



## House of Lords (Hereditary Peers) (Abolition of By-Elections) Bill [HL] (HL Bill 7 of 2019–21)

### Summary

The [House of Lords \(Hereditary Peers\) \(Abolition of By-Elections\) Bill \[HL\]](#) 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.

Lord Grocott moved similar private member's bills in the 2016–17 and 2017–19 sessions, the latter of which did not progress past report stage in the House of Lords by the end of the session.

As with the previous bill, Lord Grocott's new bill has one substantive clause, which would prevent any future vacancy among 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. However, the provisions have also been slightly altered in the newer bill. In the 2017–19 version, clause 2, subsection 2 stated that no more than 92 people at any one time should be excepted from section 1 of the House of Lords 1999 Act; namely the provision through which hereditary peers are able to sit in the House via the compromise agreed in the so-called Weatherill amendment. In the new version of the bill, this text has been amended to "[no more than 90 people at any one time shall be excepted from section 1](#)". This amendment is designed to prevent the provisions in the bill from applying to the posts of Earl Marshall and the Lord Great Chamberlain. Both positions are hereditary, and thus included in the 92 excepted by the Weatherill amendment. However, vacancies in neither post are filled by by-elections, and so this exclusion would mean the bill would apply to only those seats which are.

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 21 years since the original Act was passed during which time 37 newly elected hereditary peers have arrived in the House. The by-election system, introduced as a temporary expedient, is way past its sell-by date. Its continuation is an embarrassment. My simple two clause bill will hurt no-one, cost nothing, and bring this whole discredited system to an end.

(Source: Lord Grocott supplied the text following a request from the House of Lords Library)

James Tobin | 2 March 2020

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## 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>1</sup> The amendment was agreed by both Houses and became part of the House of Lords Act 1999. In response to concerns about keeping 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>2</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 to be filled via a by-election. The Act provides for by-elections for 90 hereditary members rather than 92. This is because two posts are hereditary and neither are subject to by-elections. 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. 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 the House of Lords Procedure Committee recommendations. The first set of elections took place in October and November 1999. 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>3</sup>

Lord Weatherill explained the reasoning behind these figures 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,

<sup>1</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>2</sup> [HL Hansard, 26 October 1999, cols 169–71](#).

<sup>3</sup> House of Lords Library, [The Weatherill Amendment: Elected Hereditary Peers](#), 23 October 2009, p 33.

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>4</sup>

## By-Elections to Date

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

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>5</sup>

According to the *Register of Hereditary Peers*, there are currently 216 hereditary peers who have declared a wish to stand as candidates in hereditary by-elections.<sup>6</sup> Voting takes place using the alternative vote system. 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.

At the time of writing, there have been 35 by-elections, filling 37 vacancies for hereditary peers in the House of Lords.<sup>7</sup> The majority of vacancies arose due to the death of a Member, but ten were created through hereditary peers retiring and one through the non-attendance.

<sup>4</sup> [HL Hansard, 11 May 1999, col 1089.](#)

<sup>5</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>6</sup> House of Lords, [Register of Hereditary Peers](#), accessed 19 February 2020. There is currently only one woman on the register, Baroness Dacre. The principle of male primogeniture continues to apply to hereditary peerages, under which, for example, a son or nephew would take precedence over a daughter or niece when a peerage is to be inherited.

<sup>7</sup> House of Lords, [By-elections in the House of Lords](#), accessed 19 February 2020.

There are currently 89 sitting excepted hereditary peers.<sup>8</sup> Of those, 88 are relevant to the by-election process. They belong to the following groups:

- Labour: 4 excepted hereditary peers
- Conservative: 46 excepted hereditary peers
- Liberal Democrat: 3 excepted hereditary peers
- Crossbench: 29 excepted hereditary peers
- Non-affiliated: 6 excepted hereditary peers<sup>9</sup>

These groupings would form the respective electorates in by-elections not of the whole House.<sup>10</sup>

### **Consideration of the previous version of the bill: The House of Lords (Hereditary Peers) (Abolition of By-Elections) Bill 2017–19**

The House of Lords (Hereditary Peers) (Abolition of By-Elections) Bill was introduced in the House of Lords on 26 June 2017. Speaking to the provisions in the bill at second reading on 8 September 2017, Lord Grocott said:

My Lords, just a year ago I introduced a bill with exactly the same objective as the one I am proposing today. Regrettably, despite very strong support from all parts of the House, the bill was blocked in committee by a small number of peers. My motive in reintroducing the bill is unchanged: the by-election system, which provides for the continuation—effectively in perpetuity—of a block of 90 hereditary peers is absurd and indefensible. In the 12 months since the last bill, there have been significant developments that make the case for scrapping the by-elections even more compelling [...]

Among them has been the evidence provided by yet more by-elections. For those of us in favour of scrapping them, the by-elections are the gift that keeps on giving. There have been two such elections this year. The first, on 21 March, was for a hereditary peer to be elected by the whole House. The second, on 18 July, was for a Crossbench peer, when only hereditary crossbenchers could vote. [...] The figure for the electorate was 803 and the number of votes cast was 436, meaning that the turnout was 43%. By way of comparison, it is worth noting that in the general election in June, the lowest turnout in all 650 constituencies was Glasgow North East, with 53%. The propensity to vote in a House of Lords by-election, where voters need only walk down the corridor from their offices and put a ballot paper in a box in the committee room, is 10% lower than the parliamentary constituency with the lowest turnout. That, to me, provides pretty clear evidence that the majority of Members of this House feel no great attachment to the practice of re-electing hereditary peers.<sup>11</sup>

<sup>8</sup> There are currently three excepted hereditary peers on leave of absence, the Marquess of Cholmondeley (also the Lord Great Chamberlain), the Earl of Listowel and the Countess of Mar.

<sup>9</sup> The Duke of Norfolk sits as non-affiliated. He holds the position of Earl Marshall, a position not subject to a by-election.

<sup>10</sup> With the exception of non-affiliated peers. If an excepted hereditary Member from this group dies or leaves the House, the vacancy would be filled from the party group to which they belonged on entry to the House.

<sup>11</sup> [HL Hansard, 8 September 2017, cols 2151–4.](#)

Responding for the Government, Lord Young of Cookham noted the opinions expressed on both sides of the debate but also drew attention to the Lord Speaker's Committee on the Size of the House, which reported later in 2017.<sup>12</sup> Lord Young argued that the committee's work presented a good reason to "pause" reforms such as those contained within Lord Grocott's bill so they could be considered in the round:

Since we last debated this subject, there has been an important initiative which to my mind constitutes a decisive reason for pausing this bill [...] During the last Parliament the Lord Speaker established a cross-party committee specifically to address the size of the Lords, chaired by the noble Lord, Lord Burns. [...]

The committee has been asked to examine practical and politically viable options for reducing the size of this House, so that progress might be made on the issue, and to provide advice to the Lord Speaker on the potential next steps. I am sure that within the remit was the issue of the hereditaries; it certainly was if the noble Lord, Lord Grocott, gave evidence. The noble Lord, Lord Burns, and the committee have since worked tirelessly on this issue, looking at reform measures to reduce our size as a whole. My noble friend Lord Brabazon reminded us that this was a priority. The committee is going to report in October and the Government look forward to its recommendations. I have no idea what they are going to be, but it cannot be right, in advance of publication and debate on those proposals, to single out one possible element which may or may not be in the recommendations and launch it down the legislative slipway. Consideration of this bill is therefore premature by singling out as it does one potential reform which does little to address the size of the House. We should await the findings of the committee rather than seeking to pre-empt them, and proceed on that basis.<sup>13</sup>

This issue was returned to at committee stage of the bill, which took place after the publication of the Lord Speaker's Committee's first report on the size of the House (or the 'Burns report' as it and subsequent reports have come to be known, after the chair of the committee, Lord Burns). Proponents of the bill including Lord Grocott argued that it was in keeping with the Lord Speaker's Committee's recommendations to reduce the size of the House. The bill's opponents argued the committee's proposed reforms should be enacted before further changes, such as those proposed in the bill, were considered. This was subject to an amendment from Lord Trefgarne (Conservative), which was defeated by 127 votes to 2.<sup>14</sup> Lord Young also returned to the subject in remarks at a later sitting of the bill committee. He noted the views expressed on both sides of the debate:

While we have reservations about the bill, it is difficult, as has just been said by my noble friend, to reconcile it with the undertakings given at the time of the abolition bill. Despite the eloquence of the noble Lord, Lord Grocott, he has not achieved consensus on his measure. Despite that, we have no plans to block the bill or impede its progress [...] The Government's view is that the energies of the House may be better employed in implementing the recommendations of the Burns report, where all parties are committed to reducing our numbers.<sup>15</sup>

<sup>12</sup> House of Lords, [Report of the Lord Speaker's Committee on the Size of the House](#), 31 October 2017.

<sup>13</sup> [HL Hansard, 8 September 2017, cols 2181–4.](#)

<sup>14</sup> [HL Hansard, 23 March 2018, cols 537–547.](#)

<sup>15</sup> [HL Hansard, 7 September 2018, cols 2024–25.](#)

Lord Young also noted, however, that the Burns report did not address the issue of hereditary by-elections:

Burns was silent on the question of these by-elections, although it noted that the proportion of hereditary peers in a reduced House would increase if no action were taken [...] and that by-election winners would pre-empt the appointments that would otherwise be made, impacting on my party and the crossbenches.<sup>16</sup>

Minor drafting amendments were subsequently made to the bill in committee, but no substantive clauses were added or amended.<sup>17</sup>

At report stage on 15 March 2019, Lord Cormack (Conservative) moved an amendment, which would have had the effect of removing the Earl Marshall and the Lord Great Chamberlain from the bill's provisions, as the new version of the bill has sought to do.<sup>18</sup> The amendment was accepted on division by 87 votes to 23.<sup>19</sup> Lord Strathclyde (Conservative) moved a further amendment with the aim of creating a statutory House of Lords Appointment Commission. This was defeated by 85 votes to 21.<sup>20</sup> Consideration of the bill at report stage was adjourned on 15 March 2019 and was not resumed before the end of the parliamentary session.

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<sup>16</sup> [HL Hansard, 7 September 2018, cols 2024–25.](#)

<sup>17</sup> UK Parliament, [House of Lords \(Hereditary Peers\) \(Abolition of By-Elections\) Bill \[HL\] 2017–19 \(as amended in Committee\)](#), 23 November 2018.

<sup>18</sup> [HL Hansard, 15 March 2019, cols 1212–14.](#)

<sup>19</sup> *ibid*, col 1236.

<sup>20</sup> *ibid*, col 1237.