



## **House of Lords (Hereditary Peers) (Abolition of By-Elections) Bill [HL] (HL Bill 2 of 2017–19)**

### **Summary**

The House of Lords (Hereditary Peers) (Abolition of By-Elections) Bill is a private member's bill introduced by Lord Grocott (Labour). 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 Bill has one substantive clause, which would prevent any future vacancy among the 92 hereditary Members of the House being filled via the current system of by-elections. Instead, such vacancies would lapse, and the departing hereditary Member would not be replaced. The same would be true for the two hereditary positions not currently filled by means of a by-election, that of the Earl Marshall and the Lord Great Chamberlain, vacancies arising in either of which would not be filled by further exception, should the Bill receive royal assent.

Speaking to the purpose of his Bill, Lord Grocott said:

Since the passing of the House of Lords Act 1999, vacancies caused by the death or retirement 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 18 years since the original Act was passed during which time there have been 30 by-elections.

Amongst the more bizarre consequences of the by-election system was one held in April last year for a Liberal Democrat vacancy when the number of candidates was seven and the electorate three. At another by-election held in March this year all 803 members of the House were entitled to vote. There were 27 candidates, 19 of whom failed to make double figures. Under the alternative vote system there were 25 counts before the winner was declared. What's more, the only people entitled to stand in a by-election are those hereditary Peers who have applied to have their names placed on the Register of Hereditary Peers. There are 198 names on the current list. Only one is a woman.

The by-election system introduced as a temporary expedient nearly 20 years ago is well past its sell-by date. My simple two clause bill will ensure that this year's by-elections are the last.<sup>1</sup>

As discussed below, Lord Grocott moved a similar private member's bill in the 2016–17 session, the House of Lords Act 1999 (Amendment) Bill.<sup>2</sup> The Bill did not progress past consideration in committee in the House of Lords by the end of the session, having failed to secure sufficient cross-party support.

## 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, 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.<sup>3</sup> 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, a separate government amendment was moved during consideration of the Bill 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.<sup>4</sup>

Consequently, the House of Lords Act 1999 not only removed the right of individuals to be Members of the House of Lords by virtue of a hereditary peerage, with the exception of the 92 detailed above, it provided for the Standing Orders of the House to make provision for any vacancies amongst the 90 excepted hereditary Peers caused by death, resignation or expulsion to be filled via a by-election. The Act provides for by-elections for 90 hereditary members rather than 92 because, although the office of Lord Great Chamberlain is a hereditary one, vested jointly in the Cholmondeley, Ancaster and Carrington families, it rotates between them in successive reigns and is therefore not subject to by-elections. Similarly, the office of Earl Marshal is also hereditary, and has been held by the Duke of Norfolk since 1677 and is not subject to by-elections.

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, following recommendations drawn up by the House of Lords Procedure Committee. The first set of elections took place in October and November 1999, and in accordance with Standing Order 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 Crossbench hereditary Peers.
- 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.<sup>5</sup>

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

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.<sup>6</sup>

## **By-Elections to Date**

The *Companion to the Standing Orders* explains that, as currently constituted, the rules regarding the by-election process are as follows:

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.

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.<sup>7</sup>

The most recent edition of the *Register of Hereditary Peers*, published on 21 June 2017, included 198 hereditary Peers who have declared a wish to stand as candidates in hereditary by-elections. Voting takes place using the alternative vote system.<sup>8</sup> Prior to a by-election the Clerk of the 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 24 July 2017, there have been 30 by-elections, filling 32 vacancies for hereditary Peers in the House of Lords. The majority of vacancies arose due to the death of a Member, but seven were created through hereditary Peers retiring and one through the non-attendance of a Member.<sup>9</sup>

## **Consideration of the House of Lords Act 1999 (Amendment) Bill**

Speaking to the House of Lords Act 1999 (Amendment) Bill at its second reading on 9 September 2016, Lord Grocott outlined the rationale for his proposals:

To those, therefore, who argue that the by-elections must continue until there is comprehensive Lords reform, the answer is simple: successive Governments have tried and failed, but what also has failed is the argument that the remaining hereditary Peers would somehow guarantee swift movement towards a fully reformed House. To those who say that commitments to the by-elections made in 1999 must continue today, the answer is surely that one of our fundamental constitutional principles is that no Parliament can bind its successor. [...]

My Bill deals with the problem of the by-elections but does not affect in any way whatever the rights of any hereditary Peer in this House today. Under my Bill, they would continue to play the important part that they do in exactly the same way life Peers do. Indeed, in most respects, hereditary Peers in this House are completely indistinguishable from any other Peer, apart from the absurd anomaly of their being able to pass on their peerage to another of their number when they die or retire.

For this House to take the lead and pass [this Bill] would enhance our reputation and improve our Parliament. Its passage would hurt no one and cost nothing.<sup>10</sup>

Responding for the Government, Baroness Chisholm of Owlpen suggested that, while they were sympathetic to the Bill, any such reform should not be considered in isolation but as part of a broader review into the work of the House:

[T]he role of hereditary Peers goes to the heart of questions about our composition. Any change to their status would fundamentally change the nature of your Lordships' House, and so as a Government we would consider any change to be bound up in those broader discussions about comprehensive reform. [...]

The nub of the debate today is that by removing hereditaries from this House over time, many of whom play an important role in our work, we would become de facto an appointed Chamber. That would be a very significant step and would clearly need to form part of a broader consideration of the role of the House.<sup>11</sup>

Baroness Chisholm added that, whilst she paid tribute to Lord Grocott for pursuing this “important constitutional matter”, the Government “do not believe that now is the time for comprehensive reform, given the priorities elsewhere—not least, implementing the result of the EU referendum”.<sup>12</sup>

At committee stage on 9 December 2016, amendments were moved to the Bill by Lord Trefgarne and the Earl of Caithness, the effect of which would have been to remove the key clauses from the Bill. Whilst those amendments were either withdrawn or defeated on division, Lord Grocott acknowledged the Bill did not have sufficient cross-party support to proceed at that time.<sup>13</sup>

## Further Information

- House of Lords Library, [House of Lords Act 1999 \(Amendment\) Bill \[HL\]: Briefing for Lords Stages](#), 10 August 2016; [Hereditary By-elections: Results](#), 20 July 2017; [Hereditary Peers in the House of Lords Since 1999](#), 26 March 2014; [The Weatherill Amendment: Elected Hereditary Peers](#), 23 October 2009; and [Principal Office Holders in the House of Lords](#), 19 March 2015

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<sup>1</sup> Text provided by Lord Grocott on request from the Library.

<sup>2</sup> UK Parliament website, [House of Lords Act 1999 \(Amendment\) Bill 2016–17](#).

<sup>3</sup> 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.

<sup>4</sup> [HL Hansard, 26 October 1999, cols 169–71](#).

<sup>5</sup> House of Lords Library, [The Weatherill Amendment: Elected Hereditary Peers](#), 23 October 2009, p 33.

<sup>6</sup> [HL Hansard, 11 May 1999, col 1089](#).

<sup>7</sup> House of Lords, [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#), 2017, paras 1.05–1.06.

<sup>8</sup> House of Lords, [Register of Hereditary Peers](#), 21 June 2017.

<sup>9</sup> House of Lords Library, [Hereditary By-elections: Results](#), 20 July 2017, HL Paper 2 of session 2017–19, pp 1–2.

<sup>10</sup> [HL Hansard, 9 September 2016, cols 1223–7](#).

<sup>11</sup> *ibid*, cols 1249–51.

<sup>12</sup> *ibid*.

<sup>13</sup> [HL Hansard, 9 December 2016, col 981](#).

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