



In Focus

House of Lords Act 1999 (Amendment) Bill [HL] (HL Bill 11 of 2016–17)

Key Provisions

The [House of Lords Act 1999 \(Amendment\) Bill \[HL\]](#) is a private member's bill introduced by Lord Grocott (Labour). The Bill received its first reading on 24 May 2016, and is scheduled to have its second reading on 9 September 2016. The Bill seeks to amend the House of Lords Act 1999 to remove the system of by-elections currently used to fill vacancies caused by the death, resignation or expulsion of individuals who are Members of the House of Lords by virtue of a hereditary peerage.

The House of Lords Act 1999 removed the right of individuals to be Members of the House of Lords by virtue of a hereditary peerage, with some exceptions, which are outlined in section 2 of the Act. Section 2 states that 90 hereditary Peers, the holder of the office of Earl Marshal and the holder of the office of Lord Great Chamberlain are excepted from the exclusion provided for in section 1. In addition, section 2 provides for the Standing Orders of the House to “make provision for filling vacancies among the people excepted from section 1”; vacancies in the 90 excepted hereditary Peers are caused by death, resignation or expulsion and in these instances the Standing Orders of the House of Lords provide for by-elections. The office of Lord Great Chamberlain is a hereditary one, vested jointly in the Cholmondeley, Ancaster and Carrington families, rotating between them in successive reigns and therefore not subject to by-elections. The office of Earl Marshal is also hereditary, and has been held by the Duke of Norfolk since 1677, the post is not subject to by-elections. Section 3 of the House of Lords Act 1999 removes disqualifications in relation to the House of Commons—voting in elections to the House of Commons and being a Member of the House of Commons—from holders of hereditary peerages; this section does not apply to excepted hereditary Peers and these restrictions therefore continue to apply to them.

The House of Lords Act 1999 (Amendment) Bill would amend the House of Lords Act 1999 to the effect that:

- Clause 1(2) would amend section 1 of the Act so that Members of the House of Lords on the day before the proposed Bill was passed would be excepted; this would mean that all of the 92 current Members of the House of Lords by virtue of a hereditary peerage would remain.
- Clause 1(3) would remove section 2 of the House of Lords Act 1999; this would remove reference to the 90 Peers, the holder of the office of Earl Marshall and the holder of the Office of Lord Great Chamberlain being excepted from the exclusion of individuals based on their hereditary peerage. It would also remove provisions for the Standing Orders of the House of Lords for by-elections where vacancies amongst the excepted hereditary Peers arose. This would mean that where a vacancy amongst either the 90 Peers or the two office holders arose, it would not be filled; while the offices of Lord Great Chamberlain and Earl Marshal would continue to be filled, those office holders would no longer be Members of the House of Lords.

- The Bill would amend section 3 of the 1999 Act to remove references to excepted hereditary Peers and replace it with a reference to Members of the House of Lords on the day before the proposed Bill was passed. This would mean that the disqualifications in relation to the House of Commons that would continue to apply to individuals who were Members of the House of Lords by virtue of a hereditary peerage.

Lord Grocott has said the following with respect to the Bill:

Since the passing of the 1999 House of Lords Act, vacancies caused by the death of one of the remaining hereditary Peers have been filled through a system of by-elections. This was always intended as a temporary measure pending a comprehensive reform of the Lords.

It is now 17 years since the original Act was passed during which time there have been 28 by-elections. There have been two by-elections in 2016, one of which was for the election of a Liberal Democrat Peer in April this year when there were seven candidates and an electorate of three. The Government has made it clear that there will be no comprehensive reform of the Lords during this Parliament by which time a temporary measure will have been in operation for more than 20 years. My bill, which does not affect the rights of existing hereditary Peers, simply brings the by-election system and its attendant adverse publicity to an end.¹

Background

The House of Lords Bill 1998–99 sought to abolish the right of all hereditary Peers to sit and vote in the House of Lords. During consideration of the Bill in the House of Lords, Lord Weatherill, then Convenor of the Crossbench Peers and previously Speaker in the House of Commons, moved an amendment to allow 92 hereditary Peers to remain Members of the House. Although the ‘Weatherill amendment’, as it became known, derives its name from the Peer who moved it, it should be noted that the origins of the amendment lie in negotiations involving a range of individuals across the political spectrum.² The amendment was agreed by both Houses and became part of the House of Lords Act 1999.

In response to concerns about maintaining the number of hereditary Peers, should the second stage of Lords reform be delayed, the Government moved an amendment to allow any vacancies arising on the death of an excepted hereditary Peer to be filled through by-elections. The amendment was agreed at third reading without division.³

In conjunction with the passage of the House of Lords Act 1999, new Standing Orders in the House of Lords were agreed in July 1999 to provide for the election of excepted hereditary Peers (Standing Order 9, or SO 9) and by-elections to fill subsequent vacancies (Standing Order 10, or SO 10), following [recommendations](#) drawn up by the House of Lords Procedure Committee. The first set of elections took place in October and November 1999, in accordance with SO 9, and in line with the Weatherill amendment, the excepted hereditary Peers consisted of the following categories:

- 2 Peers elected by the Labour hereditary Peers;
- 42 Peers elected by the Conservative hereditary Peers;
- 3 Peers elected by the Liberal Democrat hereditary Peers;
- 28 Peers elected by the Cross-bench hereditary Peers; and
- 15 Peers, elected by the whole House, from among those ready to serve as Deputy Speakers or in any other office as the House may require.

The reasoning behind these figures was explained by Lord Weatherill when he moved his amendment during committee stage of the passage of the Bill in the House of Lords.

We believed it would be appropriate if the hereditary Peers of each of the main political parties, and of the Crossbenchers, were able to elect a proportion of their number who would continue to sit. The proportion is fixed at 10 percent of the whole. That seemed appropriate given that by no means all hereditary Peers attend the Chamber on a regular basis [...]

Some hereditary Peers serve the Chamber as Deputy Speakers or Chairmen. At present the number of hereditary Peers who are Deputy Speakers is 15. We believe therefore that that would be an appropriate number to add to the 75 [...] With the Earl Marshal and the Lord Great Chamberlain added the number becomes 92.⁴

Although the 15 Members originally elected by the whole House were chosen as being willing to serve as Deputy Speakers, the Procedure Committee recommended that “any Peer elected at a by-election will, however, not be expected to serve as a Deputy Speaker”; meaning that whilst by-elections to fill vacancies for 15 hereditary Peers who are elected by the whole House do still occur, individuals taking place are not required to serve as Deputy Speaker.

SO 9 specified that any vacancies arising before the end of the first session of the next Parliament would be filled by the closest runner-up in the original election. Accordingly, when Baroness Wharton died in May 2000, she was replaced by Lord Cobbold, and when the Earl of Carnarvon died in September 2001, he was replaced by Lord Chorley. Since the 2002–03 session, vacancies have been filled through by-elections in accordance with SO 10. The [Companion to the Standing Orders](#) explains that:

- 1.05 Under SO 10, any vacancy due to the death, retirement or exclusion of one of the 90 is filled by holding a by-election. By-elections are conducted in accordance with arrangements made by the Clerk of the Parliaments and take place within three months of a vacancy occurring. If the vacancy is among the 75, only the excepted hereditary Peers (including those elected among the 15) in the relevant party or Crossbench grouping are entitled to vote. If the vacancy is among the 15, the whole House is entitled to vote.
- 1.06 The Clerk of the Parliaments maintains a register of hereditary Peers who wish to stand in any by-election under SO 10. Any hereditary Peer other than a Peer of Ireland is entitled to be included in the register. Under SO 11, any hereditary Peer not previously in receipt of a writ of summons who wishes to be included in the register petitions the House and any such petition is referred to the Lord Chancellor to consider and report upon whether such Peer has established the right to be included in the register.⁵

The most recent edition of the [Register of Hereditary Peers](#), published on 18 May 2016, included 196 hereditary Peers who have declared a wish to stand as candidates in hereditary by-elections. Voting takes place using the alternative vote system. Prior to a by-election the Clerk of Parliaments provides [notices](#) and lists of candidates, which provide more information about the timetable and conduct of the election and eligible candidates and voters. Following an election the Clerk of the Parliaments produces a note of the results.

As at 3 August 2016 there have been 28 by-elections, filling 30 vacancies for hereditary Peers in the House of Lords. The majority of vacancies arose due to the death of a Member, but six were created through hereditary Peers retiring and one through the non-attendance of a Member during the 2015–16 session.

As most hereditary peerages descend down the male line, there have been only a few female hereditary Peers in the House of Lords. Five women were chosen to remain as excepted hereditary Peers in the elections held in October and November 1999, all of whom were Crossbenchers. Only one of the original five female excepted hereditary Peers remains in the House today (the Countess of Mar). The other four female hereditary Peers were all replaced after their deaths by male hereditary Peers. To date, no women have been admitted (or re-admitted) to the House through hereditary by-elections.

Since the 1999 Act, there have been numerous proposals put forward for further reform of the House of Lords. Successive Governments have attempted to carry out a second stage of major reform, which would change the current basis of membership—thus far without success. There have also been numerous proposals, including a series of private member's bills, for more limited reforms to reduce the size of the House of Lords and to restrict the criteria for membership, including ending the practice of by-elections for replacing hereditary Peers. Again, no attempt to end hereditary by-elections or otherwise remove the excepted hereditary Peers has succeeded. The House of Lords Library briefing, [Hereditary Peers in the House of Lords Since 1999](#), provides an overview of proposals to change the position of hereditary Peers in the House of Lords since 1999. In answer to a recent parliamentary question regarding appointment to the House of Lords the then Leader of the House of Lords, Baroness Stowell of Beeston, stated:

The hereditary Peers who are Members of this House make an important contribution to our work. Any change relating to their arrival in this House would be part of a much wider package of reform, and that is not something that is currently being explored.⁶

Further Information

- House of Lords Library, [Hereditary Peers in the House of Lords Since 1999](#), 26 March 2014
- House of Lords Library, [The Weatherill Amendment: Elected Hereditary Peers](#), 23 October 2009
- House of Lords Library, [Principal Office Holders in the House of Lords](#), 19 March 2015

¹ This text was provided by Lord Grocott on request from the Library.

² For a more detailed discussion of the background to the Weatherill amendment see: House of Lords Library, [The Weatherill Amendment: Elected Hereditary Peers](#), 23 October 2009; and [Hereditary Peers in the House of Lords since 1999](#), 26 March 2014.

³ [HL Hansard, 26 October 1999, cols 169–71.](#)

⁴ [HL Hansard, 11 May 1999, col 1089.](#)

⁵ House of Lords, [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#), 2015, p 18, paras 1.05–1.06.

⁶ [HL Hansard, 21 April 2016, col 756.](#)

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