



House of Lords Appointments Commission

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The House of Lords Appointments Commission (HoLAC) was established in 2000 as a non-statutory non-departmental public body. Its main functions are:

- to recommend people as non-party political peers; and
- to vet all nominations for membership of the House of Lords for propriety.

To date, HoLAC has recommended 57 nominees for appointment to the House of Lords.

Previous government proposals for reform of the House of Lords have included proposals for HoLAC to be made a statutory body with responsibility for recommending appointed members to a reformed second chamber. The Coalition Agreement published by the Conservative Liberal Democrat Government in May 2010 pledged to establish a committee to bring forward proposals for a wholly or mainly elected upper chamber. The draft Bill is expected to be published in early 2011.

This note sets out the background to the establishment of HoLAC and its functions. It considers the 'propriety and peerages' inquiry by the Public Administration Select Committee into the 'cash for peerages' allegations made in the 2005-10 Parliament. Lastly it sets out previous proposals for a statutory Appointments Commission alongside a reformed House of Lords.

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1 Background

It is the Queen, as the sole fountain of honour, who awards peerages, but she only exercises this prerogative power on the advice of her ministers. The Prime Minister is responsible for making all recommendations for appointment.

Before the creation of the House of Lords Appointments Commission (HoLAC) in 2000, the Prime Minister decided on nominations from his or her own party. He or she also invited recommendations from other party leaders to fill vacancies on their own benches. Non-party appointments to the independent Cross Benches were also in the control of the Prime Minister. The Political Honours Scrutiny Committee (PHSC) vetted all nominations for life peerages and could withhold approval on the grounds of propriety. The PHSC received information from parties’ Chief Whips about the individuals’ political donations, and also had access to checks run by the Inland Revenue, the Security Service, the police and relevant Departments.¹

¹ See Royal Commission on the Reform of the House of Lords, *A House for the Future*, January 2000, Cm 4534, p112

The PHSC had been established in 1923 following scandals about the ‘sale’ of honours during the premiership of Lloyd George. A Royal Commission was established in 1922 to examine the procedures for the award of honours, and its report eventually led to the enactment of the *Honours (Prevention of Abuses) Act 1925*. There has only been one prosecution under this Act: that of Maundy Gregory in 1933.

The 1997 Labour Party manifesto included pledges to make the House of Lords “more democratic and representative”, to remove the hereditary peers, and to change the way appointments to the House of Lords were made. It stated:

The system of appointment of life peers to the House of Lords will be reviewed. Our objective will be to ensure that over time party appointees as life peers more accurately reflect the proportion of votes cast at the previous general election. We are committed to maintaining an independent cross-bench presence of life peers. No one political party should seek a majority in the House of Lords.²

The 1999 White Paper on House of Lords Reform proposed a Commission that would nominate cross-bench peers and take on the function of the PHSC in vetting nominations for life peerages for propriety. The Prime Minister would decide on the overall number of nominations to be made, and the Commission would be asked to provide the same number of names. This list would then be passed on to the Queen in the same way as lists from other party leaders. The White Paper stated, however, that the Government would maintain a “significant independent, cross bench element” in the transitional House.³ Lord Falconer confirmed that it was “the Government's intention that during the lifetime of the transitional House the non-political Peers will form a fairly constant percentage of the House”.⁴

The Appointments Commission was established in May 2000 as a Non Departmental Public Body (NDPB) with seven members: three representatives from the main political parties and four independent figures, one of whom chairs the Commission. The posts are part-time and receive a small remuneration. The secretariat for the Commission is provided by the Cabinet Office.

2 The Commission: appointment and membership

The members of HoLAC are appointed in accordance with the rules of the Commissioner for Public Appointments. In addition, since the establishment of pre-appointment hearings by House of Commons select committees, the appointment of the Chair of HoLAC has been scrutinised by the Public Administration Select Committee (PASC).

The initial chair, Lord Stevenson of Coddendam, and members of HoLAC were announced on 4 May 2000.⁵ All seven members were reappointed for a further three year term in 2003. The membership was reappointed again in January 2007 for a further 18 month term.⁶ On 20 October 2008 the Prime Minister announced the appointments of three new independent members of the Commission, all appointed in accordance with the Commissioner for Public Appointments’ code of practice, all for a single non-renewable term of five years. The

² *New Labour: because Britain deserves better*, April 1997, pp 32-3

³ Cabinet Office, *Modernising Parliament: Reforming the House of Lords*, January 1999, Cm 4183, p31

⁴ HL Deb 14 April 2000 vol 612 c439

⁵ 10 Downing Street Press Notice, *Prime Minister Announces Members of the House of Lords Appointments Commission*, 4 May 2000

⁶ House of Lords Appointments Commission, *Annual Report 2006-07*, June 2007, p2; HC Deb 8 February 2007, c45WS

political party membership remained the same.⁷ New political members of the Commission were appointed in November 2010.⁸

The *Governance of Britain* Green Paper, published in July 2007, announced plans for select committees to be involved in some public appointments.⁹ For certain posts, it was proposed that select committees would be able to hold pre-appointment hearings, although would not be able to veto appointments. The Government's proposed list did not include the Chair of HoLAC.¹⁰ In a letter to the Chairman of the Liaison Committee Tony Wright, then Chair of PASC, listed the appointments which he believed his committee should scrutinise. He wrote:

Perhaps most importantly, the Chairman of the House of Lords Appointments Commission is absent from the Government's list. This is a hugely important and influential post... It is of particular interest to Parliament. It would seem very strange if no hearing was provided for in respect of this post.¹¹

The post was included in the Government's final list of proposed posts.¹²

On 22 July 2008 PASC held a pre-appointment hearing with Lord (Michael) Jay of Ewelme, the Prime Minister's preferred candidate for the post of Chair of the House of Lords Appointments Commission. Lord Jay was previously the Head of the Diplomatic Service from 2002-2006. The timetable for the hearing was described by the Committee as "much tighter" than they would normally expect. The name of the preferred candidate emerged on Friday 18 July and the House of Commons adjourned for the Summer recess on Tuesday 22 July, the day on which the hearing was held.¹³ The Committee concluded that:

We are satisfied that Lord Jay has the professional competence and personal independence required for the post of Chair of the House of Lords Appointments Commission. We therefore welcome his nomination and encourage the Prime Minister to make the appointment. We wish Lord Jay every success in his new post.¹⁴

Details of the current membership of HoLAC is available on its website.¹⁵

3 The role of the House of Lords Appointments Commission

The main functions of the Commission are:

- to make recommendations for the appointment of non-party-political members of the House of Lords and;
- to vet for propriety recommendations to the House of Lords, including those put forward by the political parties.

⁷ HC Deb 30 October 2008 38WS

⁸ House of Lords Appointments Commission, [New political members](#), 19 November 2010

⁹ Ministry of Justice, *The Governance of Britain*, Cm 7170, July 2007, paras 76-79

¹⁰ Letter from the Minister for the Cabinet Office to the Chairman of the Liaison Committee, 23 January 2008, published as Annex A of Liaison Committee, *Pre-appointment hearings by select committees*, 5 March 2008, HC 285 2007-08

¹¹ Liaison Committee, *Pre-appointment hearings by select committees*, 5 March 2008, HC 285 2007-08, p24

¹² Liaison Committee, *First Special Report of Session 2007-08*, 2 June 2008, HC 594 2007-08

¹³ Public Administration Select Committee, *Selection of a new Chair of the House of Lords Appointments Commission*, 23 July 2008, HC 985, paras 5-6

¹⁴ *Ibid*, para 10

¹⁵ House of Lords Appointments Commission, [Chairman and Members of the House of Lords Appointments Commission](#)

The Commission is also responsible for vetting for propriety certain individuals recommended for an honour such as an MBE, OBE, CBE or knighthood. This latter role was transferred to HoLAC when the Honours Scrutiny Committee was wound up in 2005.

4 Appointments Commission Peers

4.1 Introduction

The House of Lords Appointments Commission is perhaps best known for recommending names for appointment as non-party-political life peers. The Commission first invited applications from people wishing to become non-party-political members of the House of Lords in September 2000. To date, HoLAC has nominated 57 people for the peerage. A full list of Appointments Commission peers is available in the Library Standard Note, SN/PC/5867, *Peerage Creations since 1997*.

Formally, it is the Prime Minister that decides the number of people that HoLAC should recommend for a peerage. Speaking in March 2010, the Chair of HoLAC, Lord Jay, stated that “In practice, we have settled on a rhythm of around five to six appointments each year, and that seems to be acceptable to the Prime Minister”.¹⁶

Table 1: Appointments Commission Peers

Date	Number of Nominations
26 April 2001	15
01 May 2004	7
22 March 2005	2
22 July 2005	5
03 May 2006	7
15 February 2007	6
18 October 2007	2
18 April 2008	3
29 September 2008	2
13 July 2009	2
05 February 2010	4
05 October 2010	2
Total	57

4.2 “People’s peers”

Before the first round of appointments recommended by HoLAC the press dubbed the appointments as ‘people’s peers’.¹⁷ When the first nominations were announced in 2001, they received largely hostile press coverage. The thrust of the criticism was that those nominated were exactly the kind of establishment figures who might well have been nominated under the old system. The nominees were characterised by the *Independent* as “Seven knights, four charity grandees, three professors and a Lady”.¹⁸ The Commission’s nominations were also criticised by a number of MPs in a Westminster Hall debate on 9 May

¹⁶ House of Lords Constitution Committee, *Meeting with the Chairman of the House of Lords Appointments Commission*, 7 April 2010, HL Paper 109 2009-10

¹⁷ See for example, “Now anyone can be a lord”, *Sunday Express*, 10 September 2000 and “Labour invites applications for people’s peerage”, *Sunday Times*, 10 September 2000

¹⁸ “Meet the ‘People’s Peers’: seven Knights, four charity grandees, three professors and a Lady”, *Independent*, 27 April 2001

2001.¹⁹ However, an article in the *Times* pointed out that half the appointments came from groups under-represented in the House of Lords.²⁰ In response to the criticism, Lord Stevenson reportedly pointed out that the Commission had never set out to appoint 'People's Peers', that the phrase was not theirs, and was not a particularly helpful one.²¹ In the Commission's 2000-2003 Report, they stated that their brief had not been to nominate people who were representative of all walks of life in the UK, and that at the outset the Commission had published, for the first time, criteria it would use in making its selection.²² HoLAC made no further recommendations for independent peers until May 2004.

An analysis of the perceived difficulties with an appointments commission was provided by Robin Cook in his memoir, *Point of Departure*. After an examination of the critical reaction to the first round of appointments, he argued:

The net result was such a public relations disaster that throughout the two years that I was in the loop, ministers begged the Appointments Commission not to come up with any more names. There is an odd contrast between the conviction of Number 10 that appointment is the best entry route to the second chamber and their terror of making any appointments because they are so unpopular. This unpopularity is not the fault of the members of the Appointments Commission. They are all estimable people, whose main fault is a predictable tendency to pick people like themselves and, famously in one case, to choose one of themselves. The problem is deeply embedded in a system in which the great and the good choose others from their number to rule over us. Unless the public have their say in the process, no system of picking lawmakers will command public confidence.²³

The current chairman of HoLAC told the House of Lords Constitution Committee in March 2010 that:

...one of the important issues is... the concern I have that we may be choosing people in our own image. I think it is very important that we should be able to look more widely than we do at present. When I am looking ahead at the changes that we need to make, that is one of [them].²⁴

4.3 Suitability

The Commission recommends individuals for peerages "on the basis of merit and their ability to make a significant contribution to the work of the House".²⁵ The Commission states that it has been asked to consider nominees who would "broaden the expertise of the House and reflect the diversity of the people of the UK". Those nominated must be independent, have integrity, and must be committed to the highest standards of public life.

In March 2008 the Commission announced changes to its selection criteria for non-party-political peers. These changes were summarised in the Commission's 2008-10 Annual Report as follows:

The key changes were to require nominees to:

¹⁹ HC Deb 9 May 2001 cc 71-91WH

²⁰ "People's peers shift Lords' balance", *Times*, 26 April 2001

²¹ "Meet the 'People's Peers': seven Knights, four charity grandees, three professors and a Lady", *Independent*, 27 April 2001

²² House of Lords Appointments Commission, *Report 2000-03*, p12

²³ Robin Cook, *Point of Departure*, 2003, p87

²⁴ Q43

²⁵ House of Lords Appointments Commission, *Annual Report 2008-10*

- make an explicit commitment to devote the time necessary to make an effective contribution to the House of Lords, rather than, as previously, stating that they had “the time available” to do so;
- confirm that, in addition to being resident in the UK for tax purposes, they also accept the requirement to remain so in the future (this strengthened requirement is also reflected in the vetting criteria for future party-political and other nominations)...and
- confirm not only that they are independent of any party but that they intend to remain so...

In addition to the requirements set out above, nominees have to demonstrate that they have a “record of significant achievement in their chosen way of life that demonstrates a range of experience, skills and competencies”. They also have to have “some understanding of the constitutional framework, including the pace of the House of Lords”. Nominees “should be able to speak with independence and authority”.²⁶

The process for considering nominations to the House of Lords is set out by HoLAC as follows:

Stage 1 - Before the assessment begins, a number of objective checks on eligibility are made. For example, it is a statutory requirement that appointees to the Lords be UK, Commonwealth or Irish nationals, aged over 21. The Commission has also decided that nominees should be resident in the UK for tax purposes. Nominees who do not meet these criteria will not be considered further.

Stage 2 - The Commission’s Secretariat carries out the first sift. Each team member makes an initial assessment of the nomination against the published criteria. The team then discuss their separate assessments and agree a final recommendation for discussion by a sub-committee.

Stage 3 - A sub-committee of the Commission meets to discuss the Secretariat’s recommendations. The sub-committee considers all the nominations and ensures that the assessments are consistent with the selection criteria.

Stage 4 - The Commission interviews the nominees it judges best meets the published criteria. The interview will also address the nominee’s skills in relation to the role of a Peer. At least two of the Commission members, including the Chairman, meet each interviewee. References are usually taken up before this stage.

Stage 5 - Following the interviews, the Commission reviews all the information about the shortlisted nominees before drawing up its final list of recommendations.²⁷

Further information, including nomination forms, are available on HoLAC’s website.

4.4 Monitoring the Commission and its nominees

HoLAC has not set any type of performance indicator for the peers it has appointed so currently it has no measures of ‘success’ in the appointments it makes. However, the person specification for the post of Chair of the House of Lords Appointments Commission appointed in July 2008 suggested that the Commission’s remit might expand to include:

²⁶ House of Lords Appointments Commission, *Criteria Guiding the Assessment of Nominations for Non-Party Political Life Peers*

²⁷ House of Lords Appointments Commission, *Nominations for non-party-political membership of the House of Lords*

...the maintenance of active relations with Peers who have been through the Commission's processes and the assessment of the effectiveness of the Commission's appointees.²⁸

Lord Jay told the Constitution Committee in March 2010 that:

If we felt that a Member of the House of Lords was not attending as often and taking as important a role in the House of Lords as they had given us to believe they would, then that is something which I think it would be reasonable to take up with them.²⁹

However, he admitted there was no formal mechanism to do so and he was not in favour of the Commission having formal sanction powers. The most recent HoLAC annual report includes case studies setting out the contribution of some Appointments Commission peers.³⁰

4.5 Prime Ministerial appointments

The Prime Minister retains the right to nominate directly to the Queen a limited number of distinguished public servants, on their retirement, for non-party political peerages. Both Tony Blair and Gordon Brown stated that they the number of such appointments would not exceed ten in any one Parliament. These nominations are vetted by HoLAC for propriety.

5 Vetting for Propriety: Peerages

5.1 Introduction

HoLAC plays no part in assessing the suitability of those nominated to the House of Lords by the political parties; this is a matter for the parties themselves. Its role is to advise the Prime Minister of any concerns about the propriety of a nominee. The Commission does not have a veto over the appointment of party nominations. The Commission states that they take the view that 'propriety' in this context means that:

- the individual should be in good standing in the community in general and with particular regard to the public regulatory agencies; and
- the individual should be a credible nominee: the Commission's main criterion in assessing this is whether the appointment would enhance rather than diminish the workings and the reputation of the House of Lords itself and the appointments system generally.³¹

HoLAC asks political parties and nominees for specific information about those nominated to be provided. This includes declarations that:

- they are resident in the UK and accept the requirement to remain so;
- that they are not involved in any roles, positions or activities that would conflict with their membership of the House of Lords;
- whether or not they have made any donations or loans to, or credit agreements with, a political party;

²⁸ Public Administration Select Committee, *Selection of a new Chair of the House of Lords Appointments Commission*, 23 July 2008, Appendix 2

²⁹ House of Lords Constitution Committee, *Meeting with the Chairman of the House of Lords Appointments Commission, 7 April 2010*, HL Paper 109 2009-10, Q49

³⁰ House of Lords Appointments Commission, *Annual Report 2008-10*, 2010, pp10-11

³¹ *Ibid*, p13

- whether they have a financial relationship with any senior member of a political party; and
- whether any close family member has a financial involvement with any political party or senior party member.

The Commission's 2008-10 Report makes special reference to the matter of donations to a political party:

On the one hand, the Commission believes that nominees should not be prevented from receiving a peerage solely because they have made donations or loans. On the other, the making of a donation or a loan to a political party cannot of itself be a reason for a peerage.³²

The Commission does not consider the suitability of party-political nominations. Lord Stevenson, former chair of HoLAC, stated that:

We are responsible for propriety but the political parties and the political system at this point in time are responsible for saying this chap or this woman is suitable. We might privately think that some such person is not particularly suitable but it is not our job to comment on that.³³

5.2 Propriety and peerages

During March 2006 it emerged that a number of party political peerages had been blocked by the House of Lords Appointments Commission. In March 2006 the identities of the nominees became public, as did the fact that the all four in question were amongst those who had made undeclared loans to the Labour Party in 2005. Following the subsequent police investigation, the Crown Prosecution Service confirmed that the investigation by the Metropolitan Police had "revealed that the names of other individuals who had loaned money to the Labour Party appeared on earlier drafts of the working peerages list".³⁴

The Public Administration Select Committee announced that it would inquire into propriety in the honours system as part of its ongoing inquiry into Ethics and Standards in Public Life.³⁵ Following a complaint by the SNP MP Angus McNeil, the Metropolitan Police started a police investigation, as it was alleged that offences under the *Honours (Prevention of Abuses) Act 1925*, might have been committed. PASC "paused" their inquiry whilst the police progressed their own work. An interim report *Propriety and Honours: Interim Findings* was published. Once it was clear that no prosecutions would be brought by the police, PASC restarted their inquiry. They published their final report, *Propriety and Peerages* on 18 December 2007.³⁶ This made a number of recommendations about the working of the House of Lords Appointments Commission, including that it should be put on a statutory basis.

Lord Stevenson, chair of HoLAC during the propriety and peerages inquiry, confirmed to PASC that HoLAC had blocked the peerages before details of the loans were known by them:

³² *Ibid*, p14

³³ Public Administration Select Committee, *Propriety and Peerages*, 18 December 2007, HC 153 2007-08, q149

³⁴ Crown Prosecution Service, *CPS decisions: "Cash for Honours" case – explanatory document*, 20 July 2007, para 7

³⁵ Public Administration Select Committee Press notice, *PASC to probe scrutiny of political honours*, 15 March 2006

³⁶ Public Administration Select Committee, *Propriety and Peerages*, 18 December 2007, HC 153 2007-08

What happened was we got the list in October or something like that, and we went back to the Prime Minister at the beginning of February or thereabouts, and we only discovered a very few weeks after that there had been a loan from one of them, and we then moved very fast to ask the political parties to tell us what other loans there were and if there was anything else we should know.

It is quite an important piece of fact that we had given our advice to the Prime Minister without knowledge of the loans which subsequently came to light.³⁷

In December 2007 the Public Administration Select Committee published their report, *Propriety and Peerages*. PASC concluded that:

It appears that the regulatory system for assuring the propriety of party nominees to the House of Lords had the right outcome, in that it those who made undeclared loans to a party were blocked from becoming peers...³⁸

The Committee commended the Commission “for the robust performance of its scrutiny role”.³⁹ However, they went on to state that there were “doubts over the processes which led to those outcomes. These can be summarized in one question: from where does the House of Lords Appointments Commission derive its authority to act as it does?”⁴⁰

For example, PASC questioned where the House of Lords Appointments Commission derived the power to advise against potential peers on the basis of their tax status when at the time it was not illegal to serve in the legislature and not be tax resident.⁴¹ They then concluded that:

We agree with Lord Stevenson that it is inappropriate for people who are not tax resident in the UK to serve in the legislature, and we understand that the Commission has had largely to make up the rules as it goes along, because it is operating in an area where there are not rules. We make no criticism of the House of Lords Appointments Commission. But it cannot be right that the rules for entry to one half of our legislature are made by just six people, whoever they may be, and can be unmade or re-made at any moment without proper process.⁴²

In its report on *Propriety and Peerages*, the Public Administration Select Committee noted that HoLAC was never intended to operate indefinitely in its current form:

... It is crucial to note that this design of an Appointments Commission was never intended to be permanent; the Government clearly envisaged that the second stage of Lords reform would have happened by now. It was therefore a pragmatic decision not to spend legislative time on the creation of an Appointments Commission which would be replaced soon after its inception (especially as it could be created without legislation). **The intention was always to create a Statutory Appointments Commission as part of the second stage of Lords reform. This inquiry has demonstrated why it is now important that this happens sooner rather than later.**⁴³

³⁷ *Ibid*, HC 153 2007-08, q228

³⁸ *Ibid*, para 121

³⁹ *Ibid*, HC 153 2007-08, para 122

⁴⁰ *Ibid*, para 123

⁴¹ *Ibid*, para 124

⁴² *Ibid*, para 126

⁴³ *Ibid*, para 115

5.3 The residency requirement

The requirement for nominees to be resident in the UK, and to be resident for tax purposes, has been the source of some interest. The Commission has always required that nominees are resident in the UK for tax purposes. In their 2006-07 annual report the House of Lords Appointments Commission stated that:

56. The Commission looks at residency as part of its vetting process. It has always considered that, as a matter of principle, individuals who are appointed to the House of Lords should have their main home in the UK so that they can devote the time necessary to make an active and effective contribution to the work of the House. Further, the Commission has always required that nominees must be resident in the UK for tax purposes.

57. During spring 2004, the Commission vetted a list of party-political nominees. One of the individuals on the list, Irvine Laidlaw (now Lord Laidlaw of Rothiemay), was not resident in the UK for tax purposes. Following an exchange of correspondence and a face-to-face meeting, the Commission accepted an assurance from Lord Laidlaw that he would become resident in the UK for tax purposes from April 2004. On the basis of this assurance the Commission found no objection to his appointment. The Commission would have taken a different view on Lord Laidlaw's nomination if it had known that he would not be resident in the UK for tax purposes from April 2004. In June 2004 he was appointed to the House of Lords.

58. Lord Laidlaw has not become resident in the UK for tax purposes. The Commission has drawn the Prime Minister's attention to the situation.

59. The Commission reviewed its policy on residency in 2005 and now declines to scrutinise any nominee who is not resident in the UK for tax purposes. It will continue to ask all nominees, and the political parties that nominate them, to confirm that they are and will remain resident in the UK for tax purposes.⁴⁴

The Government introduced amendments to the *Constitutional Reform and Governance Bill 2009-10* to ensure that MPs and peers are treated as domiciled in the UK for tax purposes. The relevant part of the *Constitutional Reform and Governance Act 2010* are sections 41 and 42 in Part 4.⁴⁵ The Explanatory Notes to the Act state that:

Part 4 of the Act provides that Members of Parliament and most members of the House of Lords are to be deemed to be resident, ordinarily resident and domiciled ("ROD") in the United Kingdom for the purposes of income tax, capital gains tax and inheritance tax. As a result, MPs and Lords will be liable to pay these taxes in the UK on their worldwide income, gains and assets regardless of their actual status in the UK, and will be unable to access the remittance basis of taxation.

The deemed status will start from the tax year 2010-2011, and will apply to individuals in whole tax years (including where an individual is a member only for part of a tax year). The deemed status will apply to MPs once they have taken the oath of allegiance, at the start of the new Parliament in 2010. It will apply to members of the House of Lords, with the exception of the Lords Spiritual and those temporarily disqualified from sitting in the House by virtue of being an MEP or a judge, following a three month transitional period. During the transitional period members of the House of Lords will be able to state that they do not wish to be subject to the deemed status and leave the House without the deemed status applying to them. Members who leave the

⁴⁴ House of Lords Appointments Commission, *Annual Report 2006-07*, June 2007

⁴⁵ [Constitutional Reform and Governance Act 2010](#)

House of Lords under this Part will remain disqualified from being, or being elected as, a member of the House of Commons for three years beginning with the date on which they give notice that they do not wish to be subject to the deemed status. Those who remain members at the end of the three month transitional period will automatically be deemed ROD from the start of the 2010-11 tax year.⁴⁶

6 Vetting for Propriety: Honours

The vetting for propriety of certain individuals recommended for an honour was previously a function of the Political Honours Scrutiny Committee, which was abolished in 2005. The Commission is only asked to vet honours awarded in certain categories:

- individuals put forward by the political parties for political and public services;
- Members of Parliament who are being put forward for services to Parliament; and
- anyone added to the Honours list at a late stage, who would not therefore have been subject to the normal assessment and selection process.

In their 2008-10 Annual Report, the Commission explained that:

The Commission's remit does not extend to commenting on the merits of an award. Its role is to advise the Prime Minister if there is anything in the past history, current circumstances or general character of an individual that might suggest that he or she is not a fit and proper person to be recommended for an award.

The Commission has not been invited to perform this function since 2006 when the then Prime Minister, Tony Blair, announced that he would not use his right to nominate individuals for honours. The current Prime Minister has indicated that he will continue not to use this right. Therefore the Commission was not invited to consider any honours nominees during this period.⁴⁷

The Public Administration Select Committee's 2004 Inquiry, *A Matter of Honour: Reforming the Honours System* had recommended that the Honours Scrutiny Committee should be abolished. However, it suggested that its remaining functions should be transferred to a new independent Honours Commission rather than the House of Lords Appointments Commission.⁴⁸

7 A statutory Appointments Commission?

7.1 Background

A statutory Appointments Commission has been a feature of all government proposals for House of Lords reform since 1997. The Royal Commission on Reform of the House of Lords (the Wakeham Commission), which was appointed after the majority of hereditary peers left the House of Lords, following the *House of Lords Act 1999*, considered the role and powers of the House of Lords. It recommended that a significant minority of members of the reformed House should be chosen by regional electorates; that approximately 20 per cent of the members should be independent and should be nominated by a "genuinely independent Appointments Commission"; and that the political balance of the remaining politically-affiliated appointees should be determined by the Appointments Commission, taking into

⁴⁶ [Constitutional Reform and Governance Act 2010: Explanatory Notes](#)

⁴⁷ House of Lords Appointments Commission, *Annual Report 2008-10*, para 62-63

⁴⁸ Public Administration Select Committee, *A Matter of Honour: Reforming the honours system*, 13 July 2004, HC 212-I 2003-4

account votes cast at the most recent general election. It also recommended that the Appointments Commission should vet nominations from political parties for propriety.⁴⁹ When considering the role of the Appointments Commission it went further and argued that:

Recommendation 80: The Appointments Commission should be charged by the Crown with a general duty to appoint members to the second chamber and empowered to appoint individual members on its own authority.⁵⁰

The Government's response to the Royal Commission, a white paper *The House of Lords: Completing the Reform*, was published in November 2001. It accepted the case for a statutory Appointments Commission but considered that the Prime Minister should continue to be able to appoint a small number of people in each Parliament directly as ministers and disagreed with the Royal Commission proposal that the Appointments Commission should determine whether or not political nominees were appointed:

The Appointments Commission will have three main functions.

First, it will determine the overall size and political balance of the House, within parameters laid down by statute. [...]

The Appointments Commission will also be required to maintain the independent element at around 20% of the total. The Commission, not the Prime Minister, will decide at each round of appointments how many nominations to invite from each party. The only exception is that the Government believes it right to retain the discretionary right for the Prime Minister to appoint a small number of people - 4 or 5 a parliament - directly as Ministers in the Lords. [...]

The Commission will itself select the non-political members. It will do so using an open and transparent selection procedure. [...]

The Commission will carry out the propriety checks on those nominated by the political parties. This will be its only involvement in the individual nominations made by the parties. The Government does not accept the Royal Commission recommendation that the Appointments Commission should have the final say over the identity of party nominations. Parties of whatever persuasion must be able to decide who will serve on their behalf. The Commission will of course scrutinise nominations to ensure that those put forward are fit and proper candidates for membership of the Lords.⁵¹

Further detail about the white paper proposals, the subsequent creation of a Joint Committee of both House, and votes in both Houses on the preferred option for composition of the Lords on 4 February 2003 are detailed in Library Research Paper 03/85 *House of Lords: Developments since January 2002*.

A Bill to make further reforms to the House of Lords and to establish a House of Lords Appointments Commission was announced in the Queen's Speech in November 2003:

⁴⁹ Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm 4534 January 2000, Executive Summary and chapter 11 (Recommendation 70),

<http://www.archive.official-documents.co.uk/document/cm45/4534/4534.htm>

⁵⁰ *Ibid*

⁵¹ *The House of Lords: Completing the Reform*, Cm 5291, November 2001, para 66

Legislation will be brought forward to reform the House of Lords. This will remove hereditary peers and establish an independent Appointments Commission to select non-party members of the Upper House.⁵²

This followed a consultation document in September 2003 in which the Government outlined various options for establishing the House of Lords Appointments Commission, along the lines of the Electoral Commission.⁵³ The House of Lords reform bill was never published.

In February 2007 a further white paper on House of Lords reform was published. This also made the case for a statutory Appointments Commission:

There seems to be general agreement that under any system with appointed members, party and non party-political appointments would be overseen and made by an independent Statutory Appointments Commission.⁵⁴

The 2007 White Paper noted that the current non-statutory appointments commission was “a temporary measure to assist with the transitional phase in reforming the House of Lords”. The Statutory Appointments Commission would select and recommend for appointment the non party-political members of the reformed House, who would comprise 20 per cent of the membership. The Statutory Appointments Commission would have “power over both non-party and party-political appointments”. The Commission would invite nominations for party-political peers from the political parties. The White Paper suggested that the Appointments Commission should take into account the balance of the parties at the most recent General Election when determining how many party-political nominations each party could make. It also proposed that the Commission would assess the suitability of party nominations as well as the propriety of the nomination. Nominations would be considered “on the basis of merit and would follow strict criteria”. The Commission would be “independent of Government and should be accountable to Parliament, rather than Ministers”. It proposed it should have nine members, three to represent the political parties and six members independent of Government and the political parties.⁵⁵

On 7 March 2007 the House of Commons held a series of free votes on the composition of the House of Lords. It was in favour by a large majority for a wholly or an 80% elected second chamber.

7.2 The 2008 White Paper, *An Elected Second Chamber: Further reform of the House of Lords*

In July 2008 the Labour Government published another White Paper on House of Lords reform which made proposals for how an 80% elected and a 100% elected House of Lords might be constituted. If the House of Lords were to be 80% elected, there would remain an appointed element. The White Paper stated:

The key argument for any appointments to the second chamber is that it would preserve a significant Crossbench element. If there were an appointed element in a reformed second chamber, appointments would be made by an Appointments Commission, which would seek applications and nominations, against published criteria. Appointments would be made on merit, with the key focus being an

⁵² HC Deb 26 November 2003 c5

⁵³ Department for Constitutional Affairs, *Constitutional Reform: Next Steps for the House of Lords*, CP 14/03, September 2003, paras 29-38

⁵⁴ HM Government, *The House of Lords: Reform*, 7 February 2007, Cm 7027, para 8.1

⁵⁵ *Ibid*, paras 8.11-8.16

individual's ability, willingness and commitment to take part in the full work of the second chamber.

As with elected members, appointed members would serve for three electoral cycles without the possibility of re-appointment. One-third of appointed members would be replaced at each set of elections to the second chamber.

The Appointments Commission would operate on a statutory basis. Legislation would contain only broad parameters in relation to the role and operation of the Commission, to give it flexibility. The Commission would be accountable to the Prime Minister.⁵⁶

The White Paper also included the views of the Opposition where these differed with the Government, as the White Paper was the result of cross-party talks. The White Paper noted that:

The Conservative Party considers that any future appointments commission should continue to be non-statutory, to maximise flexibility.⁵⁷

However, David Cameron, as leader of the Opposition, argued that the Commission should be put on a statutory basis.⁵⁸ This view was echoed by Andrew Tyrie and Sir George Young in their July 2009 report, *An Elected Second Chamber: A Conservative View*.⁵⁹ Lord Jay, Chair of the Appointments Commission, has also stated that there would be merit in putting the Commission on a statutory basis.

7.3 A draft Bill on Reform of the House of Lords

The Coalition Agreement, published by the Government on 20 May 2010, stated that:

We will establish a committee to bring forward proposals for a wholly or mainly elected upper chamber on the basis of proportional representation. The committee will come forward with a draft motion by December 2010. It is likely that this will advocate single long terms of office. It is also likely that there will be a grandfathering system for current Peers. In the interim, Lords appointments will be made with the objective of creating a second chamber that is reflective of the share of the vote secured by the political parties in the last general election.⁶⁰

A cross-party committee has been established to draw up a draft Bill. Although no motion was brought to the House in December 2010, it has been indicated that the publication of a draft Bill will occur during early 2011.⁶¹

⁵⁶ Ministry of Justice, *An Elected Second Chamber: Further reform to the House of Lords*, July 2008, Cm 7438, pp 5-6

⁵⁷ *Ibid*, para 6.34

⁵⁸ See Andrew Tyrie MP and Sir George Young Bt MP, *An Elected Second Chamber: A Conservative View*, July 2009

⁵⁹ *Ibid*

⁶⁰ HM Government, *The Coalition: Our Programme for Government*, 20 May 2010

⁶¹ HL Deb 28 October 2010 c319WA