



Resignation, suspension and expulsion from the House of Lords

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The *Constitutional Reform and Governance Bill 2008-09*, as introduced, included provisions which would have allowed peers to resign. Provisions also allowed for the suspension and expulsion from the House of Lords. The Bill was carried over into the 2009-10 Session. These clauses were, however, removed from the Bill during the ‘wash-up’ period at the end of the 2005-2010 Parliament.

During a debate on House of Lords Reform on 29 June 2010 the Leader of the House of Lords, Lord Strathclyde, announced he would establish a Leaders’ Group, chaired by Lord Hunt of Wirral, to consider options for allowing Members of the House of Lords to retire. The Coalition Government has also appointed a cross-party committee, consisting of front-bench spokespeople from the three main political parties, to prepare a draft Bill on reform of the House of Lords.

This note sets out the current rules on membership of the House of Lords and the disqualification criteria. It then outlines recent developments which have caused interest in the ability of the House of Lords to suspend and expel its own Members, and the ability of members of the House of Lords to stand down. It considers the provisions included in the *Constitutional Reform and Governance Bill* as introduced, and the reactions to them, including some of the main arguments made during the second reading debate. It also sets out proposals which have been made for time-limited appointments to the House of Lords – so called ‘term peerages’.

Details of the Coalition Government’s Leader’s Group on members leaving the House of Lords and the Committee on Reform of the House of Lords is available in Library Standard Note, SN/PC/5623, [Reform of the House of Lords: the Coalition Agreement and further developments](#).

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1 Membership of the House of Lords

At present, a life peerage cannot be alienated or surrendered; members are not able to resign or retire from the House of Lords. Although Lords of Appeal in Ordinary retire from their judicial office at 70, their peerages have enabled them to continue to sit in the Lords. The bishops who sit in the Lords are ex-officio members and are only able to sit and vote in the Lords by courtesy of the office they hold. Bishops retire from their sees at the age of seventy and hence leave the House of Lords unless appointed as life peers. Although peers are appointed for life, it is possible for a peer to obtain a leave of absence for the rest of the Parliament by applying in writing to the Clerk of the Parliaments.

It is not possible to be both a member of the House of Lords and the House of Commons. The *Peerages Act 1963* made it possible for a hereditary peer to disclaim his or her title. The primary purpose of this legislation was to enable hereditary peers to sit in the House of Commons. It was Tony Benn, then Viscount Stansgate by succession, who had challenged the existing law which had disqualified members of the Lords from standing for election to the House of Commons. The *House of Lords Act 1999* now allows hereditary peers to be elected to the Commons provided that they are not also members of the House of Lords. Life peers are also disqualified while members of the European Parliament.

A member of the House of Lords who is declared bankrupt under the *Insolvency Act 1986* is disqualified from sitting and voting in the House during the period of bankruptcy. Once the period is over, he or she can resume sitting and voting. In addition, peers may be temporarily disqualified from sitting or voting in the House of Lords if convicted of Treason under the *Forfeiture Act 1870* until he or she has either suffered his or her term of imprisonment or received a pardon. Now that section 137 of the *Constitutional Reform Act 2005* (creating the Supreme Court) has come into force, it is not possible to hold judicial office and sit in the House of Lords. Those under the age of 21 are also disqualified for membership, as are 'aliens'.

An Act of Parliament is needed to expel a peer who is not disqualified for any of the reasons above. The last time an act was passed to remove particular individuals from the House of Lords was in 1917, where two peers were deprived of their writ of summons as a result of supporting "the King's enemies" during the First World War.¹ More recently, the *House of Lords Act 1999* removed all but 92 hereditary peers from the House of Lords.

A recent inquiry was undertaken by the Committee for Privileges in the House of Lords into the powers of the House of Lords in respect of its members, in the wake of the lobbying allegations against four peers.² The Committee concluded that although the House is able to suspend its Members, the House has no power, by resolution, to require that the Writ of Summons be withheld from a Member otherwise entitled to receive it. The Writ of Summons is the document which calls the Member to the House and acts as their 'entry ticket' to the House of Lords. A new writ is issued for every Member at the beginning of each Parliament. A writ accompanies the Letters Patent which create the life peerage to a new Member. The House therefore cannot expel a Member permanently, and cannot suspend a Member for longer than the remainder of the current Parliament. More details of their report are set out below.

¹ *Titles Deprivation Act 1917*. See fn 5 in *Erskine May* (24th ed), p49

² House of Lords Committee for Privileges, *The Powers of the House of Lords in respect of its Members*, 14 May 2009, HL 87

2 Background

2.1 Lobbying allegations

Background

In January 2009 the *Sunday Times* published allegations that four peers had accepted fees to amend laws on behalf of business clients.³ The Leader of the Lords, Baroness Royall of Blaisdon issued a statement noting that she had spoken to the peers and the matter was being investigated by the Sub-committee on Lords Interests. In addition, she had also asked the Chairman of the Committee for Privileges, Lord Brabazon of Tara, to consider any issues relating to the rules of the House that arose, including the sanctions available if a complaint was upheld.

During Prime Minister's Questions on 28 January 2009, Gordon Brown confirmed that the two inquiries were underway. He also noted that the Government's most recent proposals for the reform of the House of Lords had included relevant measures:

We put forward our proposals for the reform of the House of Lords. They were in a paper that was issued a few months ago. In that paper there is also the proposal on sanctions for Members of the House of Lords who commit criminal offences. Baroness Royall has today put forward proposals for new codes of conduct and for new rules that include the ability to expel Members of the House of Lords from their duties if they are guilty of an offence, and she has said that in the cases that we know about, she is prepared to bring forward emergency sanctions to deal with those issues. I believe that when a problem is identified, we are taking the necessary action.⁴

In an article in *The Guardian* on 28 January 2009, Baroness Royall of Blaisdon explained the steps she had already taken and noted that "The House is a more modern and professional place in a very different world: we need to make sure our rules and structures reflect that":

...So I will be recommending that we should be able to take a range of actions as necessary, including being able to suspend peers immediately while an investigation is being carried out, and longer periods of suspension if cases are proven, and the option not of removing peerages - not in the gift of the House - but of even longer and perhaps permanent exclusions in extreme cases. If the current allegations are proven, we may need as well to consider emergency sanctions if warranted...⁵

Two reports were issued by the Committee for Privileges on 14 May 2009. One dealt with the conduct of the individual peers and one on the powers of the House of Lords in respect of its Members.⁶

Reports of the Committee for Privileges

The Committee for Privileges had asked both the Attorney General and Lord Mackay of Clashfern (a former Lord Chancellor and member of the Committee for Privileges) for their advice on the range of sanctions available to the House in the event of a serious complaint about a Member being upheld. The Attorney General argued that:

³ See Library Standard Note SN/PC/4950, [Standards of Conduct in the House of Lords](#)

⁴ HC Deb 28 January 2009 c296

⁵ Baroness Royall of Blaisdon, "Let's put our House in order", *Guardian*, 28 January 2009

⁶ House of Lords Committee for Privileges, *The Powers of the House of Lords in respect of its Members*, 14 May 2009, HL Paper 87 2008-09; House of Lords Committee for Privileges, *The Conduct of Lord Moonie, Lord Snape, Lord Truscott and Lord Taylor of Blackburn*, 14 May 2009, HL Paper 88 2008-09

While it is possible to construct a respectable argument that the power of the House to regulate its own procedure includes a power to suspend a member of a period within a Parliament on the grounds of misconduct, I consider, on balance, that the House does not have such a power. In my opinion, the key factor against this argument is that a suspension would interfere with the rights of a peer conferred by the Crown to attend, sit and vote in Parliament (albeit to a lesser degree than permanent exclusion). This is a fundamental constitutional right and any interference with that right cannot be characterised as the mere regulation of the House's own procedures.⁷

The Committee explained that the Attorney General:

...also draws attention to a binding resolution agreed by both Houses, in 1705, to the effect that "neither House of Parliament hath power, by any Vote or Declaration, to create to themselves any new Privilege, that is not warranted by the known Laws and Customs of Parliament". She advises that a decision to suspend or expel a Member would exceed the limits of the House's power of self-regulation, and so constitute the creation of a "new privilege", contravening the 1705 resolution.⁸

Lord Mackay of Clashfern, however, believed that the House of Lords did have the power to suspend its Members. The Committee explained that Lord Mackay agreed with the Attorney General that:

...Members are, by statute and by their letters patent, entitled to receive a writ of summons at the commencement of each new Parliament, and that the House cannot by resolution require that the writ of summons be withheld. However, he went on to advise that implied within the writ of summons are certain conditions, in particular a requirement that Members respect the rules of the House; and the House must therefore possess a corresponding power to enforce its rules where necessary. He therefore concludes:

"The House's existing power to adopt the procedure's necessary to preserve 'order and decency' includes a power to suspend, for a defined period within the lifetime of a Parliament, a Member who has been found guilty of clear and flagrant misconduct. I consider further that the exercise of such a power would not affect the rights conferred upon Members by virtue of their letters patent; rather it would affirm the conditions implied in the write of summons, that Members much conduct themselves in accordance with the rules of the House".

Lord Mackay also advances a secondary argument, based on historical comparison between the two Houses. He concludes that the House of Lords, like the Commons "had in 1705 an inherent power, deriving from its status as a constituent part of the High Court of Parliament, to discipline its Members". His advice on its secondary point therefore leads to the same conclusion, that "any decision that the House may now take as to the means by which it imposes such discipline, for example by suspension, falls within the undoubted privilege of the House to regulate its own procedures".⁹

The Committee agreed with the advice of Lord Mackay. The Committee asked the House of Lords to agree to the following:

⁷ House of Lords Committee for Privileges, *The Powers of the House of Lords in respect of its Members*, 14 May 2009, HL Paper 87 2008-09, para 4

⁸ *Ibid*, para 5

⁹ *Ibid*, paras 6-7

- The House possesses, and has possessed since before the 1705 resolution, an inherent power to discipline its Members; the means by which it chooses to exercise this power falls within the regulation by the House of its own procedures.
- The duty imposed upon Members, by virtue of the writs of summons, to attend Parliament, is subject to various implied conditions, which are reflected in the many rules governing the conduct of Members which have been adopted over time by the House.
- The House has no power, by resolution, to require that the writ of summons be withheld from a Member otherwise entitled to receive it; as a result, it is not within the power of the House by resolution to expel a Member permanently.
- The House does possess the power to suspend its Members for a defined period not longer than the remainder of the current Parliament.

The procedure for imposing a suspension should in due course be set out in a new Standing Order; the wording of the Standing Order would be a matter for the Procedure Committee. However, we emphasise that the function of Standing Orders is not to confer new powers, but to describe the rules and procedures governing the use of existing powers; the lack of a Standing Order does not prevent the House from exercising its existing power to suspend its Members in the interim.

It will also be for the Procedure Committee to consider and report in detail on the practical implementation of any suspension. In outline, we expect that following any suspension the Member concerned would be required to withdraw from the precincts immediately, and that he or she would then be barred from the precincts for the duration of the suspension. This would be consistent with the procedures adopted by the House of Commons.¹⁰

The House of Lords agreed to the report on 20 May 2009.¹¹ They also agreed the report of the Committee for Privileges on the conduct of the four peers.¹² Lord Snape and Lord Moonie were invited to make personal apologies to the House.¹³ Lord Truscott and Lord Taylor of Blackburn were suspended until the end of the 2008-9 Session of Parliament.¹⁴

2.2 Suspension of three peers in October 2010 over allowances paid

Following allegations concerning the allowances paid to Lord Bhatia, Baroness Uddin and Lord Paul, the Privileges and Conduct Committee recommended periods of suspension from the House in their reports of 18 October 2010.¹⁵ On 21 October 2010 the House agreed to the following periods of suspension:

- Lord Paul: four months;
- Lord Bhatia: eight months

¹⁰ *Ibid*, paras 8-10

¹¹ HL Deb 20 May 2009 c1418

¹² *Ibid*

¹³ Lord Moonie: HL Deb 3 June 2009 c209; Lord Snape: HL Deb 21 May 2009 c1426

¹⁴ HL Deb 20 May 2009 c1418

¹⁵ See [Committee for Privileges and Conduct - Publications](#)

- Baroness Uddin: until the end of the current Session of Parliament.¹⁶

3 The *Constitutional Reform and Governance Act 2010*

3.1 Background

The 2008 White Paper, *An Elected Second Chamber: Further reform of the House of Lords*, set out the outcome of cross-party talks on a number of issues for a reformed second chamber where the majority or all of the members would be elected.¹⁷ Amongst its proposals were the eligibility criteria for membership that:

...The minimum age for membership would be 18 and there would be no maximum limit. As now, British, Commonwealth and Republic of Ireland citizens would be eligible. Those subject to a bankruptcy restriction order, those holding full-time judicial offices, those with certain criminal convictions, those detained for mental health reasons, those who have been convicted of electoral fraud and those who are not UK taxpayers would be ineligible...

...There would be provision for members to resign. There would be provision for them to take leave of absence only where they had a major illness.¹⁸

The White Paper had also, however, indicated that the proposals were “intended to generate discussion and inform debate, rather than representing a final blueprint for reform” and that “final proposals for reform would have to be included in a general election manifesto”.¹⁹

On 10 June 2009, in the wake of the expenses scandal in the House of Commons and the publication of allegations about claims made by two members of the House of Lords, the Prime Minister made a statement on Constitutional Renewal. The statement was wide-ranging but included proposals to reform the House of Lords. The Prime Minister indicated that there would be “new legislation for new disciplinary sanctions for the misconduct of peers in the House of Lords”.²⁰ In addition, he announced that the Government would “come forward with published proposals for the final stage of House of Lords reform before the summer Adjournment, including the next steps we can take to resolve the position of the remaining hereditary peers and other outstanding issues”.²¹ Responding to questions from the Leader of the Opposition, the Prime Minister said that “The House of Lords has also got to face up to its responsibilities in that its discipline procedures and procedures for dealing with its finances are not good enough, and that is very much part of the measures we are putting forward”.²²

In the House of Lords, responding to the statement and the further comments made by the Prime Minister, the Conservative spokesman Lord Strathclyde asked:

Does the Prime Minister know anything about your Lordships' House? Is he aware of the swift and exemplary action recently taken to suspend two Labour Peers following a thorough investigation by a committee of your Lordships' House, a decision by the Committee for Privileges and a unanimous vote of this House? Can the noble

¹⁶ HL Deb 21 October 2010 c902

¹⁷ See Library Standard Note SN/PC/5135, [House of Lords Reform: the 2008 White Paper and recent developments](#)

¹⁸ Ministry of Justice, *An Elected Second Chamber: Further reform of the House of Lords*, July 2008, Cm 7438, para 7.2-7.3

¹⁹ *Ibid*, Foreword, p3

²⁰ HC Deb 10 June 2009 c798

²¹ *Ibid*

²² *Ibid*, c802

Baroness tell the House precisely what in those procedures her right honourable friend considers is not good enough?²³

On 29 June 2009 the Government published *Building Britain's Future* which outlined various policies for the last year of the Parliament. It included details of a proposed Constitutional Renewal Bill, to be introduced this session, which amongst other provisions would provide for the "disqualification of Peers convicted of a serious criminal offence" and allow peers to resign.²⁴

3.2 The Bill

The *Constitutional Reform and Governance Bill 2008-09* was published on 20 July 2009. It included various provisions on the civil service, the ratification of treaties, judicial appointments, protest around Parliament, National Audit and Financial Reporting to Parliament, and Human Rights claims against the devolved administrations. The Bill was carried over into the 2009-10 session of Parliament.

Provisions relating to the House of Lords were contained in Part 3 of the Bill. As introduced, the Bill allowed for the suspension and expulsion of peers and the resignation of peers from membership of the House of Lords. The clauses on the House of Lords were not included in the draft version of the Bill, the *Draft Constitutional Renewal Bill*, which had been published in March 2008 and was scrutinised by a Joint Committee. The Bill, as introduced, also included provisions to end the by-elections which take place to replace hereditary members of the House of Lords where vacancies arise.²⁵

The House of Commons Library published a Research Paper on the *Constitutional Reform and Governance Bill* to inform the Second Reading debate on the Bill.²⁶ This provides detailed analysis of the clauses of the Bill.

In short, the Bill allowed for the removal of peers from the House of Lords if they had been convicted of a serious criminal offence and been sentenced to be imprisoned or detained for a year or more, if they had been declared insolvent, if they had been expelled, or if they had resigned. The peer would no longer be a member of the House of Lords once the relevant event had taken place, and would not have been entitled to receive a writ of summons to attend the House and any writ of summons previously issued would no longer have any effect. The Bill allowed the Standing Orders of the House to make provision for the passing of an expulsion or suspension resolution by the Lords. The suspension resolution could cover a period which crossed two parliaments by removing the entitlement to receive a writ of summons at the beginning of a new parliament.

The Bill also allowed hereditary and life peers at any time, to resign from the House of Lords by giving notice to the Clerk of the Parliaments. Those who resigned would also be able to disclaim their peerage by giving notice to the Lord Chancellor.

As the Bill went through its passage in Parliament other clauses on membership of the House of Lords were added. An amendment was passed during the Committee stage in the Commons to require members of the House of Commons and of the House of Lords to be

²³ HL Deb 10 June 2009 c644

²⁴ HM Government, *Building Britain's Future*, June 2009, Cm 7654, p108

²⁵ See Library Standard Note SN/PC/5141, [Reform of the House of Lords: Proposals to end the by-elections for hereditary peers](#)

²⁶ Library Research Paper 09/73, [Constitutional Reform and Governance Bill](#)

treated as resident and domiciled in the UK for tax purposes.²⁷ Another amendment was passed to clarify the eligibility of Commonwealth and Republic of Ireland citizens to sit in the House of Lords.²⁸

During 'wash-up' at the end of the 2009-10 Parliament, many clauses from *Constitutional Reform and Governance Bill* were lost, including those on resignation, suspension and expulsion from the second chamber. The reactions to the proposals and the parliamentary debates are summarised below.

3.3 Reactions to the proposals

Much interest in the Government's proposals was directed towards the provision which would have allowed peers to resign from the House of Lords, leaving it open for them to be elected to the House of Commons. According to press reports, the Conservative Party had indicated that they would oppose such a measure.²⁹

In a response to the proposals in the Bill (including the ending of by-elections for hereditary peers), Dr Meg Russell of the Constitution Unit, UCL, argued that although the "incremental" reforms announced were welcome, they could be strengthened. In particular, amongst her suggestions was that:

A clause to ensure that peers retiring cannot stand for the House of Commons for at least five years would stop the Lords being weakened by becoming a jumping off point for ambitious politicians. Such a clause has been widely backed over the years by bodies making proposals on Lords reform.³⁰

It was reported in August 2009 that Jack Straw had indicated that he either intended to introduce an amendment to have this effect, or support a backbench amendment which would do the same. The *Financial Times* has reported that:

...on Wednesday it emerged that Mr Straw was to amend the legislation – due before the Commons in October – inserting a clause to prevent politicians "chamber hopping" between the red and green benches.

Government officials say Mr Straw wants a quarantine period – probably five years – between a peer's resignation and any attempt to win a seat as an MP in the Commons.

"This is absolutely nothing to do with Peter Mandelson," said one official. "The idea of a cooling-off period is an idea which we mentioned in a white paper last year. It is something of an omission that it is not in the current bill."

Mr Straw is expected either to table an amendment to the bill inserting the quarantine clause or to accept an amendment if tabled by another MP.³¹

However, a report in the *Financial Times* in October 2009 stated that:

Jack Straw, justice secretary, has revealed he will not impose a five-year "quarantine period" for unelected life peers who want to switch to the Commons, as had been suggested by his office...

²⁷ HC Deb 1 February 2010 c113

²⁸ HC Deb 19 January 2010 c273. See also Library Standard Note SN/PC/5357, [Clarification of the Act of Settlement 1701](#)

²⁹ "We'll block Mandelson's Commons return", *Telegraph*, 10 August 2009

³⁰ "Lords reform: Today's incremental reforms welcome", Press Notice, Constitution Unit, UCL, [on 1 October 2009]

Mr Straw told the *Financial Times* that ... he had never planned to accept such an amendment to cover existing life peers, claiming it was 'an Aunt Sally'.³²

The clauses on retirement of peers could have alleviated some concerns about the growing size of the second chamber. The House of Commons Justice Committee commented in their July 2009 report, *Constitutional Reform and Renewal* that:

The present Prime Minister has appointed 11 people to be life peers so that they could serve as ministers or as an adviser to the Government, some of whom have already given up ministerial office but remain members of the House of Lords. These measures accentuate a trend towards an appointed second chamber, contrary to the view expressed by the three main parties and by the House of Commons. Moreover, it is likely to lead to a continuous trend in future governments appointing peers to rebalance the numbers and this is unsustainable.³³

3.4 Second reading debate in the Commons

The *Constitution Reform and Governance Bill* had its Second Reading in the House of Commons on 20 October 2009. Jack Straw introduced Part 3 of the Bill as follows:

.... Part 3 on the House of Lords includes measures to ensure that the House has a robust disciplinary regime to deal with misconduct, to ensure that peers can be suspended or expelled, which they currently cannot be. It provides that peers are to be disqualified from the House after a conviction for a serious criminal offence or being subject to a bankruptcy restrictions order. Currently it is an offence to the public that Members may have been convicted of a serious offence and may still be able to serve, which Members cannot do in this House. Part 3 also allows peers to resign and, if they wish to do so, to disclaim their peerage. I have already indicated that we intend to bring forward proposals for further reform.³⁴

The Shadow Justice Secretary, Dominic Grieve, asked Jack Straw:

Furthermore, why are there measures in the Bill to allow peers to resign or retire? Are those measures intended for the reformed House or are they supposed to cover the transitional House, or are they for the halfway house that we have at the moment?

He then continued:

I do not want to see life peers in this House either. The Secretary of State is right that under the Peerage Act 1963, peers who swiftly choose to forgo a hereditary peerage should be free to stand for election to this House, just as it is right that peers who were removed in 1999 should now be free to seek election here. If Parliament allows the House of Lords to expel Members for misconduct, they too should be free to argue their case in public and, indeed, stand for election to this House, because their peerages will effectively have been removed.

However, the position is very different for those who have chosen to accept a life peerage in the full understanding that they will forgo the opportunity of standing for, or for that matter returning to, the House of Commons. In a reformed House of Lords, that would lead to that House becoming a stepping stone and vastly increase his patronage. That step would turn the House of Lords into the departure lounge for special advisers.

³¹ "Straw blocks Mandelson escape from Lords", *Financial Times*, 26 August 2009

³² "Pathway back to Commons opens for Mandelson", *Financial Times*, 2 October 2009

³³ Justice Committee, *Constitutional Reform and Renewal*, 29 July 2009, HC 923 2008-09, para 58

³⁴ HC Deb 20 October 2009 c809

...We will table an amendment to give effect to the Government's policy on the issue. I look forward to the Secretary of State, and perhaps even the Minister of State, joining us in the Lobby on that.

In his White Paper last year, the Justice Secretary proposed a cooling-off period of five years between someone ceasing their membership of the second Chamber and their being eligible for election to the House of Commons. That would prevent membership of the second Chamber from being used as an immediate launch pad for a career as an MP. We support the Justice Secretary's policy on that, although his Cabinet colleagues do not seem to be very enthusiastic.³⁵

Closing the debate, the Justice Minister Michael Wills stated:

A number of Members referred to the measures allowing peers to stand down and perhaps to stand again for election to the House of Commons. The Bill is designed to ensure that there is a framework allowing the House to deal effectively with discipline issues. We have seen the need for that in recent months, and I hope that everyone will be able to take advantage of it. It is right and proper, however, that in all other aspects of public life politicians are able to resign from office should that be the honourable thing to do, and we consider that the House of Lords should also form part of that process.³⁶

3.5 Committee stage debate

The clauses on suspension, resignation and expulsion from the House of Lords were considered on the fourth day of the Committee stage, 26 January 2010. As a constitutional bill, the Committee stage was taken on the floor of the House.

Term peerages

Andrew Tyrie and Sir George Young published a pamphlet in July 2009 in which they argued for term-limited peerages who would serve for a maximum of three parliaments. They proposed:

... a new basis for salaried, time-limited service in the Lords. We have chosen to call this 'term peerages'. Arguably, the peerage element is unnecessary, since there is widespread agreement that in the longer term the link between the peerage and membership of the upper house should be broken, it might be preferable to created fixed term appointments that were not peerages at all. However, this approach would represent a more direct challenge to the existing second chamber; it might be less inflammatory to keep the form of the House of Lords while making an important change to its substance.

Term peerages would adopt the approach already agreed between the parties for members of a wholly or predominantly elected second chamber to serve a single, non-renewable term of three parliaments. Term peers appointed at the beginning of a parliament would serve for three parliaments; those appointed during a parliament would serve for that parliament and the next two. If term peerages, created on this basis, were to replace life peerages as the basis for appointing new members of the House of Lords, it could bring about a significant and rapid change in the nature of the chamber. Yet, since it does not invoke the principle of election, it is much less likely to precipitate a crisis.³⁷

³⁵ *Ibid*, cc821-822

³⁶ *Ibid*, c878

³⁷ Andrew Tyrie, Rt Hon Sir George Young, *An Elected Second Chamber: A Conservative View*, July 2009

The paper argued that the shift to term peerages would attenuate any large-scale creation of peerages following a change of government.

During the Second Reading debate, Andrew Tyrie asked:

Mr. Andrew Tyrie (Chichester) (Con): ... has the Lord Chancellor had a chance to look at the proposals that set out in some detail a term peerage approach—the paper that I wrote with the present shadow Leader of the House when he was a Back Bencher, my right hon. Friend the Member for North-West Hampshire (Sir George Young)? Does that have the Lord Chancellor's support, and might he be prepared to consider an amendment in Committee to enact some of those proposals?

Mr. Straw: I have indeed read them. I think they were published by the University College London Constitution Unit. I do not wish to damage the hon. Gentleman's future career, but I thought they were rather good. I do not say that I agree with every part of them, but I am open-minded about the issue. I do not want to give a guarantee that we will accept amendments on it, because the usual processes of consulting in Government have to take place, but I certainly wish to consider the proposals. I hope that is a reasonable undertaking.³⁸

Sir Alan Beith, chair of the Justice Select Committee stated that:

I have not made up my mind to oppose the proposal by the hon. Member for Chichester, but my worry is that it would give a spurious legitimacy to appointment for potentially quite a long period and further delay the reform that is required – the creation of a predominantly elected second Chamber.³⁹

Andrew Tyrie and Keith Vaz proposed an amendment to introduce term-peerages of 15 years. Andrew Tyrie explained the purpose of the amendment was three-fold. First, it would move membership of the House of Lords “a step along the road” from being an honour to being a job.⁴⁰ Secondly, it would address the “inevitable upward ratchet in the size of the House, given the way it is presently constituted”.⁴¹ Lastly, the proposals would leave the existing life peerage unaffected, minimising the “risk of friction” as term peerages were introduced.⁴² The amendment received support from the Conservative front bench,⁴³ the Liberal Democrats; and some Labour backbench Members including the chair of the Public Administration Select Committee, Tony Wright.⁴⁴ However, the Justice Minister, Michael Wills, stated that the Government would not support the amendment. He argued that the proposals were based on the premise that comprehensive reform of the House of Lords was not going to happen in the near future, and this premise was “misplaced”.⁴⁵ He stated that the Government “will publish draft clauses” for “wholesale reform” shortly. The House divided on the amendment, with 170 voting in favour and 249 voting against.⁴⁶

Resignation from the House of Lords

Douglas Hogg tabled a number of amendments that would have prevented a Member resigning from the House of Lords. Instead they would have to take a leave of absence that

³⁸ HC Deb 20 October 2009 c809

³⁹ *Ibid*, c846

⁴⁰ HC Deb 26 January 2010 c732

⁴¹ *Ibid*

⁴² *Ibid* c733

⁴³ *Ibid* c734

⁴⁴ *Ibid* c734-735

⁴⁵ *Ibid* c741-2

⁴⁶ *Ibid* c744

would make them ineligible to stand for election to the House of Commons. An amendment was also tabled by the Liberal Democrats to require a five year gap between resigning from the House of Lords and eligibility to stand for election to the House of Commons. Douglas Hogg argued such provisions would be desirable because “such swapping” between Houses would “diminish the dignity and standing of the other place” and would also “diminish independence”.⁴⁷ David Howarth, speaking for the Liberal Democrats, also argued that they did not want the House of Lords “to be full of people who have an eye to a future political career at a very high level”.⁴⁸ For the Conservatives, Dominic Grieve explained that “it is essential to have a mechanism to ensure that a person cannot use an appointment to the House of Lords as an antechamber to a political career in this place”.⁴⁹ He also pointed out that under the provisions in the Bill there would be nothing stopping people moving from the Commons, to the Lords, and back again.

Michael Wills argued against the amendments, stating that a member of one House moving to the other did not diminish the status of either chamber. He continued by arguing that he did not want to see one House turn into the antechamber for the other, but stated that guarantee that this would not happen was “the British electorate”.⁵⁰ Douglas Hogg withdrew his amendments, but the Liberal Democrat amendment was put to a vote. The House divided with 179 in favour of the amendment and 270 against.⁵¹

At various points during the debate, the Government made reference to the fact that they would be publishing draft clauses on further reform of the House of Lords. Jack Straw stated that:

Quite shortly, I intend to publish what will amount to the basic contents of a Bill fully to reform the House of Lords.⁵²

Eleanor Laing asked:

We have known for a very long time that this part of the Bill would be debated in the Chamber today, so why have the Government not already brought forward the draft Bill... They could have put it before us this evening, so that we could have debated this matter knowing what they intend.⁵³

In the event, no draft clauses were published before the end of the 2005-10 Parliament.

There were also several references to the likelihood of the clauses relating to the House of Lords in the Bill reaching the statute at all. Douglas Hogg, for example, stated:

..Does he [Mr Straw] agree that the chances of the Bill becoming law are now negligible? It will probably have a sixth day of consideration, which will be about the time of the February recess. The Bill will then go to the other place, which will not pass it by the time of dissolution. The Bill is a gimmick that has no prospect of becoming law.⁵⁴

⁴⁷ HC Deb 26 January 2010 c759

⁴⁸ HC Deb 26 January 2010 c761

⁴⁹ HC Deb 26 January 2010 c762

⁵⁰ HC Deb 26 January 2010 c764

⁵¹ HC Deb 26 January 2010 c767

⁵² HC Deb 26 January 2010 c692

⁵³ HC Deb 26 January 2010 c742

⁵⁴ HC Deb 26 January 2010 c702

Amendments tabled on the House of Lords Appointments Commission by members of the Public Administration Select Committee were not reached.

3.6 Second Reading Debate in the Lords

Opening the Second Reading debate in the Lords on 24 March 2010, Lord Bach stated that:

It is essential that this House is able to deal with disciplinary issues effectively. Last year, the Privileges Committee concluded that this House did not have the powers it needed to expel Peers, or to withhold a writ of summons from a suspended Member. In order to ensure that this House has a robust disciplinary regime to deal with misconduct, Part 5 [Part 3 as introduced] includes important measures which will, among other things, provide the House with the power to suspend or expel a Peer; override a writ of summons, or cause one not to be issued; and provide that Peers are to be disqualified from the House after conviction for a serious criminal offence, or being subject to a bankruptcy order.

A consensus is forming around the need to address the growing size of your Lordships' House. With over 700 Members, this House is second in size only to the Chinese National People's Congress... In all other aspects of public life we accept that a person should be allowed to resign from office, and the Government believe that Members of this House should be able to resign if they no longer intend to sit and vote. In advance of full reform, Part 5 will provide this House with the powers it needs to operate effectively and for us to address the growing size of the House.⁵⁵

3.7 Wash-up

The Bill was awaiting its Committee stage in the House of Lords when the General Election was called. It was therefore considered as part of the 'wash-up' during the last sitting week of the 2005-10 Parliament. Its Committee stage and remaining stages in the Lords were taken on 7 April 2010. The clauses on resignation, suspension and expulsion from the House of Lords were amongst those removed from the Bill, as were those to end the by-elections for hereditary peers.

Lord Strathclyde, Leader of the Conservatives in the House of Lords, explained that he knew that there was concern about the clauses on expulsion and suspension from the second chamber, but that:

It is not vital that it should be passed today. If we are the next Government, we will certainly wish to find an early opportunity to put this right.⁵⁶

Lord Tyler, the Liberal Democrat spokesman argued that the clauses on suspension and expulsion were "a real issue of principle, as well as trust and confidence in the parliamentary process and your Lordships' House in particular".⁵⁷

The House of Commons considered the Lords amendments on 8 April 2010. The Liberal Democrat Constitutional Affairs spokesman said that:

The House of Lords reform aspects of the Bill throw into doubt the commitment of the whole of Parliament to the reform of Parliament and the return to the high standards in

⁵⁵ HL Deb 24 March 2010 c962

⁵⁶ HL Deb 7 April 2010 c1610

⁵⁷ *Ibid*, c1627

public life. That is surely the most serious part, for the reputation of politics, of the wash-up process.⁵⁸

4 The Coalition Agreement and further details

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.⁵⁹

The Committee on Lords Reform is a Government committee. Its membership is drawn from the front benches of both the Government and main opposition party in the Commons and the Lords.⁶⁰ It is tasked to draw up a draft Bill on the House of Lords. Initially the draft Bill was to be published in December, but more recent statements have indicated that it will not be published until the New Year.⁶¹ Once published, the draft Bill will be subject to pre-legislative scrutiny by a joint committee.

On 29 June 2010 the House of Lords held a debate on the motion “That this House takes note of the case for reform of the House of Lords”.⁶² Opening the debate, Lord Strathclyde stated that:

While we remain an overwhelmingly directly appointed House... our membership continues to grow. It is now fast approaching 800, with daily average attendance rising over 400. More new Members are due to be introduced over the coming weeks and months. I believe that it is time to examine what avenues could be created to make it possible for Members to leave the House permanently. To this end, I can announce that I will be setting up a Leaders’ Group, chaired by my noble friend Lord Hunt of Wirral, to investigate the options available. The group will include representation from all sides of the House and will be tasked with identifying the options that could be considered to allow members to leave or to retire from the House.⁶³

The Leader’s Group published an interim report on 3 November 2010 in which it set out the responses to its consultation on proposals to allow members to leave the House. The report was debated in the House of Lords on 16 November 2010. Further details and developments are set out in the Library Standard Note, SN/PC/5623, [Reform of the House of Lords: the Coalition Agreement and further developments](#).

⁵⁸ HC Deb 8 April 2010 c1208

⁵⁹ HM Government, *The Coalition: Our Programme for Government*, 20 May 2010

⁶⁰ HC Deb 7 June 2010 c48 and HL Deb 9 November 2010 cWA62

⁶¹ HL Deb 28 October 2010 c319WA

⁶² HL Deb 29 June 2010 c1661

⁶³ HL Deb 20 June 2010 c1667