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The *House of Commons (Removal of Clergy Disqualification) Bill*

Bill 34 of 2000-01

Currently, clergy in the Churches of England and Ireland (but not Wales), ministers in the Church of Scotland, Roman Catholic priests, and other priests who have been ordained by a bishop are disqualified from sitting in the House of Commons. This Government Bill is designed to repeal provisions which disqualify such clergy from membership of the Commons. These provisions are the *House of Commons (Clergy Disqualification) Act 1801*, and s9 of the *Roman Catholic Relief Act 1829*. The Bill also provides for the continuing disqualification of any bishop from the Commons who sits in the Lords as a Lord Spiritual. The Bill extends to the whole of the United Kingdom and would come into force on royal assent.

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Summary of main points

At present, clergy in the Churches of England and Ireland (but not Wales), ministers in the Church of Scotland,[1] Roman Catholic priests, and priests who have been ordained by a bishop are disqualified from sitting in the House of Commons by the *House of Commons (Clergy Disqualification) Act 1801* and s9 of the *Roman Catholic Relief Act 1829*. The interpretation of these statutes came under review in the *MacManaway* case decided by the Judicial Committee of the Privy Council in 1950. There are no similar disqualifications for ministers of other religions.

These statutes appear to affect ex-priests as well, due to difficulties about the interpretation of the term 'holy orders'. However former Church of England clergy may use provisions in the *Clerical Disabilities Act 1870* to escape these disabilities. Ministers in the Church of Scotland can demit their status under internal procedures to stand as candidates. Therefore the practical effect of the existing nineteenth century legislation outlined above falls on non-Church of England former episcopally ordained priests, including Roman Catholic priests.

The Home Affairs Select Committee report *Electoral Law and Administration*[2] recommended that all restrictions on ministers of religion standing as candidates for the Commons should be removed, except that Church of England bishops, who have separate representation in the Lords, should remain ineligible for the Commons. The Royal Commission on the reform of the House of Lords has recommended changes in the current system of religious representation in the second chamber.[3]

Legislation creating the Scottish Parliament, the National Assembly for Wales, and the Northern Ireland Assembly specifically excluded the disqualification of candidates who have been ordained or who are ministers of any religious denomination. There is no clerical disqualification for candidates in local authority or European Parliament elections.

The *House of Commons (Removal of Clergy Disqualifications) Bill 2000-01* would establish that a person who has been ordained or who is a minister of any religious denomination is not disqualified from membership of the Commons. As a consequence it repeals the 1801 Act and s9 of the 1829 Act and makes amendments to the 1870 Act. Any bishop of the Church of England who sits in the Lords as a Lord Spiritual will be specifically disqualified from membership of the Commons. The Bill applies to the whole of the United Kingdom and would come into force on royal assent.

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[1] The established church in Scotland. It is not an Episcopal church

[2] HC 768 1997-98

[3] Cm 4183 January 2000

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I Introduction

The major legislation governing disqualification from sitting in the Commons is consolidated in the *House of Commons Disqualification Act 1975*. However other enactments and the common law also disqualify a range of people, including Christian clergy, members of the Lords, minors and aliens. This paper does not offer a comprehensive guide to all these categories of disqualification.[4]

The main purpose of disqualification is to ensure that Members are fit and proper to sit in the House, and are able to carry out their duties and responsibilities free from undue pressures from other sources. These considerations may be called "House-based" and are the basis not only of disqualifications under the *House of Commons Disqualification Act 1975* but of the whole range of earlier disqualifications for the Commons.[5]

At present, priests in the Churches of England and Ireland (but not Wales), ministers in the Church of Scotland, Roman Catholic priests and priests who have been ordained by a bishop are disqualified from sitting in the Commons. Nonconformist ministers (that is, ministers who have not been episcopally ordained) are not disqualified from sitting. The legislation appears to affect ex-priests as well. There is no disqualification for clergy of non-Christian faiths. The disqualifying legislation is considered in some detail below.

It should be noted that the disqualification provisions apply only to the Commons, not to local government,[6] or to the devolved assemblies/parliaments in Scotland, Wales and Northern Ireland (see below), or to the European Parliament.[7]

Historically, Roman Catholics were effectively prevented from sitting in either House of Parliament by the terms of the Second Test Act of 1678.[8] While this Act did not specifically forbid Catholics, this was its clearly declared purpose in the preamble. It achieved its purpose by requiring that all Peers and Members of the House of Commons should not only take the oaths of supremacy and allegiance, but also make a declaration abjuring transubstantiation, worship of the Virgin Mary and the celebration of mass. It would obviously be impossible for a genuine Catholic to take such an oath. Members who refused to take it would automatically lose their seats.

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4 See *The Electoral System in Britain* (1995) by Robert Blackburn pp 160-197 for a discussion on disqualification from the Commons

5 The other main consideration is ‘office-based’; the wish to ensure that an office held by an individual is not adversely affected by his membership of Parliament. For further information, see Library Research Paper 00/6 The *Disqualification Bill.*

6 It should be noted, however, that there were a number of nineteenth century enactments prohibiting clerics from holding local government office, now all repealed. See HC 200 1952-3 Appendix B.

7 Para 5(3)(b) of Schedule 1 to the *European Parliament Elections Act 1978* [a person is not disqualified…by reason only that he has been ordained or is a minister of any religious denomination]

8 So, of course, were nonconformists

This restriction against Roman Catholics entering Parliament was one of many other discriminatory statutory provisions against Catholics and other non-Anglicans. By the end of the 18th century, some of the discriminatory practices had been removed, but more remained until the passing of the *Roman Catholic Relief Act 1829*. This provided, among other things, that Catholics could sit and vote in either House of Parliament provided that they took, instead of the oaths of supremacy, allegiance and abjuration, a new, inoffensively phrased oath of allegiance.[9] There was now nothing to prevent Catholics from becoming a Member of Parliament, or indeed Speaker or Prime Minister. However, s9 of the 1829 Act states:

> That no person in Holy Orders in the Church of Rome shall be capable of being elected to serve in Parliament as a member of the House of Commons; and if any such person shall be elected to serve in Parliament as aforesaid such election shall be void; and if any person, being elected to serve in Parliament as a member of the House of Commons shall, after his election, take or receive Holy Orders in the Church of Rome, the seat of such person shall immediately become void; and if any such person shall, in any of the cases aforesaid, presume to sit or vote as a member of the House of Commons, he shall be subject to the same penalties, forfeitures, and disabilities as are enacted by an Act passed in the forty-first year of the reign of King George the Third, intitled 'An Act to remove doubts respecting the eligibility of persons in Holy Orders to sit in the House of Commons'; and proof of the celebration of any religious service by such person, according to the rites of the Church of Rome, shall be deemed and taken to be prima facie evidence of the fact of such persons being in Holy Orders within the intent and meaning of this Act.

The definition of priests in holy orders raises some issues of conflicting interpretation and it seems at least arguable in ecclesiastical law that, once ordained, a priest remains in holy orders. This application of s9 to parliamentary candidates who have left the priesthood raises some difficult questions.

The *House of Commons (Clergy Disqualification) Act 1801* is also relevant and has a much wider disqualifying remit: this Act states:

> No person having been ordained to the office of priest or deacon or being a minister of the Church of Scotland is or shall be capable of being elected to serve in Parliament as aforesaid…

This Act therefore appeared to disqualify episcopally ordained priests, and ministers of the two established churches; the Church of England and the Presbyterian Church of Scotland (which is not an episcopal church).[10] There was no specific reference to Roman

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9 For further information on the current Parliamentary oath see Library Research Paper 00/17 - *The Parliamentary Oath*

10 The immediate background to the Act was the election of Rev Horne Tooke, an ordained priest of the Church of England, for the seat of Old Sarum (and a well-known radical). He was not holding

Catholic priests in this Act (which of course predated the abolition of the Test Acts). However, during the passage of the 1829 Act what became s9 resulted from an amendment in committee introduced by the then Home Secretary, Robert Peel, as a matter of abundant caution, despite the general impression of lawyers that the 1801 Act would be sufficient to disqualify Roman Catholic priests.[11]

II The *MacManaway* case

The case of *MacManaway*[12] has led, however, to uncertainties in interpretation. Reverend J G MacManaway was elected as an Ulster Unionist member for Belfast West in 1950. He had been ordained a priest in 1925 by the Bishop of Armagh in the Church of Ireland, but had relinquished all his rights as a priest in the Church of Ireland. The question of his valid election arose. A select committee was established to consider whether his election was void under the 1801 Act. The committee concluded that immediate legislative action was necessary to clarify the law.[13] However, the Home Secretary, at the request of the Commons, referred the issue to the Judicial Committee of the Privy Council[14] which concluded that the words 'ordained to the office of priest or deacon' meant that the disqualification extended beyond priests and ministers of the established churches to all episcopal ordinations. The judgment was as follows:

> Their Lordships answer the questions of law referred to them as follows. They will humbly advise His Majesty:
>
> (1) That the provisions of the House of Commons (Clergy Disqualification) Act 1801, so far as they apply to persons ordained to the office of priest or deacon, do not disable from sitting and voting in the House of Commons only persons ordained to those offices in the Church of England as by law established;
>
> (2) That those provisions disable from so sitting and voting all persons ordained to the office of priest or deacon, whether by a bishop of that Church in accordance with the form of making and ordaining priests and deacons according to the order of the Church of England, or by other forms of episcopal ordination;[15]

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ecclesiastical office at his election. There was doubt as to whether it was appropriate for members of the established church to sit in the Commons, given separate representation in Convocation and the spiritual role which holy orders was held to endow. The Commons had excluded a number of clergy in earlier sixteenth, seventeenth and eighteenth century cases. See *MacManaway* AC 1951 161 at 164 for details of the cases. Rev Tooke continued to sit in the Commons, as there was a specific saving in the Act for those who had previously taken their seats.

11 Cited by the then Attorney General, Sir Hartley Shawcross, in evidence to the 1950 select committee HC 68 1950 (see below) See *Parl Debates* 2nd series vol XX, col 1402

12 *In re MacManaway and In re The House of Commons (Clergy Disqualification) Act 1801* AC [1951] 161 at 178

13 *Special Report from the Select Committee on the Election of a Member (Clergyman of the Church of Ireland)* HC 68 1950

14 *Commons Journal* 29 June 1950 p156. The procedure used was under s 4 of .the *Judicial Committee Act 1833.* There was a precedent for this procedure in the case of Sir Stuart Samuel, (contract with minister disqualifying from Parliament) *Re Samuel* [1913] AC 514

15 For a consideration of the difficulties of determining whether there had been in fact been episcopal ordination, see the evidence of the Clerk of the House in HC 200 1952-53

> (3) That the Reverend James Godfrey MacManaway is disabled from sitting and voting in *the House* of Commons by reason of the fact that, having been ordained as a priest according to the use of the Church of Ireland, *he has* received episcopal ordination.

Reverend MacManaway's election was therefore held void. The Commons declared on 19 October 1950 that he was disqualified from sitting.[16]

Professor Robert Blackburn, a specialist in electoral law, has questioned the *McManaway* judgment as follows:[17]

> The alternative interpretation that might have been taken of the words in the 1801 statute was that the disqualification related only to priests of the Established Church. This was clearly the purpose of the prohibition two hundred years ago, when not only were the Anglican clergy regarded as a fourth estate of the realm, but their religious posts were in the grant of the Crown and they were therefore in a directly analogous position to other holders of public offices or places of profit under the Crown. Mr Chancellor Addington made this very point during the House of Commons debates during the passage of the 1801 Act. His view was that, 'As a great part of the benefices of the clergy were in the immediate gift of the Crown, the inclusion of the clergy would tend to diminish the independence of the House by increasing the influence of the King. This factor could only apply to priests of the Established Church, because elsewhere the Crown did not make the appointments. Furthermore, if all episcopally ordained priests were meant to be disqualified, as the court ruled, this clearly included all priests of the Roman Catholic Church, yet the Roman Catholic Relief Act of 1829 (considered above) was passed a few years later to cover their situation. This 1829 Act can only be explained if Parliament at the time intended the 1801 Act to apply only to the Established Anglican Church. Mr MacManaway was unfortunate, therefore, in losing the legal right to sit in the Commons, after his local electorate had given him the political right to do so. The more appropriate interpretation of the 1801 Act, after the Church of Ireland was disestablished in 1869, was that ordained priests in the Church of Ireland were no longer disqualified. This would also have been in tune with the general political feeling that the ancient statutes prohibiting priests or former priests standing for Parliament had become antiquated and anachronistic, that it should be the internal rules or ecclesiastical law of the churches concerned to regulate whether or not it is suitable for a priest to stand for Parliament, and if so, in what circumstances, and that any development in our parliamentary or judicial law should move in the direction of relaxing rather than increasing the extent of this statutory disqualification.

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16 *Commons Journal*, 19 October 1950, p 233

17 *The Electoral System in Britain*, 1995, pp 189-90

Express provision was made in ss1 and 2(4) of the *Welsh Church Act 1914*[18] to ensure that priests and deacons of the Church of Wales would not be disqualified from sitting or voting in the House of Commons. However, there was no such express provision in the *Irish Church Act 1869*, which dissolved the union between the Church of England and the Church of Ireland.[19]

Former priests of the Church of England are not disqualified, by virtue of the *Clerical Disabilities Act 1870*, which allows them to draw up a certificate of relinquishment which frees them from disabilities affecting Anglican clergy.[20] Therefore the effect of the 1801 Act and the *Macmanaway* interpretation has fallen on non-Church of England episcopally ordained priests, including Roman Catholic priests.[21]

Professor Blackburn concludes that the disqualification in the 1801 Act extends to all priests who have ever been episcopally ordained, whether or not they subsequently resigned from the priesthood. As such, the former Roman Catholic priest, Bruce Kent, who stood for Oxford West and Abingdon in the 1992 general election would have been disqualified if successfully returned for that constituency. In practice, the current legislation is only likely to affect former Roman Catholic priests, since the Catholic church does not approve of priests becoming politically active.[22]

The continuing disqualification of ministers of the established Church of Scotland under the 1801 Act should also be noted. It is possible for a minister to demit his status in order in order to stand for Parliament under an ecclesiastical procedure.[23] In evidence to the 1952-3 select committee (see below) the then Procurator pressed for the removal of the disqualification, given in particular the lack of representation of this established church in the Lords.[24]

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18 This Act disestablished the Church of England in Wales and created a Church of Wales. It also removed from the Lords bishops who sat for Welsh sees.

19 The two Churches were united under Article V of the *Union with Ireland Act 1800*. For the reasons for the omission, see HC 50 1950, para 8.

20 It should be noted that the priest relinquishes not his holy orders but the exercise of holy orders under this Act. See evidence from the Archbishop of Canterbury to HC 200 1952-53 Q213. In theory, the 1870 Act could simply be extended to cover episcopally ordained priests of other denominations, and allow such former priests to stand as parliamentary candidates.

21 Under the *Colonial Clergy Act 1874* priests or deacons ordained by bishops other than bishops of the Churches of England and Ireland may be admitted to benefices in England and Ireland with the consent of the bishop of the diocese.

22 The *Code of Canon Law* 1983, canon 285, paragraph 3 forbids clerics from assuming public office whenever it means sharing in the exercise of civil power.

23 Church of Scotland ministers are, of course, not episcopally ordained. For details of the procedure and a list of ministers who have stood as candidates see HC 200 1952-3 *Minutes of Evidence* 11 December 1952, para 7.

24 HC 200 1952-3 *Minutes of Evidence* 11 December 1952. This evidence sets out the history of clerical disqualification in Scotland between the Reformation and the 1801Act.

III Proposals for Reform

Following *MacManaway*, the Select Committee on Clergy Disqualification was established in 1951, but recommended against any change: [25]

> 4. The anomalies of the present position are in the main of three kinds. First. certain clergymen are debarred from standing for election to the House of Commons while others are not and there is often no very logical basis for the distinction. Thus one Presbyterian minister in England may be ineligible because he is a member of the Church of Scotland while another Presbyterian minister performing exactly similar religious duties may be eligible because he belongs to the Presbyterian Church of England or Ireland. Secondly, the disability has no relation to the actual practice of a religious vocation and whether or not a clergyman is or is not disqualified has nothing to do with whether he is actively engaged in his ministry. Thus a situation could arise where a non-conformist minister could stand in a constituency where he had his Church and where many of the electors were of his religious persuasion, while a retired episcopally ordained priest whose Church had no adherents in the constituency and who had himself given up all his clerical attributes would be ineligible. Thirdly, while clergymen of the Church of England can divest themselves of their religious office and can then become candidates, once a man has been ordained into the Roman Catholic Church, the Church of Ireland, the Episcopal Church of Scotland or any other Church whose priests are episcopally ordained he can never become a parliamentary candidate, although he may have not only given up his ministry but actually abandoned or changed his faith.
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> 5. In the evidence which was tendered to Your Committee, the witnesses from Churches in full communion with the Church of England preferred their clergy not to be eligible to be elected : Archbishop Myers, in relation to the Roman Catholic Church, preferred the ineligibility to be preserved by ecclesiastical rather than by civil law : whilst those Churches whose ministers are not episcopally ordained and are at present eligible to sit in the House of Commons expressed no desire for the law to be changed so as to take away from their ministers their present freedom to sit in the House of Commons. It was suggested in evidence that ministers of the Church of Scotland should be eligible to be elected and that clergy of the Church in Wales should be barred from sitting in the Commons. To meet the case of loss of vocation, several witnesses recommended that the provisions of the Clerical Disabilities Act, 1870, should be extended to all episcopally ordained clergy. Consideration was given by Your Committee to the proposal that the non-performance of religious functions for a specified period of time prior to an election might be deemed to render a minister of religion eligible to be elected, whatever his Church or status.

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[25] HC 100 1951-2, HC 200 1952-3 *Report from the Select Committee on Clergy Disqualification*

6. In reviewing the present state of the law to the amendment of which these various proposals were directed, no evidence of great difficulties or hardship was found which called for urgent attention, nor was any evidence offered to Your Committee of public demand for an alteration of the law. The only case of hardship known to have arisen since 1801 was that of the Reverend J. G. MacManaway. The proposals for amendment were advanced on grounds of principle rather than on grounds of practical need. Only in relation to the Church of Scotland were they strongly urged, and that partly on the ground that the Church of England was represented in the Upper House. The Archbishop of Canterbury epitomised the views of most other witnesses when he said, " If you finally reported that it would be much better to leave the thing alone. I should not doubt that you might well have taken the course of wisdom ".

7. On the basis of the evidence which they have heard, Your Committee recommend that no change in the law be at present made. The simplest way to create a completely logical system would be to remove all clerical disability in relation to membership of the House of Commons. The alternative course would be to go to the other extreme and to debar all " clergymen and ministers " from membership. Either of these would bring under review clerical membership of the House of Lords, which would take Your Committee beyond its orders of reference. Witnesses from the Church of England, the Church of Ireland and the Church in Wales, did not desire the removal of clerical disability. With the exception of the Church in Wales, no representative of any church whose ministers are permitted to sit desired, to see the disability imposed, and to attempt to define every kind of minister of religion would be liable to multiply existing anomalies. So many other loyalties and duties are involved that it would be wrong to deal with the issue of clerical disability purely as a matter of civil liberty. In the case of the established churches, in particular, many other considerations have to be taken into account. Your Committee believe that the question of clerical disability should not be considered or decided in isolation. but only as part of the general question of what disabilities should or should not be imposed upon those wishing to stand for Parliament. At the moment there are a considerable number of other grounds upon which persons are debarred from the House of Commons. These are, however, outside Your Committee’s orders of reference, and therefore what Your Committee has to recommend is whether or not the problem of clerical disabilities should be dealt with apart from, and in advance of, any consideration of other disabilities. Your Committee consider that it would be unwise to deal separately with clerical disabilities. So to do might arouse undesirable religious controversy, the problem appears neither pressing nor urgent and there has been no public demand for a change.

8. Short of abolishing entirely all clerical disqualifications, Your Committee have considered whether it would be practicable by some limited action to deal with the anomalies which exist in the present law. Not only might any attempt to do so create new anomalies but it could scarcely be undertaken without opening up the whole question of the basis upon which the disqualification at present rests. In these circumstances, Your Committee think that it would not be desirable to introduce any legislation to deal with the anomalies ahead of any general legislation which may hereafter be contemplated to deal with the qualification and disqualification of members generally.

The report was not debated in the Commons. The Committee heard evidence against the representation of priests in the Commons on the grounds that the established Church of England was already represented through bishops in the House of Lords[26] and that party politics did not mix with the vocation of the priesthood. Arguably, however, it is the role of the various churches to decide whether to impose restrictions, rather than to involve statutory disqualifications.[27]

The Home Affairs Select Committee enquiry into electoral law and administration recommended change in its 1997-98 report:[28]

> 126. Professor Blackburn has pointed out that finding the answer to the question 'Can a priest stand for Parliament?' involves reference to nine separate acts, dating back to the sixteenth century.[29] The results show a picture almost totally lacking in consistency or, in modern terms, any rational basis. Restrictions apply only to Christian ministers and not to those of any other faith. They differ between Anglican priests, Roman Catholic priests, and non-conformist clergy. And the position differs in England, Scotland and Wales. Furthermore, some such ministers who are otherwise barred from being MPs can resign their ministry in order to serve while others cannot.
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> 127. These restrictions seem to us to be out of place in modern times. There should be no restriction on ministers of religion becoming Members of Parliament, and certainly no distinction between those of different faiths or of different Christian traditions. Whether such persons should serve as an elected representative should be a matter for the rules or customs of their own faiths or churches and for the electorate, and need not be restricted by law. **We therefore recommend that, with one exception, all restrictions on ministers of religion standing for, and serving as, Members of Parliament be removed; the exception would be in respect of all serving bishops of the Church of England who, for so long as places are reserved for the senior bishops in the House of Lords, should remain ineligible to serve as Members of the Commons.**

The Government response stated that it was seeking the views of those churches whose clergy were prevented from sitting as Members, and would consider the matter carefully.[30]

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26 For background on the current position, see Chapter 15 of *A House for the Future*, the Royal Commission on the Reform of the House of Lords, Cm 4534, January 2000

27 See *The Electoral System in Britain* pp193-7 for further argument on this point.

28 HC 768 1997-98

29 The other enactments referred to by Professor Blackburn concern the definitions of holy orders and established church.

30 HC 856 1998-98

Siobhan McDonagh introduced a ten minute rule bill to allow any ordained person, or any minister of any religious denomination, to qualify for membership of the Commons and to repeal the whole of the 1801 Act and s9 of the 1829 Act.[31] Although there was cross party support, the Bill made no further progress.

The possibility of breach of the European Convention on Human Rights and the *Human Rights Act 1998* has been raised if the current legislation remains on the statute book. Article 14 (religious discrimination), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 3 of Protocol 1 (right to free elections) would seem relevant. The use of a Human Rights remedial order would involve prior legal proceedings and the declaration of incompatibility by the courts.[32]

A former Roman Catholic priest, David Cairns, has been selected as a Labour candidate for Greenock and Inverclyde, currently held by Norman Godman with a 13,040 majority. If he were to be elected, legal uncertainty about the validity of his election would result if there were to be no legislation before the General Election.

IV Disqualifications for devolved parliaments/assemblies in Scotland, Wales and Northern Ireland

The provisions governing candidacy for the Scottish Parliament, [33] the National Assembly for Wales[34] and the Northern Ireland Assembly[35] specifically state that there are no disqualifications on grounds of being or having been a priest. The phrase used in each enactment is: 'he has been ordained or is a minister of any religious denomination'. Presumably, the opportunity was taken in the devolution legislation to 'tidy up' this aspect of candidate disqualification, without much public debate of the issues.[36] It provides a neat precedent for changes to the disqualifications for the Commons.

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31 *House of Commons (Disqualification) Bill* HC 120 1998-99. See HC Deb 16 June 1999 c393-395

32 For background see the briefing note *The Human Rights Act 1998* from the Library Home Affairs Section.

33 The *Scotland Act 1998*, s16(1)

34 The *Government of Wales Act 1998*, s13(1)

35 The *Northern Ireland Act 1998*, s36(6)

36 For example, a Government amendment to the *Northern Ireland Bill* 1997-98 removing the clergy disqualification passed without comment in the Commons. HC Deb 30 July 1998 c596.

V The Lords Spiritual[37]

A. Background

It should be noted that there are two established churches in the United Kingdom; the Church of Scotland[38] and the Church of England.[39] Only the latter has direct representation in the Lords.

The Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester and the 21 other most senior diocesan bishops of the Church of England are members of the House of Lords by virtue of their office, ceasing to be members of the Lords when they retire from their bishoprics. S5 of the *Bishoprics Act 1878* provides that the number of bishops who may sit in the House is not to be further increased.[40] Bishops sit until they retire (those appointed since 1975 must do so at 70) or die; unlike other members of the Upper House they do not sit for life as of right.[41] As with other bishops not currently sitting in the Lords, under the existing clerical disabilities these Lord Spiritual are not eligible to sit in the Commons as well.[42] They are Lords of Parliament, but not peers.[43]

According to a recent study, "the House of Lords is unique among the Parliamentary chambers of democratic states in still having a body of members present by virtue of a prescriptive right enjoyed by their religion."[44] The possible removal of the various clerical disqualifications applicable to membership of the Commons has been linked with the continuing separate representation of one established church in the Lords.

In the early days of what became Parliament in England, representatives of the Church sat as natural members of such an assembly. They had wealth and position (not least through their extensive feudal landholding), and came from the most learned class in society,

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37 This section draws on Part V, A of Research Paper 99/6 *The House of Lords Bill:Options for StageTwo*.

38 See the *Acts of Union 1707*. For background see *Stair's The Law of Scotland* vol 3, para 1501.

39 For background on establishment, with particular reference to the *Human Rights Act 1998*, see *Law and Religion in Contemporary Society* ed Peter W Edge and Graham Harvey,2000, Chapter 3, and *Law and Religion* ed Rex J Ahdar, 2000, Chapter 7.

40 This Act does not specifically confer a right on bishops to sit in the Lords.

41 Although they may be appointed life peers

42 The *Explanatory Notes* to the *House of Commons (Removal of Clergy Disqualification) Bill* states: 'Lords Spiritual are disqualified from membership of the House of Commons because they are ordained clergy not because they are members of the House of Lords'. But see fn 39 below for further discussion of this point.

43 See House of Lords Standing Order no 6. There remains a certain ambiguity as to whether the Lords Spiritual would in any case be disqualified from membership of the Commons, as members of the Lords, even without the clergy disqualification. See *Parker's Law and Conduct of Elections*, para 5.4-5.5 and for background, Part V of Library Research Paper 99/5 *The House of Lords Bill: Stage One Issues.*

44 F Bown, "Influencing the House of Lords: the role of the lords spiritual 1979-1987, (1994) XLII *Political Studies* 105, citing a 1977 House of Lords Information Office publication, *Religious elements in representative assemblies*

holding many of the senior public offices. As well as the bishops, abbots and priors used to be summoned by the monarch to Parliament, and until the time of Henry VIII, the spiritual lords outnumbered the lords temporal.[45] Following the dissolution of the monasteries, the bishops alone were summoned. All bishops were entitled to a seat,[46] including holders of newly created sees, until following the creation of the see of Manchester in 1847, statute forbade any further increase.[47]

Because of prime ministerial patronage,[48] the spiritual bench had tended to be a source of support for the political ministry of the day, and felt able to be independent only in ecclesiastical matters. However Bromhead could assert in the 1950s that "bishops have long since ceased to feel any sort of obligation to come down to the House of Lords to support with their votes the Party under which they have been appointed, and they no longer regard a record of faithful voting as a means of obtaining translation."[49]

By the beginning of this century, the practice of the bishops not involving themselves in overt political controversy was starting to evolve,[50] restricting their participation generally to social, educational or moral issues.[51]

More recent studies[52] demonstrate how the bishops have continued to be active in social and moral matters, as substantive issues themselves or as components of more general, political issues, from abortion to immigration control, and capital punishment to family law. They cover more domestic issues on behalf of the Church, in its religious aspect (including issues such as Sunday observance) or in its other capacities, such as landholders or education-providers. However in recent decades they have become more involved in a number of high-profile issues of political controversy, such as in the field of local government, including the abolition of the Greater London Council in the mid-1980s. This has included voting against the government of the day, even when their votes have contributed to defeats for the government. These tensions between Church and

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45 As members by virtue of their position, rather than by election or other form of selection, they joined with the barons in the Lords when Parliament gradually evolved into a bicameral body. Their deteriorating relative position arose because of the increase in the membership of the temporal peers.

46 Except when all bishops were excluded by statute during the Civil War/Cromwellian era

47 See *Bishoprics Act 1878*

48 Such patronage was not always welcomed by incumbents of No. 10, as demonstrated by Melbourne's famous cry, "Damn it, another bishop dead! They do it to vex me".

49 P Bromhead, *The House of Lords and contemporary politics*, 1958, p 55. The former Bishop of Liverpool, David Shepherd, provoked some comment when taking the Labour whip on being made a life peer recently. See "Defiant bishop joins Labour in the Lords" *Sunday Times*, 5.4.98

50 For example, the then Archbishop of Canterbury, Randall Davidson, deliberately refrained from involvement in the great Parliamentary battles over the 1909 Finance Bill. However the bench was active in opposition to Irish Home Rule legislation in the period before the First World War, and was involved in issues which had both a religious and political aspect, such as Welsh Disestablishment. See further, Bromhead, ibid, pp 55-58

51 Ibid, p 63

52 Such as Shell,, pp 52-56 and N Baldwin, "The membership of the House" in D Shell & D Beamish, *The House of Lords at work*, 1993, p 58

government, not confined to activity in the Upper House, were particularly pronounced and public during Margaret Thatcher's premiership. Participation in the House cannot be measured solely in terms of speeches or voting; bishops, like peers generally, will also participate in the work of the House's committees, initiate debates and put down questions to ministers.

There have been suggestions from time to time in Parliament that the bishops should no longer sit in the Lords,[53] or that their number should be reduced.[54] In a wider sense, the issue of ecclesiastical representation in Parliament is just one aspect of the Church-State relationship, including the existence of an established church, subjects which are beyond the scope of this Paper.[55]

B. The Wakeham Report[56]

The white paper on the reform of the House of Lords[57] did not propose any change in the the representation of the Church of England in the transitional House of Lords, but encouraged the forthcoming Royal Commission to 'consider if there is a way of overcoming the legal and practical difficulties of replicating that regular representation for other religious bodies.'

In January 2000 the Royal Commission recommended as follows:

> **Recommendation 108:** The Church of England should continue to be explicitly represented in the second chamber, but the concept of religious representation should be broadened to embrace other Christian denominations, in all parts of the United Kingdom, and other faith communities.

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53 See, for example, attempts in the Commons to bring in bills in 1834 and 1870 (HC Deb 13.March 1834 Vol 22 cc 131-153, and 21 June 1870 Vol 202 cc 676-704,)

54 See, for example, the Wilson Government's proposal in 1968 for a gradual reduction to 16: Cmnd 3799, para 63-67, set out in clause 6 to the *Parliament (No 2) Bill*. This was followed a decade later by the Conservatives' Home Report, adding that "retention of some of the Lords Spiritual would be a way of resolving the difficult questions about the status of the Established Church and the legislative procedures to which its measures are subject which would necessarily arise if they were excluded altogether" (March 1978, para 51).

55 The Church in Ireland had four representatives in the Lords until its disestablishment in 1869. No representatives of the Church of Scotland sit in the Upper House by virtue of their spiritual office. Although there have been suggestions for such representation (eg in the report of the Royal Commission on Scottish Affairs, Cmd 9212, 1953, para 106), it would be difficult to arrange on doctrinal and practical grounds. For a history of Prime Ministerial ecclesiastical patronage see B Palmer, *High & mitred: Prime Ministers as bishop-makers 1837-1977*, 1992.

56 *A House for the Future*, Cm 4534, January 2000. For a full discussion of the Royal Commission proposals and initial responses, see Library Research Paper 00/60 *Lords Reform: Major Developments since the House of Lords Act 1999.*

57 *Modernising Parliament: Reforming the House of Lords,* Cm 4183, January 1999, Chapter 4, paras 21 and 22

The reasoning behind the recommendation was that Anglican bishops were not representative of the broad spectrum of religious opinion in the United Kingdom.[58] The new statutory Appointments Commission, a key recommendation of the report, would ensure that there were at least five members of the second chamber specifically selected to be broadly representative of non-Christian faith communities, and 16 of the 21 places in the reformed second chamber to be reserved for representatives of the Christian denominations in England would be assigned to representatives of the Church of England.[59]

The Royal Commission accepted that the reduction from 26 to 16 would pose difficulties for the Church of England and considered that the Church of England should take the lead in finding a satisfactory basis for determining how its representatives, whether bishops or not, should be identified.[60]

The Government response to the Royal Commission was to propose the creation of a Joint Committee of both Houses to consider the parliamentary aspects of any proposed reform. The Joint Committee has yet to be appointed.[61] In a debate on the Royal Commission's proposals on 7 March 2000, the Leader of the House, Baroness Jay said that the Government accepted its overall approach and in particular noted that a statutory Appointments Commission should form part of any permanent arrangement for the second chamber.[62] During that March debate, the Bishop of Durham made an initial response to the Royal Commission proposals for religious representation:[63]

> In speaking in chapter 15 of the representation of religious faiths, the commission uses, no doubt, a convenient shorthand but risks offering a model for the future which would reduce the contribution of spiritual leaders to the representatives of particular religious institutions. That is a model which my colleagues and I would resist vigorously. The presence of Bishops in Parliament can point to an abiding validity of the Christian tradition to public doctrine and ethical norms. It is the national ministry of the Church of England "by law established" that makes this role possible. Through the dioceses and parishes, through a small army of clergy and licensed lay ministers, through church schools and chaplaincies to many kinds of institutions, the Church of England has a vast constituency of pastoral contact which extends far beyond the core of committed churchgoers. The expression "national church" is not an anachronism.

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58 Para 15.10

59 Overall, there would be 26 places reserved for UK Christian denominations; Scotland, Wales and Northern Ireland representatives would take the other five places.

60 Paras 15.27-15.28. For background see *House Magazine* 24 April 2001 'Lord Norton discusses the role of the spiritual representatives in the Upper House'.

61 For background see 'Labour manifesto set to detail next stage of Lords reform' *Financial Times* 2 December 2000

62 HC Deb 7 March 2000 c910-914

63 HL Deb 7 March 2000 c932-3

> With regard to these Benches, there is also the danger that what the commission has given with one hand, it has taken away with the other. I refer to the proposed reduction in the number of Church of England Bishops in your Lordships' House from 26 to 16. We appreciate that the commission and the Government naturally will be concerned to ensure a proportionate representation of Bishops--proportionate, that is, to the reduced size of the House as a whole. However, given the diocesan, national and, in the case of the two Archbishops, international responsibilities, of those on these Benches, we are gravely concerned that a reduction to 16 will prevent us making an effective contribution to the work of the reformed Chamber.
>
> Conversely, if Bishops are to make such a contribution--and in an episcopally led Church many will argue that they should continue to do so--their involvement in their diocese and wider community (one of the key contributions that we bring to this Chamber) will be unhelpfully curtailed.
>
> In paragraph 15.27 of its report, the commission recognises that,
>
> > "our recommendations will create considerable difficulties for the Church of England".
>
> It goes on to recommend that the Church should itself review the options for filling the places allotted to us. We have already begun that process, although it is too soon for me to report the outcome. However, I would not want your Lordships to underestimate the difficulties that we face, the potential detrimental impact on the traditional role of a diocesan Bishop or the contribution that we are able to make in this place.
>
> I emphasise that our concerns are not about the preservation of vested interest or privilege; they reflect our wish to give the most effective parliamentary service that we can to the nation. Other concerns, which I can mention only in passing but which I know we share with our ecumenical partners, focus on the report's use of baptismal membership as the basis for allocating seats and on the effect of the suggested 15-year rule.
>
> In mentioning some of our concerns about the Royal Commission's report, I do not want to undermine our broad support for many of its conclusions and recommendations. The noble Lord, Lord Wakeham, and his colleagues are to be congratulated on the depth as well as on the speed of their work. It is indeed good that the noble Lord, Lord Wakeham, is to speak next, and we look forward with great anticipation to what he has to say. In our judgment, the report of the commission provides a generally sound basis on which dialogue about reform can be developed. We look to play our full part in that. Indeed, we would hope to be represented on any committee of this House or Joint Committee with another place which considers these matters further

In May 2000 Baroness Jay met representatives of the British and Irish churches as part of a consultation process on the Royal Commission proposals.[64] These discussions are continuing.

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[64] *Cabinet Office Press Notice* 17 May 2000 'Margaret Jay consults on Lords reform recommendations'

VI The Bill

This is a short two clause Bill, repealing the *House of Commons (Clergy Disqualification) Act 1801*, s9 of the *Roman Catholic Relief Act 1829 Act* and the relevant provisions of the *Clergy Disabilities Act 1870* and the *Welsh Church Act 1914*. However the position of Church of England bishops in the Lords is unaffected.

Clause 1 reads as follows:

> 1- (1) A person is not disqualified from being or being elected as a member of the House of Commons merely because he has been ordained or is a minister of any religious denomination.
> (2) But a person is disqualified from being or being elected as a member of that House if he is a Lord Spiritual.
> (3) Accordingly-
> (a) Schedule 1 (which makes amendments consequential on this section) has effect, and
> (b) the enactments mentioned in Schedule 2 (which relate to the disqualification of clergy from membership of the House of Commons) are repealed to the extent specified in that Schedule.

The *Explanatory Notes* state that 'the Lords Spiritual are disqualified from membership of the House of Commons because they are ordained clergy not because they are members of the House of Lords'.[65] The Bill will therefore clarify the existing position by introducing a specific disqualification in respect of the Commons for the Lords Spiritual. However other Church of England bishops not currently Lords Spiritual could, in theory, stand for election to the Commons if the Bill receives royal assent.[66]

Clause 2 deals with short title, commencement and extent. The Bill applies to the whole of the United Kingdom and comes into force on royal assent.

The Home Office has consulted the Church of England, Church of Ireland, Church of Wales and the Church of Scotland, as well as representatives of the Roman Catholic church in the United Kingdom. None has expressed opposition to the Bill.[67]

The need for consequential amendments to the various disqualifying statutes is set out in the *Explanatory Notes*:

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65 Para 8. Although this sentence is placed in the Background part of the *Notes*, the intention appears to be to refer to the position after enactment of the Bill

66 There are 14 other bishops in the Church of England who do not sit as Lords Spiritual

67 See *Explanatory Notes* para 9

Schedule 1: consequential amendments

12. The House of Commons Disqualification Act 1975 lists various offices the holders of which may not, during the period they hold those offices, become members of the House of Commons. Paragraph 1 of Schedule 1 adds a reference to a Lord Spiritual to the listed offices in order to disqualify a bishop who is by virtue of being a bishop, for the time being, a Lord Spiritual member of the House of Lords (and who, but for the Bill, would be disqualified by the 1801 Act).

13. The remaining paragraphs of the Schedule amend statutes governing qualification for election to the European Parliament, the National Assembly for Wales, the Scottish Parliament and the Northern Ireland Assembly. These paragraphs ensure that the effect of the provisions that relate to disqualification from membership of those bodies remains unchanged.

14. The amendments operate in a similar way. Each of the four statutes - the European Parliamentary Elections Act 1978, the Government of Wales Act 1998, the Scotland Act 1998 and the Northern Ireland Act 1998 - presently provide that a person who is disqualified from membership of the House of Commons other than by the House of Commons Disqualification Act 1975 is also disqualified from the legislative body in question. This would disqualify clergymen because they are disqualified from the Commons by the Acts of 1801 and 1829 mentioned above. In order that such clergymen can sit in these legislatures each of those four statutes goes on to provide expressly that a person who is ordained or who is a minister of any religious denomination is not disqualified from membership of that legislative body. It will no longer be necessary to make that express statement as regards the entitlement of clergy to be members of those bodies. But it does remain necessary to state that a person who is a Lord Spiritual can still be elected to those legislative bodies. In this respect, the position of Lords Spiritual reflects that of peers: they can be members of those legislative bodies notwithstanding their membership of the House of Lords.

The Home Secretary has stated that, in his view, the Bill is compatible with the European Convention on Human Rights.[68]

[68] S19 of the *Human Rights Act 1998*