Life Peerage Creations: Powers of the Crown

Summary

The Lord Speaker's committee on the Size of the House's report, *Report of the Lord Speaker's committee on the Size of the House* (31 October 2017), is due to be debated in the House of Lords on the 19 December 2017. The committee explored and made recommendations on ways by which the size of the House of Lords could be reduced. The report commented on advice it received contending that the Monarch is empowered to appoint life Peers outside of the Life Peerages Act 1958, and that Peers appointed in this way would not be entitled to a seat in the House of Lords. Accordingly, the committee encouraged the Government to pursue this option in tandem with their main proposals. This Briefing further explores this option by considering the background to the appointment of life Peers; the *Wensleydale Peerage* case which challenged the Crown's authority to create life Peers; and ways in which the Crown may honour individuals to be addressed as Lord or Lady, without giving sitting and voting rights in the House of Lords outside of the Life Peerages Act 1958.

Historical Life Peerages

According to R P Gadd. Barrister at Law of Gray's Inn and King's Inn Dublin, a peerage "is one of the several dignities, including baronetcies and knighthoods, which can be created by the Crown".[1] Prior to the Life Peerages Act 1958, the Crown had on many occasions granted peerages for life, which did not necessarily enable the Peer to sit in the House of Lords. O Hood Phillips, former Dean of the Faculty of Law at University of Birmingham, stated in 1958 that "life peerages were created in the old days for reasons of romance of family affection".[2] Francis Beaufort Palmer, Bencher of the Inner Temple, listed such creations.[3] For example: Guichard D'Angle was made Earl of Huntingdon in 1377 (although, as he was a "foreigner", he could not sit in Parliament); in 1385, when Robert de Vere (Earl of Oxford) was made Marquis of Dublin for life (although Palmer remarks that this was made in Parliament with the assent of the nobles and the commons); in 1390, when the Duke of Lancaster was made Duke of Aquitaine for life; and in 1398 (also in Parliament) Margaret, Countess of Norfolk was made Duchess of Norfolk for life.[4]

In view of these precedents, Palmer contended that "it is not to be wondered at that generations of lawyers should have recognised the power of the Crown to grant life peerages" and cited several authorities, such as Sir Edward Coke and Sir William Blackstone, in support of this view.[5] He also noted that "doubts as to the validity of such peerages [had also] been expressed in other quarters".[6] However, he goes on to state that it was not until 1856, when the question of the validity of life peerages, and their entitlement to sit and vote in the House of Lords, arose in "acute form".[7]

Wensleydale Peerage Case

In *Wensleydale Peerage* [1856] 5 HLC 958, the Crown had granted letters patent to Sir James Parke—a judge of the Court of Exchequer—to make him a baron for life as Baron Wensleydale. The letters patent were followed by a writ of summons to Parliament in the usual form, but due to him falling ill at the time, a copy of the patent was instead laid on the Table of the House. The validity of the grant was immediately challenged and the matter was referred to the Committee for Privileges. Arguments were

put forward by both sides, and the various instances in which life peerages were created were noted by the Committee. Lord Lyndhurst, a former Lord Chancellor, argued that the creation of a peerage for life was contrary to the settled usage of the last 400 years, to the principles of the constitution and to the privileges of Parliament. He stated that even if such power existed, it had fallen into desuetude, and likewise the power of giving a seat in the House by a life peerage.[8] In contrast, the then Lord Chancellor, Lord Cranworth, argued that the House of Lords had no power, without a reference from the Crown, to question the validity of a grant by the Crown.[9] Lord Granville maintained that the power of the Crown to create Peers for life had existed, had been frequently used and was not lost. In contrast, Lord St Leonard stated that such a creation, in his opinion, was illegal.[10] The Committee debated over several days, and on 22 February 1856 Lord Lyndhurst moved the following motion that:

> the House, examined and considered the copy of the letters patent, purporting to create the Right [Honourable] Sir James Parke, knight, a Baron of the United Kingdom for life; and they report it as their opinion that neither the said letters patent, nor the said letters, with the usual writ of summons issued in pursuance thereof, can entitle the grantee therein named to sit and vote in Parliament.[11]

An attempted amendment to the motion was defeated by 92 votes to 57. The original motion was agreed and the report was ordered to be made to the House.[12] Sir James Parke was subsequently given a hereditary peerage, as Lord Wensleydale of Walton, on 23 July 1856. According to Gadd, the resolution passed in *Wensleydale* "meant in effect that, although the Crown could create a life Peer, the House of Lords could decide whether or not such a creation allowed a seat and vote in the House of Lords".[13]

Gadd notes that this decision caused some difficulty, as in order for judges to be promoted into the House of Lords to perform its appellate function, they would have to be made into hereditary Peers. However, by virtue of the Appellate Jurisdiction Act 1876 (which was amended in 1887), the Crown was empowered by letters patent to create a limited number of Lords of Appeal in Ordinary—applying to judges only—for the purpose of aiding the House of Lords in the determination of appeals. Therefore, during their life as barons, they were entitled to receive a writ of summons to the House of Lords.[14]

Life Peerages Act 1958

Subsequent to *Wensleydale*, six unsuccessful attempts through private member's bills were made to strengthen the legislative capacity of the House of Lords by allowing life peerages. However, in 1957 the Life Peerages Bill was introduced and it received royal assent on 30 April 1958.[15] The 1958 Act enabled the Crown to create life Peers (including women for the first time), and for them to receive writs of summons to attend the House of Lords and sit and vote accordingly.

The 1958 Act specifies that the Crown shall have power to grant by letters patent to any person a 'peerage for life', and that person shall for his or her life rank as a baron and receive writs of summons to attend the House of Lords. However, Gadd claims that, notwithstanding this power, the Crown may still create life Peers without sitting and voting rights outside of this statute. He states:

> The [Life Peerages Act 1958] stipulates that only baronies can be created, but it is submitted that the Crown could still create other classes of life Peers without the right to sit in the House of Lords.[16]

Similarly, the recent Lord Speaker's committee on the Size of the House's report commented on advice it received contending that the Monarch is empowered to appoint life Peers outside of the Life Peerages Act 1958, and that Peers appointed in this way would not be entitled to a seat in the House of Lords. The committee stated:

> While this report is not the place to set out how this might happen, we have been advised that the Monarch is empowered to appoint life Peers other than under the Life Peerages Act 1958. Peers appointed in this way would not be entitled to a seat in the House of Lords. We would encourage the Government to pursue this option in tandem with our main proposals.[17]

Justices of the Supreme Court

The power of the Crown to confer titles outside of the Life Peerages Act 1958 is analogously illustrated by the titles accorded to the Justices of the Supreme Court. When the Supreme Court started work in 2009, the new bench was composed of Lords of Appeal in Ordinary (these were those Members that were automatically transferred from the Judicial Appellate Committee of the House of Lords to the Supreme Court) and Lord Clarke of Stone-cum-Ebony (who was appointed to the Supreme Court from his judicial position as the Master of the Rolls, but he already carried a title of Lord from his life peerage which was granted to him in May 2009). Therefore, the newly appointed Justices of the Supreme Court all already held the titles allowing them to be addressed as Lord or Lady.

However, in April 2010 when the then Court of Appeal Judge, Lord Justice Dyson, was appointed to the Supreme Court, his title reverted back to Sir John Dyson. The Supreme Court therefore issued a notice on 13 December 2010 explaining that Her Majesty The Queen had signed a warrant declaring that every Justice of the Supreme Court of the United Kingdom will in future be styled as Lord or Lady for life, to ensure that all Justices of the Court are described and addressed in a similar manner to resolve the potential anomalies in titles from different, or former jurisdictions.[18] Lord Phillips of Worth Matravers, then President of the Supreme Court, stated:

> One of the hallmarks of the new Court is that, in order to ensure the complete separation of the Court from the legislature, new Justices are not made life Peers, and that those who are already life Peers are unable to sit and vote in the House of Lords. However, the appointment of colleagues who are not life Peers has inevitably led to some confusion about the manner in which they should be described and addressed. This announcement is a welcome move to help us introduce consistency and avoid the complications of a variety of titles being employed.[19]

Professor Graham Zellick QC, Emeritus Professor of Law of the University of London, notes that every other judicial title is derived directly from the statutory office held by the incumbent, such as: Judge, Justice or Lord Justice. However, in the case of the Supreme Court, there is "no connection" between their office, designated by statute as 'Justice of the Supreme Court' under section 23(6) of the Constitutional Reform Act 2005, and the title the Queen has been advised to give them.[20]

Further Information

- Lord Speaker's committee on the Size of the House, *Report of the Lord Speaker's committee on the Size of the House*, 31 October 2017
- House of Lords Library, *Life Peerages Act 1958*, 21 April 2008
- R P Gadd, *Peerage Law*, 1985
- Francis Beaufort Palmer, *Peerage Law in England: A Practical Treatise for Lawyers and Layman*, 1907

[1] R P Gadd, *Peerage Law*, 1985, p 1.
[2] O Hood Phillips, 'Lords and Ladies for Life', 1958, *Oxford Lawyer*, vol 1 no 1, pp 27–32.
[3] Francis Beaufort Palmer, *Peerage Law in England: A Practical Treatise for Lawyers and Layman*, 1907, p 86.
[4] ibid.
[5] ibid.
[6] ibid.
[7] ibid, p 87.
[8] *Wensleydale Peerage* [1856] 5 HLC 958.
[9] ibid.
[10] ibid.
[11] ibid. See also: HL *Hansard*, 22 February 1856, col 1170; and R P Gadd, *Peerage Law*, 1985, pp 50–1.
[12] ibid.
[13] R P Gadd, *Peerage Law*, 1985, p 51.
[14] ibid.
[15] House of Lords Library, *Life Peerages Act 1958*, 21 April 2008, pp 6–15.
[16] R P Gadd, *Peerage Law*, 1985, p 51.
[17] Lord Speaker's committee on the Size of the House, *Report of the Lord Speaker's committee on the Size of the House*, 31 October 2017, para 25.
[18] Supreme Court, 'Courtesy Titles for Justices of the Supreme Court', 13 December 2010.
[19] ibid.
[20] Graham Zellick, 'Judicial Titles and Dress in the Supreme Court and Below', *Amicus Curiae (Journal of the Society of Advanced legal Studies)*, Autumn 2013, no 95, pp 2–5.