



The *Disqualification from Parliament (Taxation Status) Bill*

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This Private Member's Bill is due to have a second reading on Friday 25 January 2008. It introduces a new disqualification procedure for members of both Houses relating to grounds related to residence and domicile for tax purposes.

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A. Background

The rules for the disqualification of Members of the House of Commons are mainly consolidated in the *House of Commons Disqualification Act 1975*. Background on this Act is given in Library Standard Note 3221.¹ Briefly, there are an extensive range of public offices which disqualify Members from the Commons. These include the judiciary, the armed forces and the police. In the Lords there are no similar disqualification provisions. In the *House of Lords: Reform White Paper*, published in February 2007, the Government set out proposals for bringing the rules on disqualification in the two Houses into line.² However, these proposals have not yet been implemented.

The question of the tax status of peers has been the subject of some controversy. Attention has focused on the position of Lord Ashcroft and Lord Laidlaw. Lord Ashcroft is the Deputy Chairman of the Conservative Party and major donor. Lord Laidlaw is another major Conservative Party donor.

Peers are expected to attend the House regularly but may obtain leave of absence. Information on this procedure is given in the House's *Companion to the standing orders*,³

The 10 Downing Street press notice, announcing new working peers, on 31 March 2000, included the following Notes for Editors:

In order to meet the requirements for a Working Peer, Mr Michael Ashcroft has given his clear and unequivocal assurance that he will take up permanent residence in the United Kingdom again before the end of the calendar year. He would be introduced into the House of Lords only after taking up that residence. These undertakings have been endorsed by the Leader of the Conservative Party and conveyed to the Prime Minister - and to the Political Honours Scrutiny Committee.⁴

Subsequently, the *Guardian* reported:

The parliamentary ombudsman has abandoned his attempt to establish whether the former Conservative party treasurer and millionaire businessman, Michael Ashcroft, fully complied with his pledge to "take up permanent residence" and pay income tax in Britain before receiving his peerage.

Sir Michael Buckley, who was asked to investigate by the Labour MP Peter Bradley, has written to the backbencher, admitting that his inquiries have been blocked by parliamentary rules - much as Mr Bradley's own inquiries into the "gentleman's agreement" have been since the peerage was announced in March 2000.

¹ http://10.160.3.10:81/PIMS/Static%20Files/Extended%20File%20Scan%20Files/LIBRARY_OTHER_PAPERS/TANDARD_NOTE/snpc-03221.pdf

² HM Government, *House of Lords: Reform*, February 2007, Cm 7027, paras 9.39-9.41, <http://www.official-documents.gov.uk/document/cm70/7027/7027.pdf>

³ House of Lords, *Companion to the standing orders and guide to proceedings of the House of Lords*, 2005, pp8-9, <http://www.publications.parliament.uk/pa/ld/ldcomp/ldctso03.htm#a8>

⁴ Number 10 press notice, *Working peers*, 31 March 2000, <http://www.number10.gov.uk/output/Page2796.asp>

What the Cabinet Office has said is that, in relation to Lord Ashcroft's introduction into the House of Lords, the political honours scrutiny committee were content to rely on undertakings given by both him and the then leader of the Conservative party [William Hague]," Sir Michael says in a letter to Mr Bradley seen by the Guardian.

"Once Lord Ashcroft had been introduced into the House of Lords, however, the role of the committee ceased and their interest ended there. The Cabinet Office have also said that, once a life peerage has been awarded, it can only be withdrawn by an act of parliament. There would therefore have been no purpose in carrying out the kind of checks to which you refer," Sir Michael's letter adds....⁵

The Political Honours Scrutiny Committee was wound up in February 2005 and its functions transferred to the House of Lords Appointments Commission. Further information is available in Library Standard Note no 2832 *Honours*.⁶ The Commission continues to vet the awarding of honours and peerages for propriety. Further information about its work is contained in Library Standard Note 2855 *House of Lords Appointments Commission*.⁷

The *Guardian* reported that "new questions about his peerage, his tax and his home" had been raised about Lord Ashcroft's peerage in November 2007.⁸ Lord Stevenson of Coddenham, the chairman of the House of Lords Appointments Commission, was asked about the issue in 2006 by the Public Administration Select Committee during their inquiry into Propriety and Honours:

Q14 Chairman: Is Lord Ashcroft resident here and paying UK taxes?

Lord Stevenson of Coddenham: I do not know. He pre-dates what I understand from the Cabinet Secretary is called "HOLAC". We do not call ourselves "HOLAC". He pre-dates us.⁹

There were further questions in 2007:

Q169 Mr Prentice: I think it is quite a big deal for someone to be elevated to the House of Lords and to have given you an assurance way back in 2004 that from April 2004 he was going to become a UK resident for tax purposes and three years on he is still not paying UK taxes. I think that is a big deal. I wonder what the Government's view is. You have not discussed this with the Prime Minister, but what about Jack Straw, the Ministry of Justice? Do you have any idea what the Government's view is, given the fact that you flagged this up publicly in your annual report?

Lord Stevenson of Coddenham: May I say that we think it is quite a big deal too, which is why we went out of our way to draw attention to it, with the result—and result is the right word—that he took leave of absence from the House of Lords. I think your question is an entirely legitimate one but one to be asked of the Government and not us.

⁵ Michael White, "Ashcroft tax inquiry runs into buffers", *Guardian*, 27 August 2002

⁶ http://pims.parliament.uk:81/PIMS/Static%20Files/Extended%20File%20Scan%20Files/LIBRARY_OTHER_PAPERS/STANDARD_NOTE/snpc-02832.pdf

⁷ http://pims.parliament.uk:81/PIMS/Static%20Files/Extended%20File%20Scan%20Files/LIBRARY_OTHER_PAPERS/STANDARD_NOTE/snpc-02855.pdf

⁸ Ian Cobain, "Ashcroft: new questions about his peerage, his tax and his home", *Guardian*, 9 November 2007

⁹ Public Administration Select Committee, *Propriety and Honours – corrected transcript of evidence – 16 May 2006*, 9 June 2006, HC 1119-i 2005-06, q14

Q170 Mr Prentice: I have but I am not getting anywhere. I have written to the Prime Minister. He, in a strange kind of circular way, referred me back to your annual report which triggered the whole thing in the first place. I hope I am not doing the Ministry of Justice a disservice but I think I am still waiting to hear from them. Finally—I think I have almost squeezed the orange dry here—leave of absence. Is that good enough? Should we not just invite Lord Laidlaw to hang up his ermine and leave the House of Lords? What penalty is there? ¹⁰

Lord Laidlaw was interviewed by the House of Lords Appointment Commission in April 2004 and agreed that to make a contribution to the work of the House, members of the Lords should be resident in the UK. ¹¹ This was made public following an FOI request from the BBC to HOLAC¹² show that the Commission was concerned about the fact that he was non-resident, and had been for over 20 years. The Commission's view was that peers should be UK resident in order not to limit the amount of time they can give to Lords' business, and they took as a starting point 'the Revenue's definition of whether or not an individual was resident in the UK for tax purposes'. In a letter to HOLAC on 21 March, Lord Laidlaw accepted that he had not been resident in the UK for a sufficient number of days to be classified as resident for tax purposes.

The minutes of proceedings of the House of Lords indicate that leave of absence was granted to Lord Laidlaw on 9 May 2007 "...for the remainder of this Parliament."¹³ The House of Lords Information Office publishes a list of Peers who have been granted leave of absence.

1. Public Administration Select Committee recommendations

The Public Administration Select Committee report *Propriety and Peerage* called for reform:

144. The House of Lords Appointments Commission reluctantly cited the case of Lord Laidlaw of Rothiemay in its last annual report:

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.

Lord Laidlaw has not become resident in the UK for tax purposes. The Commission has drawn the Prime Minister's attention to the situation. [126]

Lord Laidlaw is currently on leave of absence; he takes no part in the proceedings of the House of Lords, but it is of course within his power to rescind that decision. Lord Hurd told us that as the Commission had no penal power, it had decided that its only option was to effectively name and shame Lord Laidlaw—and so that is what it had done.[127]

¹⁰ *Minutes of Evidence* 11 October 2007 Public Administration Select Committee

<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmpublicadm/153/7101101.htm>

¹¹ "Kind heart and coronet", *Taxation*, 3 May 2007.

¹² <http://snipurl.com/laidlaw>

¹³ HC 153 2007-8

<http://www.publications.parliament.uk/pa/ld200607/minutes/070510/ldordpap.htm#minproc>

145. Lord Stevenson would not be drawn on whether the system was unsatisfactory, but he did acknowledge that a case could at least be made:

I do think, in the light of that case and other things that happened, there is a legitimate question as to whether the arrangements whereby people can voluntarily leave the Lords or involuntarily leave the Lords should be reconsidered. [128]

The Government has been less equivocal on this matter. Their White Paper suggested that peers should be able to resign on any grounds whatsoever, and that disqualification provisions should be brought into line with those of the House of Commons—meaning that the idea of leave of absence would no longer be necessary.[129] In the House of Commons, Members are disqualified automatically if they are convicted of a criminal offence and sent to prison for over 12 months. Peers in the same circumstances are free to resume their seats. **It is illogical that while HoLAC can require that a putative Member of the House of Lords should be a UK resident for tax purposes, there is no provision to enforce this once someone is an actual Member.** The White Paper also indicates that the cross-party group convened by the Government were in agreement over the need for disqualification provisions. [130]¹⁴

The Government have not yet responded to this report.

2. Lord Oakeshott's Bill

In April 2007, the Liberal Democrat peer, Lord Oakeshott, presented a Private Members' bill in the Lords to "amend the *Life Peerages Act 1958* to provide a tax residency requirement for the conferral of life peerages under that Act." The Bill was published, but did not proceed beyond its first reading.¹⁵ The Bill proposed that a life peerage could only be bestowed on someone "if that person has been ordinarily resident in the United Kingdom for the purposes of the Income and Corporation Taxes Act 1988 for the five years before the conferral", although the requirement would not apply "if the reason for that person's absence from the United Kingdom was— (a) his service in Her Majesty's Diplomatic Service or other service under the Crown; or (b) his membership of or service in a branch of the European Union or other international organisation or court of which the United Kingdom is a member."¹⁶

B. The Disqualification from Parliament (Taxation Status) Bill¹⁷

This Bill was introduced by the Labour Member Gordon Prentice, who is a member of the Public Administration Select Committee. It is due for a second reading on 25 January 2008, but is the third Bill to be taken that day, so further progress is unlikely.

The Bill disqualifies a Member of the Lords or Commons on grounds related to residence and domicile for tax purposes. Clause 1 states:

1 Disqualification on grounds of residence and domicile for taxation purposes

¹⁴ <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmpublicadm/153/15302.htm>

¹⁵ HL Deb 23 April 2007 c 503

¹⁶ The text of the Bill is available on the Parliament site at:

http://www.publications.parliament.uk/pa/pabills/200607/life_peerages_residency.htm

¹⁷ Bill 24 of 2007-8 at <http://www.publications.parliament.uk/pa/cm200708/cmbills/024/08024.i-i.html>

(1) Subject to the provisions of this Act, a person is disqualified from membership of the House of Commons and House of Lords if he does not comply with the conditions set out in subsection (2).

(2) The conditions referred to in subsection (1) are—

(a) that he was resident in the United Kingdom for the purposes of Part 14 of the Income Tax Act 2007 (c. 3) for the tax year during which he was elected or appointed and for each subsequent tax year; and

(b) in the case of a non-domiciled United Kingdom resident, that he has not made a claim to be taxed on the remittance basis in respect of the tax year in which he was first elected or appointed, nor in any subsequent tax year during which he was a Member of Parliament.

Clause 1(3) requires Members and peers to submit a declaration that they are in compliance with these conditions to the Speaker, or Lord Speaker.

The Bill differs in approach to that taken by Lord Oakeshott, which refers to a person having been resident for a period of time up to the time when their appointment is considered. Residence for tax purposes is a question of fact – it is not a matter of someone making a claim to HM Revenue & Customs be treated in this way, and so having a choice about their status. HMRC will regard someone as ordinarily resident in the UK if, once they have arrived, they decide to stay for at least three years. Longer term visitors – as they are termed – are treated as ordinarily resident from “the day you arrive if your decision is made in the tax year of arrival, or the beginning of the tax year in which you make your decision when this is after the year of arrival.”¹⁸

Clearly, most taxpayers can be quite confident about whether they are going to be resident in this country for the next twelve months. However, strictly speaking, the question of someone’s residence for a given tax year would be settled only after the end of that tax year because it would only be then that their movements during the year, and any other relevant factors, were known. Therefore, it might be difficult for Members and peers to submit declarations which are categoric on the question of tax residency.

The main Act about income tax is the *Income Tax Act 2007* – which took effect from 6 April 2007.¹⁹ Chapter 2 of part 14 of the Act contains provisions relating to the determination of residence for the purposes of liability to income tax; the explanatory notes comment that “the question whether or not a person is UK resident is primarily to be determined in accordance with case law” though “a limited number of statutory rules either supplement or disapply the case law rules in specific circumstances.”²⁰

Clause 1(2)(b) refers to the remittance basis for taxing individuals. UK residents who are not domiciled in the UK are liable on overseas income and gains only to the extent that they are remitted to, or received in the UK.²¹ The Government have recently proposed changes to

¹⁸ *Residents and non-residents. Liability to tax in the United Kingdom IR20*, December 1999 para 3.9

¹⁹ The Act is complemented by the *Income Tax (Trading and Other Income) Act 2005*, and the *Income Tax (Earnings and Pensions) Act 2003* (which deal with the charges to income tax on employment, pension, trading and other income).

²⁰ *Explanatory Notes: Income Tax Act 2007: vol 2* para 2455

²¹ See *Reviewing the residence and domicile rules as they affect the taxation of individuals: a background paper* HM Treasury April 2003 gives background in paras 2.10-2.15

introduce a fee for remittance base users.²² Clause 1(2)(b) would prevent such users from becoming Members or peers. The Chartered Institute of Taxation have commented that this would appear to be an extra penalty for those choosing the remittance basis.

²² *Paying a fairer share: a consultation on residence and domicile* HM Treasury December 2007 http://www.hm-treasury.gov.uk/media/1/2/consult_residenceanddomicile061207.pdf