

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

HOUSE OF LORDS REFORM BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the House of Lords Reform Bill as introduced in the House of Commons on 27 June 2012. They have been prepared by the Cabinet Office in order to assist the reader of the Bill and to help inform debate on it. These explanatory notes do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the clauses. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Bill is divided into 9 Parts.

Part 1 – Composition of the House of Lords

4. Clause 1 sets out the eventual composition of the House of Lords (360 elected members, 90 appointed members, up to 12 Lords Spiritual and any ministerial members) and its composition during two transitional periods. The clause also confirms the breaking of the link between membership of the peerage and membership of the second chamber.
5. Clause 2 confirms the continuing application of the Parliament Acts (which set out circumstances in which Royal Assent may be given to legislation without the consent of the House of Lords), notwithstanding the changes in the composition of the House of Lords. There is no provision in the Bill which amends the role or functions of the House of Lords. The Bill provides no new powers to the House of Lords other than in relation to the control of its own membership – for example the powers to expel members, to provide relief from disqualification in certain circumstances, or to determine its transitional membership during each transitional period. In particular there is no provision in the Bill which amends the legislative process.

Part 2 – Elected Members

6. Clause 3 provides for the first election to the House of Lords and for the frequency of subsequent elections. House of Lords elections are to take place at the same time as general elections to the House of Commons, except where a Commons election happens within two years of the previous House of Lords election.
7. Under clause 4, 120 ordinary elected members are to be elected at each House of Lords election. The United Kingdom is to be divided into a number of electoral districts, each returning several members, the details of which are set out in Schedule 1 and Schedule 2 to the Bill. Under Schedule 2 it will also be the duty of the Electoral Commission to review the number of members to be elected to each district after every third set of elections to the House of Lords. Clause 5 provides that elected members of the House of Lords are to be elected by an open list system in Great Britain and a single transferrable vote system in Northern Ireland. The conditions for the list system (which is to be a semi-open list system) are set out in Schedule 3. Under the single transferable vote system, a vote can be given so as to indicate the voter's order of preference for the candidates and can be transferred to the next choice where either the vote is not needed to give a prior choice the necessary quota of votes or a prior choice has been eliminated.
8. Under clause 6, those entitled to vote for elected members are to be the same as those entitled to vote for MPs, as set out in the Representation of the People Acts 1983 and 1985. Any remaining limitations on peers voting are removed (clause 50). Members and former members of each House of Parliament will be able to vote in elections to both their own House and the other House.
9. Clause 7 gives the relevant Minister power to make secondary legislation about the conduct of House of Lords elections. There are similar powers to make secondary legislation about the conduct of elections to the European Parliament, the Scottish Parliament and the National Assembly for Wales.
10. Clauses 8 to 10 and Schedule 4 provide for the filling of vacancies when a member ceases to be an elected member, for whatever reason. In most cases a vacancy is to be filled temporarily by an interim replacement elected member until the next House of Lords election (unless the vacancy arises six months or less before that election). Where the vacancy occurs before the former member's final electoral period, an additional seat will be contested at the next House of Lords election to elect a replacement elected member who will serve for the remainder of what would have been the former member's term.

Part 3 – Appointed Members

11. Clause 11 and Schedule 5 set up a House of Lords Appointments Commission. Clause 12 and Schedule 6 set up a Speakers' Committee on the House of Lords Appointments Commission. Under clause 13 Her Majesty is to appoint 30 ordinary appointed members after each House of Lords election (with an exception in clause 16

in certain cases where a vacancy has been filled). Like ordinary elected members, ordinary appointed members are to serve for three electoral periods (clause 13). Clauses 14 and 15 provide for the filling of vacancies and the length of term of a replacement appointed member who fills such a vacancy. The Appointments Commission is to recommend people for appointment on the basis of fair and open competition (clause 17), taking account of various criteria. Clause 18 provides for recommendations to be withdrawn where it appears that a person is disqualified.

Part 4 – Lords Spiritual

12. Clause 19 provides for the Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester to be members of the House of Lords, to serve as long as they hold those offices. Under clause 20 the Church of England may select a maximum of seven diocesan bishops as ordinary Lords Spiritual (or 16 and 11, from existing Lords Spiritual, in the first and second transitional periods (clause 21)). Ordinary Lords Spiritual are to serve for one electoral period, if selected prior to the beginning of an electoral period, or for the remainder of an electoral period, if selected during the course of an electoral period (though there is no limitation on the number of electoral periods for which they can serve). Clause 22 deals with the filling of vacancies. Clause 23 details the circumstances in which a person ceases to become a Lord Spiritual.

Part 5 – Ministerial Members

13. Clause 24 provides for the Prime Minister to appoint people who are not otherwise members of either House of Parliament to serve as ministerial members.

Part 6 – Transitional Members

14. Clause 25 and Schedule 7 make provision for transitional members. In the first transitional period the maximum number of transitional members is to be two thirds of the number of peers entitled to receive writs of summons to attend the House of Lords on 27 June 2012, the date of introduction of the Bill. In the second transitional period the maximum number is to be halved. They are to be selected from the transitional members for the first period. Transitional members are to be chosen in accordance with standing orders of the House of Lords.

Part 7 – Disqualification

15. This Part deals with the disqualification of members of the House of Lords. Clause 26 sets out the circumstances in which members can become disqualified. These are mostly similar to those which apply to members of the House of Commons, covering age (clause 26), nationality (clause 29), disqualifying office (clause 26 and Schedule 8), insolvency (clause 30), imprisonment for a criminal offence (clause 32) and corrupt electoral practice (clause 26). Previous membership of the House of Lords is also a disqualifying ground under clause 26, with limited exceptions.
16. Where a member is disqualified under the insolvency ground, the serious offence ground or the ground of disqualification relating to corrupt and illegal practices under the Representation of the People Act 1983 and the insolvency order is annulled or the

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

conviction or report quashed or sentence reduced to a period of less than one year, the prohibition on a person becoming a member more than once is disapplied (clause 33).

17. The serious offence ground applies where a person is imprisoned indefinitely or for more than a year for a criminal offence, wherever the conviction takes place and wherever the person is imprisoned, and whenever the offence occurred (clause 32). However, where the sentence or order was given outside the United Kingdom the House of Lords may resolve that the disqualification may be disregarded (clause 35).
18. The Bill follows the provisions of the House of Commons Disqualification Act 1975 in providing for the Privy Council to have jurisdiction in certain matters relating to disqualification (clauses 36 and 37).
19. Clauses 39 to 41 contain restrictions on membership of the House of Commons: members of the House of Lords are disqualified from membership of the Commons and there is also to be a cooling-off period of four years and one month after a person ceases to be an elected, appointed or transitional member of the House of Lords before they may become a member of the Commons. In addition, people may not stand for election to both Houses at the same time (clause 40).

Part 8 - General Provision about Membership

20. Clause 42 provides for members of the House of Lords to receive a writ of summons for each Parliament which meets while the person is a member, as now, and details the circumstances in which the writ of summons has no effect. No person may sit or vote in the House of Lords without having received a writ of summons.
21. Clause 43 provides for the existence of vacancies among the elected or appointed members or Lords Spiritual to be certified by the Clerk of the Parliaments, and requires the House of Lords to make standing orders setting out the circumstances in which the Clerk of the Parliaments must issue a certificate.
22. Clause 44 allows the House of Lords to make standing orders that provide that the House of Lords may expel or suspend a member. Clause 45 allows members to resign.
23. Clause 46 and Schedule 9 amend the Parliamentary Standards Act 2009 (the PSA) to provide that certain members of the House of Lords are to be paid by the Independent Parliamentary Standards Authority (the IPSA) for their participation in the work of the House. The IPSA is to set the amount of pay and determine what counts as participation. Members are also to be eligible to claim allowances under a scheme which is to be prepared by the IPSA. Pay and allowances are also to be administered by the IPSA. This is based in large part on the House of Commons scheme.
24. Clause 47 provides that the IPSA can be required to prepare and publish a report on the merits of whether a pension scheme should be established for Members of the House of Lords.

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

25. Clause 48 follows section 41 of the Constitutional Reform and Governance Act 2010 (CRAG Act 2010) to provide that members of the House of Lords are to be treated as resident, ordinarily resident and domiciled in the United Kingdom for the purposes of income tax, capital gains tax and inheritance tax.

Part 9 – Miscellaneous and General

26. Clause 49 states that nothing in the Bill affects parliamentary privilege.
27. Clause 50 removes any remaining disqualification of peers from voting in elections, or being elected, to either House of Parliament. Clause 51 enables life peers to disclaim their peerage.
28. Clause 52 abolishes the jurisdiction of the House of Lords in relation to peerage claims and provides that any peerage claim is to be made to Her Majesty in Council.
29. Clauses 53 to 60 are final provisions covering consequential, transitory and transitional provisions (see also Schedules 10 and 11), regulations, orders, interpretation, extent, commencement and the Bill's short title.

BACKGROUND

30. In the Programme for Government (available at www.cabinetoffice.gov.uk/news/coalition-documents) the Government committed to a mainly or wholly elected second chamber:

“We agree to 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 bill will advocate single long terms of office. It is also likely there will be a grandfathering system for current Peers.”

31. On 7 June 2010 (Hansard column 47), the Deputy Prime Minister announced the establishment of a cross-party Committee to consider all the issues related to reform of the House of Lords. The Committee met seven times between June and December 2010.
32. On 17 May 2011, the Government published a White Paper and draft Bill for pre-legislative scrutiny (available at www.cabinetoffice.gov.uk/resource-library/house-lords-reform-draft-bill).
33. A Joint Committee on the draft House of Lords Reform Bill was appointed by the House of Commons on 23 June 2011 and the House of Lords on 6 July 2011 to report on the draft Bill and White Paper. The Committee published its reported on 23 April 2012 (available at: www.publications.parliament.uk/pa/jt201012/jtselect/jtdraftref/284/28402.htm).

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

34. The Government responded to the Joint Committee's report on 27 June 2012 (available at: <http://www.cabinetoffice.gov.uk>).

TERRITORIAL EXTENT

35. The Bill extends to the whole United Kingdom. Its subject matter is not devolved.
36. No relevant powers have been transferred to the National Assembly for Wales or the Welsh Ministers, nor does it affect the functions of any of the devolved administrations.

COMMENTARY ON CLAUSES

Clause 1: Composition of the House of Lords

37. *Subsection (1)* specifies the composition of the House of Lords in the first, transitional, electoral period as being 120 elected members, 30 appointed members, transitional members, up to 21 Lords Spiritual and any ministerial members.
38. *Subsection (2)* specifies the composition of the House of Lords in the second, transitional, electoral period as being 240 elected members, 60 appointed members, transitional members, up to 16 Lords Spiritual and any ministerial members.
39. *Subsection (3)* states that, when fully reformed, the House of Lords is to consist of 450 members – 360 elected and 90 appointed – together with up to 12 Lords Spiritual and any ministerial members.
40. *Subsection (4)* confirms the breaking of the link between the peerage and membership of the second chamber.
41. *Subsection (5)* defines an “electoral period” as the period between elections to the House of Lords. Each electoral period starts on the day after an election to the House of Lords and ends on the day of the next election to the House of Lords.

Clause 2: Continued application of the Parliament Acts

42. This clause provides that the changes to the composition of the House of Lords do not affect the application of the Parliament Acts 1911 and 1949. These Acts ensure that legislation passed by the House of Commons cannot be frustrated by the House of Lords, in particular that money bills can be sent for Royal Assent if the Lords do not pass them within a month, and that all other public bills may not be delayed by the Lords for more than one year. These Acts underpin the primacy of the House of Commons in statute, limit the legislative power of the Lords, and ensure that any administration with a majority in the Commons can ultimately pass its legislation without Lords agreement. The Parliament Acts continued to apply following the Life Peerages Act 1958 and the House of Lords Act 1999 and will continue to apply now. The preamble to the 1911 Parliament Act, which is a short statement of the Government of the time, stating the intention to constitute the House of Lords on a

popular instead of hereditary basis, and thereafter to limit and define the powers of the second chamber, is repealed in order to make it absolutely clear that that it has no continuing relevance.

Clause 3: House of Lords elections

43. *Subsections (1) and (2)* provide that elections to the House of Lords will always to be held on the same day as qualifying general elections to the House of Commons, which are defined in subsection 3 of this clause.
44. *Subsection (3)(a)* provides that the first qualifying general election to the House of Commons will be the first general election on or after 7 May 2015, which is the date determined for the next scheduled general election by the Fixed-term Parliaments Act 2011. This will therefore also be the date of the first election to the House of Lords.
45. *Subsection (3)(b)* provides that there will be a minimum of two years between House of Lords elections, by requiring that period to elapse between elections if a House of Commons election is to amount to a qualifying election. This means that if an election to the House of Commons is held within two years of the last elections to both Houses there will be no election to the House of Lords at that time and the House of Lords electoral period will be extended accordingly.

Clause 4: Ordinary elected members and the electoral districts

46. This clause in combination with Schedules 1 and 2 lays out how many people are ordinarily scheduled to be elected to the House of Lords at each election, and the electoral districts for which they are to be elected.
47. *Subsection (1)* provides that 120 candidates are to be elected as members of the House of Lords at each House of Lords election. *Subsection (2)* provides that these members are called “ordinary elected members” to differentiate them from the two other types of elected member who would be returned in certain circumstances if an elected member’s seat became vacant. This could happen, for example, through the death, expulsion or resignation of an ordinary elected member.
48. *Subsection (3)* introduces Schedule 1, which defines the extent and the boundaries of the House of Lords electoral districts.
49. *Subsection (4)* introduces Schedule 2, which sets out how many ordinary elected members are to be elected in each district at each election, and how this number would be reviewed from time to time. Both the initial distribution of members to districts, as well as all the subsequent reviews of this distribution, will be carried out according to the general principle that the ratio of electors to elected members should be as nearly as is possible the same for each electoral district, according to the application of a mathematical formula. The number of elected members returned by each electoral district varies on a district by district basis.

Schedule 1: Electoral districts

50. *Paragraph 1* sets out that the areas of the House of Lords electoral districts are

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

defined in Schedule 1 using a two-column table. The names of the House of Lords electoral districts are listed in the left-hand column of the table, while the relevant area which makes up that district is listed in the right-hand column. The electoral districts for the House of Lords are identical to the electoral regions used for European Parliamentary elections, save that Gibraltar is excluded from the South West electoral district in relation to House of Lords elections.

51. *Paragraph 2* sets out that if the boundaries of the areas described in the right-hand column are changed for any reason, then as a consequence the boundaries of the House of Lords electoral district in the left-hand column would change in the same way. However, to avoid any confusion over the boundaries of a district changing during the course of a Parliament, it sets out that the House of Lords electoral district boundary would only change in relation to the next House of Lords election after the change to the area in the right-hand column had been made, as well as to any subsequent House of Lords elections.

Schedule 2: Allocation of ordinary elected members

52. Schedule 2 sets out how the number of members that are to be elected in each district at each House of Lords election, would be decided, and how this number would be reviewed from time to time.
53. *Paragraph 1* sets out how many ordinary elected members would be elected in each electoral district at each election. This allocation has been calculated using the methodology set out at paragraphs 2 and 3 on the basis of the electoral register that was published on 1 December 2011.
54. The number of members to be elected in each district would be reviewed periodically: *paragraphs 2 and 3* set out the way in which this will be done. The Electoral Commission will be required to carry out the review within 12 months of every third House of Lords election. This would usually mean that a review is carried out approximately every 15 years, which is equivalent to the full term of an ordinary elected or appointed member.
55. During the review, the Electoral Commission will be required to consider whether the existing distribution of ordinary elected members across the electoral districts is the same as would be produced if the mathematical allocation method set out in paragraph 3 of the Schedule (known as the “Sainte-Laguë method”) was applied to the most recent electorate figures available at the beginning of the review period. The “Sainte-Laguë method” used here seeks to ensure that the ratio of voters to ordinary elected members is as nearly as possible the same in each of the House of Lords electoral districts, subject to the fact that no electoral district may have fewer than 3 seats and that there shall never be more than 120 members elected to the House of Lords at any one particular election.
56. If when carrying out a review the Electoral Commission considers that the current arrangements for the distribution of ordinary elected members seats achieves the same result as is obtained by applying the “Sainte-Laguë method” to the current electorate

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

figures, that is the ratio of voters to ordinary elected members is as nearly as possible the same in each electoral district. The consequence of which is that the Commission is required to submit a report with this conclusion to the relevant Government Minister (the Lord President of the Council or the Secretary of State) and no further action would be taken. If the Electoral Commission considers that the current arrangements for the distribution of ordinary elected members seats do not achieve the same result as is obtained by applying the “Sainte-Laguë method” to the current electorate figures, that is the ratio of voters to ordinary elected members is not as nearly as possible the same in each electoral district, then it will be required to submit a report to the Minister with a recommendation specifying the number of ordinary elected members that should be returned for each electoral district, and how this ratio could be made as nearly as possible the same in each district. In both cases, the Minister would lay the report before Parliament and the Electoral Commission would publish its report.

57. *Paragraph 3* sets out the allocation method (the Sainte-Laguë method) that the Electoral Commission is required to use. Under this method, each electoral district is allocated a minimum of three ordinary elected members, then for each subsequent ordinary elected member the first ordinary elected member is allocated to the electoral district which produces the largest figure when the formula found in paragraph 3(4) is applied to it, until all 120 ordinary elected member seats have been allocated. With the largest electorate (that is to say, the district with the largest registered electorate) the formula is that the total number of electors in an electoral district is to be divided by the sum of one plus twice the number of ordinary elected members already allocated to the electoral district. The next ordinary elected members and subsequent members are allocated in the same way, except that the electorate of a district to which one or more members have already been allocated is divided by twice the number of members already allocated to that electoral district plus one. If two (or more) districts are equally entitled to a member, the member is allocated to the district, of those that are tied, with the smaller or smallest original electorate. This is the same method which the Commission has previously recommended for elections to the European Parliament.
58. *Paragraph 4* sets out the steps to be taken if the Electoral Commission makes a recommendation to change the numbers of members elected in each district.
59. The Minister must consult the Electoral Commission and lay a draft order before Parliament, which is to be subject to approval by a resolution of each House of Parliament. This draft order would have to follow the Commission’s recommendation concerning the changes to how many members are to be elected in each district. If both Houses agreed to the draft order, the Minister must make a final order in the terms of the approved draft. Where the Commission has made a recommendation but the Minister has yet to lay a draft order to give effect to the recommendation, then the Commission can notify the Minister that their recommendation should be altered or modified. Where such notice is given along with reasons for the change, then the Minister must lay a draft order that gives effect to the recommendation as modified. The order may also make consequential, transitional or saving provisions to modify

the Bill once enacted or any secondary legislation made under it.

60. *Paragraph 5* defines “electors” for the purposes of paragraph 3.

Clause 5: Voting system and Schedule 3: Voting system in Great Britain

61. This clause and Schedule 3 set out the key aspects of how the voting system would operate. There is a different voting system in Great Britain and in Northern Ireland.
62. *Subsections (1) and (2)* specify that, at a House of Lords election, the number of members to be elected in each electoral district is the total number of elected members required for that district. That is, the number of ordinary elected members due to be elected (defined by Schedule 2), as well as any replacement elected members that need to be elected to fill a vacancy, the process for which is set out in clause 8.
63. The voting system for Great Britain is to be a list system which complies with the conditions set out in Schedule 3 (*subsection (4)*). Under the list system, a registered party may submit a list of its candidates standing for election in an electoral district (paragraph 2 of Schedule 3). A vote may be given either for a registered party, or for a candidate named on the party list of candidates submitted by a registered party (a party candidate), or for an independent candidate (paragraph 3 of Schedule 3). Seats are to be allocated between parties and independent candidates using the d’Hondt formula (paragraph 4 of Schedule 3). For these purposes, a vote for a party candidate is counted as a vote for the candidate’s party. Under the d’Hondt formula, the first seat is given to the party or independent candidate with the most votes. The next and subsequent seats are allocated in the same way, except that the votes given to any party are divided by the number of seats already allocated to that party plus one. Paragraph 5 makes provision for a tie-breaker in the event that there is an equality of votes at any stage.
64. Seats that are allocated to a party must then be allocated to the party candidates (paragraph 6 of Schedule 3). Seats are allocated first to any candidate who received five per cent or more of the votes given to the party as determined for the purposes of applying the d’Hondt formula as described in paragraph 4 (qualifying candidates). If there are more qualifying candidates than there are seats allocated to the party, the first seat is allocated to the qualifying candidate with the largest number of votes, the second to the qualifying candidate with the second largest number of votes, and so on. If there are more seats allocated to the party than there are qualifying candidates, the remaining seats are allocated to the party candidates in the order that the candidates appeared on the party’s list of candidates at the election.
65. The voting system in Northern Ireland is a single transferable vote system (*subsection (5)*). Under this system voters may rank candidates in the numbered order in which they would prefer to see them elected as members of the House of Lords. Voters are able to express a preference on their ballot paper for as many or as few candidates as they wish (*subsection (3)(a)*).

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

66. In order to be elected a candidate would need to achieve a set number of votes (known as the Quota) calculated according to a set formula. Any candidate who had won a number of votes equal to or greater than the Quota would be elected.
67. If not all the seats available in the electoral district had been won by candidates winning a Quota of votes or more from first preference votes only, then subsection (5)(b)(i) stipulates that votes would be re-distributed from those candidates who had a “surplus” of votes (that is, those who had already been elected with more than a quota of votes). The surplus votes would be re-distributed to candidates who did not yet have a Quota, according to the second and later preferences expressed on the surplus ballot papers.
68. If at this stage it is still the case that not all the seats available in the electoral district had been won by candidates winning a Quota of votes, then the candidate with fewest votes would be eliminated, as set out in subsection (5)(b)(ii). Their votes would be redistributed according to the second (or later) preferences on all the ballot papers where they were marked as the first preference. The process of re-distribution and elimination would continue until all the seats in the district had been won.

Clause 6: Entitlement to vote

69. *Subsection (1)(a)* sets out the franchise for House of Lords elections, which is the same as that for elections to the House of Commons. This comprises a person who is registered in the register of Parliamentary electors for a constituency, who is not subject to any legal incapacity to vote, who is a Commonwealth citizen or a citizen of the Republic of Ireland and who is of voting age. Following the commencement of clause 50, peers will no longer be automatically disqualified from the Parliamentary franchise by virtue of their peerage membership of the House of Lords, and so no longer subject to a legal incapacity to vote in elections to the House of Commons. Therefore, subject to the detailed provisions and commencement of clause 50, peers will be entitled to vote in elections to the House of Lords, whether they are members of the House of Lords or not (see clause 50 for further detail).

Clause 7: Power to make provision about elections

70. *Subsection (1)* gives a power to the Minister, to make an order containing provisions about the conduct of House of Lords elections or matters relating to House of Lords elections. The power is similar, but not identical, to those conferred in the Scotland Act 1998, the Government of Wales Act 2006 and the European Parliamentary Elections Act 2002 in respect of the elections which those Acts deal with.

Clause 8: Interim replacement elected members and replacement elected members and Schedule 4: Interim replacement elected members

71. This clause sets out what is to happen when a vacancy arises in relation to a seat of an elected member, which may be the result of a membership being determined void or a member otherwise ceasing to be a member earlier than expected. Exactly how the vacancy is to be filled is dealt with in *subsection (2)* which provides that the vacancy should generally first be filled by an interim replacement elected member and then by

a replacement elected member.

72. In most cases interim replacement elected members are returned to fill the vacancy for the period between the vacancy arising and the next House of Lords general election, unless that period is less than six months in which case the seat remains vacant during that short period in order to avoid any member having an excessively short term. The criteria and process for returning interim replacement elected members is set out in Schedule 4.
73. Replacement elected members fill the vacancy for the period between the House of Lords general election that follows the vacancy arising and the end of the expected term of the original ordinary elected member the vacancy relates to. Consequently, replacement elected members are not returned where a vacancy arises in what is the last electoral period of the expected term of the original ordinary elected member that the vacancy relates to. This is because where a vacancy arises in that period the next general House of Lords election is the one at which the ordinary elected member will be replaced by the normal process, and so there is no vacancy that needs to be filled as the departing member's term is complete. Where an electoral district has a vacancy that requires a replacement elected member, an additional seat is contested at the general election for that electoral district. The ordinary elected member seats are allocated first and once all of these have been returned then the next most successful candidate is elected as the replacement elected member.
74. Schedule 4 sets out the criteria and process for determining who is to be returned as an interim replacement elected member. In Great Britain, if the former member who caused the vacancy to arise was affiliated to a political party, the vacancy is to be first offered to the candidate from the same party who would have been given the next seat at the last House of Lords election in the electoral district if another seat had been allocated to that party. If the former member was independent, the vacancy is offered to whichever candidate at the last House of Lords election would have gained the next seat if another seat had been available in that electoral district (Part 2 of Schedule 4). In Northern Ireland, if the former member was affiliated to a political party the nominating officer of that party may nominate a person to fill the vacancy. If the former member was independent, the seat remains vacant until the next House of Lords election (Part 3 of Schedule 4).

Clause 9: The “expected day” of the next House of Lords election

75. This clause defines the term “expected day” of the next House of Lords election that is used in clause 8 for the purposes of determining whether a vacancy requires the return of an interim replacement elected member or not. This clause is necessary because though the timing of general elections are now generally set, the Fixed-Term Parliaments Act 2011 does in certain circumstances allow for elections to take place earlier and so this provision takes this into account for the purposes of calculating the “expected day” under clause 8.

Clause 10: Vacancies certified in dissolution periods

76. Where a vacancy arises in a dissolution period this clause provides that it is to be

treated as if it occurred on the later date of the first day of the electoral period that follows that dissolution. This is necessary because vacancies that arise in the dissolution period occur too late for the vacancy to be filled at the upcoming election, for a variety of reasons. This provision resolves this difficulty by shifting the date the vacancy arises till after that election, at which point the vacancy can be filled in accordance with the provisions of clause 8.

Clause 11 and Schedule 5: The House of Lords Appointments Commission

77. *Subsection (1)* establishes the House of Lords Appointments Commission as a body corporate. It replaces an existing, non-statutory Commission with the same name.
78. *Subsection (2)* introduces Schedule 5 which deals with the membership, powers, staff, funding and governance arrangements of the House of Lords Appointments Commission.

Clause 12 and Schedule 6: The Speakers' Committee on the House of Lords Appointments Commission

79. *Subsection (1)* establishes the Speakers' Committee on the House of Lords Appointments Commission.
80. *Subsection (2)* introduces Schedule 6 which makes provision for the membership and procedures of the Speakers' Committee.

Clause 13: Ordinary appointed members

81. This clause sets out the process for appointing members. *Subsection (1)* requires the appointment of thirty persons to the House of Lords as ordinary appointed members, following each election to the House of Lords, subject to the provisions of clause 16. *Subsection (2)* provides that those appointments are to be made by Her Majesty on the recommendation of the Prime Minister.

Clause 14: Replacement appointed members

82. *Subsections (1) and (2)* require the appointment of a new person as a replacement appointed member to fill a vacant seat when an appointment is void (as to which see clause 27) or when an appointed member's membership ceases before the end of their expected term.

Clause 15: Replacement appointment member's term of office

83. *Subsection (1)* provides that a replacement appointed member's term begins on the day of their appointment and ends when the term of the person they replaced was due to end.
84. *Subsections (2) and (3)* provide an exception to subsection (1). This provision ensures that no appointed member ever serves a term of less than one whole electoral period.

Clause 16: Reduction in number of ordinary appointed members to be appointed

85. The clause applies where, at the start of an electoral period, one or more replacement

appointed members have been appointed in the previous electoral period, whose terms of office under clause 15(2) are for the remainder of that electoral period and a further three electoral periods. The effect is that clauses 13(1) and (3) apply in a modified way such that the number of persons whom the Appointments Commission is required to recommend (usually 30) is reduced by the number of those replacement appointed members.

86. This provision is necessary in order to ensure that subject to unfilled vacancies that may arise, the total number of appointed members and replacement appointed members stays constant in light of the extended term provided for some Replacement Appointed Members under clause 15(2) which breaks with the standard cycle of three electoral periods.

Clause 17: Criteria and procedure for selection

87. *Subsection (1)* requires the Appointments Commission to select people for recommendation for appointment on the basis of fair and open competition.
88. *Subsection (2)* contains a non-exhaustive list of criteria that the Appointments Commission must take account of when selecting people for recommendation. Any further criteria and the procedures for selection will be set out in a scheme prepared and published by the Appointments Commission (see *subsection (6)*). The relevant minister may amend the criteria in subsection (2) by order, but may only do so in accordance with a recommendation from the Appointments Commission itself. Such an order would be made under the affirmative resolution procedure.
89. *Subsection (4)* gives the Appointments Commission a duty to take whatever steps it considers necessary to ensure that a diverse range of persons is considered for recommendation. These steps might include, for example, advertising to encourage people from different groups to apply to be appointed members.

Clause 18: Withdrawal of recommendations

90. *Subsection (1)* requires any recommendation which the Appointments Commission or the Prime Minister makes to be withdrawn before it is acted upon if it appears to the person who made the recommendation that the person recommended is disqualified from being an appointed member. The Appointments Commission must then provide the Prime Minister with a new recommendation as soon as reasonably practicable (*subsection (2)*).

Part 4: Lords Spiritual

91. Currently 26 archbishops and bishops sit in the House of Lords. Under the Bishops Act 1878, the Sees of Canterbury, York, London, Durham and Winchester carry with them a seat in the Lords and the remaining seats, of which there are 21, are awarded to bishops in England in order of seniority.
92. By virtue of this Part a number of archbishops and bishops of the Church of England will sit in the House of Lords alongside the elected and appointed members, on a

supernumerary basis. Five named Lords Spiritual (the Archbishops of Canterbury and York, and the Bishops of London, Durham and Winchester) and up to seven ordinary Lords Spiritual selected by the Church of England will be members of the House of Lords after the end of the second transitional period (and be replaced if they leave) with full speaking and voting rights. They will continue to be known as Lords Spiritual. This reduces the overall presence of Lords Spiritual in the House of Lords from 26 to 12, proportionally reducing their numbers in line with the reduction in the rest of the House.

Clause 19: Named Lords Spiritual

93. *Subsections (1) and (2)* provide that the Archbishops of Canterbury and of York and the Bishops of London, Durham and Winchester, the five most senior clergy, are to be members of the House of Lords for the whole of the period for which they hold that office.
94. *Subsections (4) and (5)* provide that the Secretary General of the General Synod of the Church of England must notify the Clerk of the Crown of the appointment of a person to any of the above offices as soon as reasonably practicable.

Clause 20: Ordinary Lords Spiritual

95. *Subsections (1) and (2)* allow, but do not require, the Church of England for each electoral period to select diocesan bishops, to serve in the House of Lords as ordinary Lords Spiritual. For the first transitional period, the Church may select up to 16 bishops, for the second transitional period up to 11 and for each subsequent period, up to 7. These bishops must be selected from amongst those who do not hold a named office.

Clause 21: Ordinary Lords Spiritual for the first and second electoral periods

96. *Subsections (2) and (4)* provide that, as with transitional members, the ordinary Lords Spiritual for the first electoral period must be bishops who were members of the Lords before the first House of Lords election and that those for the second electoral period must have been members in the first period. In the latter case, if the number of previous members had fallen below seven, the Church of England may bring the number up to seven from other diocesan bishops.

Clause 22: Ordinary Lords Spiritual: vacancies

97. *Subsections (1) and (2)* provide that if the selection of an ordinary Lord Spiritual is void or an ordinary Lord Spiritual ceases to be such a member before the end of the expected term, then another person may be selected as an ordinary Lord Spiritual in their place for the “expected term” (*subsections (5)*). However, in the first two electoral periods, a vacancy may only be filled if the number has fallen below seven (*subsection (6)*).

Clause 23: Certain cases in which a person ceases to be an ordinary Lord Spiritual

98. *Subsection (1)* provides that an ordinary Lord Spiritual ceases to be such a member if

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

they are appointed to one of the named offices or they cease to hold office as a bishop. A bishop who moves to another diocese (apart from a named diocese) does not cease to be a member (*subsection (2)*).

Clause 24: Ministerial members

99. The clause provides for Her Majesty to appoint individuals to the House of Lords to serve as ministerial members on the recommendation of the Prime Minister (*subsections (1) to (3)*). By convention, all ministers sit in either the House of Commons or the House of Lords in order to be accountable to Parliament. An appointment can only be made when there are fewer than 8 ministerial members who are Ministers of the Crown (*subsection (4)*). A person appointed under this section serves for the electoral period in which they are appointed and the next 2 electoral periods (*subsection (5)*).

Clause 25 and Schedule 7: Transitional members

100. This clause introduces Schedule 7, which provides for the numbers and selection of transitional members for the first and second transitional periods.
101. Under *paragraph 1(1)* of Schedule 7 a person may only become a transitional member for the first electoral period if the person is, at the beginning of the day of the first House of Lords election, a peer entitled to receive writs of summons.
102. *Paragraph 1(2)* specifies the maximum number of transitional members who may be selected for the first electoral period. It is to be two thirds of the number of peers, rounded up to the nearest whole number, who at the beginning of the day that the Bill is introduced (27 June 2012) in the House of Commons, are entitled to receive writs of summons to attend the House of Lords.
103. Under *paragraph 2(1)* a person may only become a transitional member for the second electoral period if the person is, at the beginning of the day of the second House of Lords election, a transitional member.
104. *Paragraph 2(2)* specifies the maximum number of transitional members who may be selected for the second electoral period. It is to be one third of the number of peers, rounded up to the nearest whole number, who on the day that the Bill is introduced (27 June 2012) in the House of Commons, are entitled to receive writs of summons to attend the House of Lords.
105. *Paragraph 3* makes provision for the selection of transitional members for the transitional periods, the process for which is to be determined in the standing orders of the House of Lords.
106. Under *paragraph 3(2)* the standing orders may provide for a selection in any way. For example, this could be by election or through decisions made by political parties or other groups. Standing orders may also make provisions about a person's eligibility for selection and for when a selection is void (*paragraph 3(3)*).
107. *Paragraph 3(4)* states that these processes may take place even when the House of

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

Lords is adjourned or Parliament is prorogued or dissolved, subject to provisions made in the standing orders.

108. *Paragraph 3(5)* provides that selections may take place in accordance with standing orders in anticipation of these paragraphs being enacted or coming into force.
109. *Paragraph 4* states that in determining for the purposes of paragraphs 1 or 2 whether a peer is entitled to receive a writ of summons, an order under section 427 of the Insolvency Act 1986 (which says that there is no entitlement to a writ of summons during bankruptcy etc) is to be disregarded.
110. *Paragraph 5(1)(a)* provides that for both transitional periods the Clerk of the Parliaments will determine any questions arising as to the maximum number of transitional members.
111. *Paragraph 5(1)(b)* provides that the Clerk of the Parliaments will also determine any questions arising as to whether a person has been selected as a transitional member.
112. *Paragraph 6* provides that if the selection of a transitional member is void, then no other person may serve as a transitional member in that person's place.
113. *Paragraph 7* provides that if a transitional member ceases to be such, the transitional member will not be replaced.

Clause 26: Disqualification from membership of House of Lords

114. *Subsection (1)* makes provision barring persons from membership of the House of Lords where:
 - a) the person is subject to an insolvency order or undertaking (as to which see clause 30);
 - b) the person meets the serious offence condition (as to which see clause 32). The present House of Lords has no provision for disqualifying a peer on the basis of a serious offence;
 - c) the person holds a disqualifying office, meaning any of the offices at paragraphs 2 to 8 of Schedule 8;
 - d) the person does not meet a minimum age requirement of 18 on the day they are nominated as a candidate to be an elected member, or the day they are appointed to be an appointed member or a ministerial member, or the day they are selected to be a Lord Spiritual. The provision lowers the present minimum age requirement for membership of the House of Lords from 21 to 18, mirroring the position in the House of Commons.
115. *Subsection (2)* disqualifies holders of certain offices from being an elected member for districts related to that office. These offices and related districts are specified in

Part 2 of Schedule 8.

116. *Subsection (1)(e)* makes specific provisions for elected, appointed and ministerial members, to disqualify them from membership if they have been members of those descriptions before. This applies where the person was -
- (a) returned on a previous occasion as an elected member except, under *subsection (6)*, where that was as an interim replacement elected member, or a replacement elected member whose term began and ended in the same electoral period (that is the final electoral period of the expected term of the elected member whom they replaced) or; where the person was previously an elected member in relation to whom the clause 33 provisions on exception to disqualification are engaged;
 - (b) appointed on a previous occasion as an appointed member except where clause 33 is engaged. Clause 33 provides that if, at any time during an elected or appointed member's expected term of office, except the final electoral period of that term:
 - a) the person was disqualified on grounds of insolvency, or;
 - b) the person was disqualified on grounds of meeting the serious offence condition;but the insolvency order was later annulled or the conviction quashed etc, the person is not disqualified from being a member of the House of Lords for a second time as a result of their previous membership.
117. *Subsection (3)* provides that a person may not be an appointed member and an elected member at the same time.
118. *Subsection (4)* provides that a person who is either an elected member or an appointed member, may not also be a Lord Spiritual or transitional member.
119. *Subsection (5)* provides that a person is disqualified from being a ministerial member if they are any other type of member. Ministerial members are individuals appointed to the House of Lords from outside Parliament to enable them to serve in Government.
120. *Subsection (7)* refers to disqualification from membership of the House of Lords on grounds of:
- a) nationality, as provided by section 3 of the Act of Settlement 1700 which provides for the disqualification of people born outside the United Kingdom, as qualified by clause 29 (as to which see the notes to that clause). This mirrors the ground for disqualification from membership of the House of

Commons on the basis of nationality.

- b) corrupt or illegal electoral practices or corresponding primary or secondary legislation, mirroring the ground for disqualification from membership of the House of Commons.

Schedule 8: Disqualifying offices

- 121. Schedule 8 sets out the offices which disqualify a person from membership of the House of Lords. The present House of Lords has no particular regime of disqualifying offices (with a handful of exceptions). The list established by Schedule 8 to the Bill contains offices which are all also listed in the House of Commons Disqualification Act 1975 as disqualifying offices provisions for membership of the House of Commons, but Schedule 8 is a narrower list of disqualifying offices than that for the House of Commons. This would allow the House of Lords to continue to have the holders of a range of public offices as members.
- 122. *Paragraph 1* links the phrase “disqualifying office” to the offices listed within Part 1 of Schedule 8. Transitional members will not be subject to disqualification for holding a disqualifying office (with the exception of the office of Comptroller and Auditor General), in keeping with the current position.
- 123. The table in Part 2 relates to clause 26(2), and provides that a person is disqualified from being an elected member for a particular electoral district if they hold certain public offices that relate to areas within that electoral district. This is very similar to the provision which applies in relation to the House of Commons.
- 124. *Paragraph 9* enables the Schedule to be amended by an Order in Council in pursuance of a resolution agreed by both Houses of Parliament (paragraph 9(1)). Such amendments can change the offices listed in the Schedule; they can also provide for the disqualifying offices in the Schedule to apply differently to different classes or description of member (paragraph 9(2)). This is also similar to the arrangements for the list applying to MPs.

Clause 27: Effect of being disqualified on return day, day of appointment etc

- 125. Clause 27 sets out the circumstances in which a person who is returned, appointed or selected as a member does not become a member of the kind to which the event relates because they are disqualified from that kind of membership. The circumstances are in connection with:
 - a) a person’s return as an elected member generally;
 - b) a person’s return as an elected member for a specific electoral district;
 - c) a person’s appointment as an appointed member or as a ministerial member;
 - d) a person holding a named office, with respect to disqualification from being a Lord Spiritual;

e) a person's selection as a Lord Spiritual or transitional member.

With the exception of the circumstance at *subsection (1)(d)* the return, appointment or selection is void. In the circumstances of *subsection (1) (a), (b) or (c)* as relates to appointed members, an alternative member would be returned or appointed.

Clause 28: Effect of becoming disqualified while a member

126. *Subsections (1) and (2)* provide that where a person who is a particular kind of member becomes disqualified from being that kind of member, they cease membership. Where a person is an elected member, and they become disqualified from that kind of membership for the particular electoral district for which they were returned, they cease membership.
127. *Subsection (3)* provides that where a person is disqualified as a result of corrupt or illegal electoral practices under the relevant parts of the Representation of the People Act 1983 or any corresponding provision in primary or secondary legislation, the point at which the person ceases membership is as provided under those pieces of legislation.

Clause 29: Nationality of members

128. *Subsection (1)* qualifies the Act of Settlement to ensure that qualifying Commonwealth citizens (as defined by *subsections (2) and (3)*) and citizens of the Republic of Ireland may be members of the reformed House of Lords. It also provides that a Commonwealth citizen may be a transitional member. This brings provisions on nationality into line with those for Members of the House of Commons, except for transitional members to whom the current provisions relating to nationality will apply.

Clause 30: Meaning of “insolvency order or undertaking”

129. This clause defines an insolvency order for the purpose of the insolvency disqualification condition at clause 26. This disqualification condition applies where a person is subject to a bankruptcy restrictions order or undertaking (but not an interim order) in England and Wales, Scotland or Northern Ireland, or a debt relief restrictions order or undertaking (but not an interim order) in England and Wales. A person is not disqualified merely because they are bankrupt: an insolvency order may only be made where there has been additional behaviour by the individual such as fraud, or a neglect of business affairs which may have increased the bankruptcy or failure to cooperate with the official receiver.

Clause 31: Notification of making an insolvency order etc

130. *Subsections (1) and (2)* provide for a notification procedure to the Speaker of the House of Lords in the event of an insolvency order being made by a court or sheriff, in respect of a member of the House of Lords. This is the same as the existing position (see sections 426A and 427 of the Insolvency Act 1986).
131. *Subsection (3)* requires a person who accepts any undertaking made by a member of the House of Lords to notify the Speaker of the House of Lords. The various types of person and undertaking are set out in a table within the subsection.

Clause 32: Serious offence condition

132. *Subsection (1)* states the grounds for meeting the serious offence disqualification condition at clause 26. The grounds are that the person is imprisoned or detained (or should be, but is unlawfully at large) pursuant to a sentence or order for imprisonment or detention for more than a year (or indefinitely), relating to conviction for an offence. This is similar to the provision for the House of Commons in section 1 of the Representation of the People Act 1981.
133. *Subsection (2)* provides that the condition is met regardless of whether the imprisonment, sentencing or offence takes place in the United Kingdom or elsewhere (though clause 35 allows the House of Lords to provide relief from disqualification where the sentencing takes place outside the United Kingdom).
134. *Subsection (3)* provides that the condition at subsection (1) would still be met if the offence, conviction or sentence to which it refers took place before clause 32 comes into force. This is necessary because of the public interest in maintaining the integrity of members of the legislature is paramount and so justifies the retrospective nature of this provision.

Clause 33: Exception to disqualification under section 26(1)(e)

135. The clause applies where an elected, appointed or ministerial member who has not been such a member previously as a result of a previous return or appointment, ceased membership of the House of Lords before the final electoral period in their term of office, as a result of disqualification on grounds of meeting the insolvency condition or the serious offence condition or the corrupt or illegal practice condition from the Representation of the People Act 1983, before their final electoral period, but the insolvency order was subsequently annulled, or the conviction or report quashed or the sentence reduced etc. It also applies if a qualifying resolution was passed, as specified in *subsection (5)*, clause 34 and clause 35.
136. *Subsection (2)* provides that under these circumstances the person is not disqualified under clause 26(1)(e) from being a member for a second time as a result of their previous membership. This means the person could serve a second term in the House of Lords as an ordinary elected member, or as a replacement elected member, or interim replacement elected member (as provided at clause 8). Or the person could serve a second term as an appointed member or replacement appointed member (as provided at clause 14).

Clause 34: Relief from disqualification: age, disqualifying office or nationality

137. *Subsections (1) and (2)* provide that the House of Lords may by resolution disregard any disqualification on grounds of age, disqualifying office, or nationality, providing that the grounds for the disqualification no longer apply to a person and that it is appropriate to do so (for example a person gives up a disqualifying office).
138. *Subsection (3)* stipulates that the effect of a resolution is that the disqualification is treated as never having occurred. There is an exception to this in the case of elected

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

and appointed members and ordinary Lords Spiritual, if the vacancy has been certified (*subsection (5)*).

139. *Subsection (6)* provides that proceedings under an election petition (under which an election may be challenged in an election court) are not affected by this clause.
140. *Subsection (7)* explains the meaning of “election petition” by a reference to Part 3 of the Representation of the People Act 1983 and to orders similar to the petitions within the 1983 Act.

Clause 35: Relief from disqualification: serious offence condition

141. *Subsection (1)* provides that the House of Lords may resolve to disregard any disqualification under the serious offence condition, in connection with a sentence or order given or made outside the United Kingdom, provided it is appropriate to do so (*subsection (2)*). The clause would allow the House of Lords, for example, to disregard disqualification for offences which may not be punishable at all under UK law.
142. Under *subsections (3) to (7)* the effects of the resolution are the same as for relief from disqualification on grounds of age, disqualifying office and nationality at clause 34.

Clause 36: Jurisdiction of Privy Council as to disqualification

143. *Subsections (1) and (2)* provide that a person may apply to the Judicial Committee of the Privy Council for a declaration that a person who is apparently a member of the House of Lords is in fact disqualified on grounds of holding a disqualifying office, age, nationality, or being barred from being an elected member for a particular electoral district. This clause applies to all kinds of members, whether the conditions for the disqualification are currently met, or are no longer met but were at the time the person became an apparent member or subsequently. Similar provisions, set out in section 7 of the House of Commons Disqualification Act 1975, apply to members of the House of Commons.
144. *Subsections (3) to (6)* make provisions as to the rules under which an application to the Judicial Committee may be made, including the requirement for an applicant to provide security for the costs of proceedings as directed by the Judicial Committee.
145. *Subsections (7) and (8)* specify that the security must not be over £5,000 or as specified by the Minister by order.
146. *Subsection (9)* provides that if a disqualification is or has been the subject of proceedings concerning an election petition, or has already been disregarded by the House of Lords as a result of a resolution under clause 34, no declaration may be made.

Clause 37: Power to direct an appropriate court to try issues of fact

147. The clause provides for the Judicial Committee of the Privy Council to establish facts

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

relating to applications under clause 36 by directing issues to appropriate courts.

148. In the case of a purported elected member, the appropriate court in the United Kingdom will be determined by the location of the electoral district. In the case of other members the Judicial Committee will decide which court is appropriate.
149. The provisions mirror those which apply to the House of Commons in section 7 of the House of Commons Disqualification Act 1975.

Clause 38: Holders of certain judicial offices disqualified from sitting or voting

150. The clause provides under *subsection (1)* that transitional members who are also holders of judicial offices specified in paragraph 3 of Schedule 8 are disqualified from sitting or voting in the House of Lords or any of its committees. Although under *subsection (2)* they may still receive writs of summons, they are nevertheless subject to disqualification from sitting and voting as provided by the clause.
151. The Judges of the Supreme Court to whom paragraph 3 of Schedule 8 refers, were previously Law Lords in the House of Lords. The Constitutional Reform Act 2005 made them Justices of the Supreme Court and removed their right to sit and vote in the House of Lords (though not their membership of that House) so long as they were active judges. The 2005 Act provides that the disqualification is lifted upon their retirement from the Supreme Court.

Clause 39: Members of the House of Lords disqualified from being MPs

152. The clause provides that the provision in the House of Commons Disqualification Act 1975 which disqualified Lords Spiritual from membership of the House of Commons is substituted with a provision disqualifying all members of the House of Lords. This provision therefore ensures that a member of the House of Lords cannot also be an MP.

Clause 40: Bar on standing for election to both Houses at the same time

153. This clause provides that a person may not stand for election to the House of Lords and for election to the House of Commons at the same time.
154. *Subsections (3) to (5)* amend section 65A(1A) and paragraph 8(3) of Schedule 1 to the Representation of the People Act 1983 to provide that a person who makes a false statement on the nomination form for an election to the House of Commons, in order to stand at that election and a House of Lords election, the polling day for which falls on the same day, is guilty of corrupt practice.

Clause 41: Restriction on former members being elected as MPs

155. This clause provides that former members of the House of Lords (except Lords Spiritual) are disqualified from being elected to the House of Commons for a period of 4 years and 1 month, from the day they cease to be a member. This is to limit the extent to which membership of the House of Lords can be a “stepping stone” to election to the House of Commons.

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

156. The effect of the provision is that a person who completes a full term in the House of Lords will be disqualified for an interval which ends just before the earliest date on which, under the Fixed Term Parliaments Act 2011, it would be possible for a scheduled election to fall after the general election which follows the person's last day of membership of the House of Lords.
157. A person who ceases membership of the House of Lords early will be disqualified for a period of 4 years and 1 month from the day they cease membership.
158. If a person has completed two periods of membership in the House of Lords, for example as a result of an exception from disqualification under clause 33, or as a result of previously being an interim replacement elected member under clause 8, the period of disqualification would apply in relation to each period of membership.

Clause 42: Writs of summons

159. *Subsection (1)* provides for a member of the House of Lords to be entitled to receive a writ of summons to attend for each Parliament that they are a member, as they are at present. This is subject to the rest of the Act and to other primary legislation (*subsection (2)*). As provided by *subsection (3)* that entitlement may be provided by no other means (for example by dint of a hereditary or life peerage). *Subsection (4)* provides that a writ of summons issued to an individual who was disqualified at the time they were returned, appointed or selected as a particular kind of member, or who is disqualified as a Lord Spiritual by virtue of holding a named office, has no effect.
160. *Subsection (5)* provides that the entitlement to attend the House of Lords which is conferred by a writ of summons ends when a person ceases to be a member.

Clause 43: Certification of vacancies etc

161. This clause makes provision as to how it will be confirmed that a vacancy exists. This is so that:
 - a) if it is a vacancy among elected members, the Returning Officer knows if and when to begin the process of selecting a replacement elected member;
 - b) if it is a vacancy among appointed members, the Appointments Commission knows when to begin the process of selecting a replacement appointed member; or
 - c) if it is a vacancy among the ordinary Lords Spiritual, the Church of England knows when to begin the process of selecting a replacement.
162. Vacancies are to be certified by the Clerk of the Parliaments.
163. *Subsections (2) and (3)* provide that the House of Lords must make standing orders which will govern the circumstances in which the Clerk must issue the certificate. These may be different in relation to different circumstances. For example, if the vacancy arises out of the resignation of a member it is likely that the Clerk would be

required by the standing orders to issue his certificate very swiftly, but in the event of a person being disqualified for a criminal conviction which is subject to appeal, the standing orders could provide that the Clerk must wait until all reasonable avenues of appeal are exhausted before certifying a vacancy.

164. The timing of certification is important because *subsection (7)* prevents a person who has been disqualified from resuming membership after a vacancy has been certified, even if the reason for their disqualification is removed – for example if their criminal sentence is subsequently overturned. Until the vacancy is certified, *subsection (6)* sets out that disqualification may be overturned by any of the qualifying events listed at clause 32.
165. *Subsection (7)(b)* confirms that the existing provisions of electoral law on corrupt or illegal electoral practice continue to apply, which means that the circumstances in which members convicted of such practice may resume their seats on successful appeals continue to be governed by existing electoral laws such as the Representation of the People Act 1983 rather than by this Bill.

Clause 44: Expulsion and suspension

166. *Subsection (1)* provides powers for the House of Lords to expel or suspend any member by resolution according to standing orders which it may make. These provisions mirror powers available to the House of Commons.
167. The House of Lords at present has a power to suspend a member temporarily, but this power is considered to be limited to suspension for the duration of the Parliament within which the power is exercised. The clause provides both an enhanced power of suspension and a power of expulsion, which the House does not currently have.
168. *Subsections (2) and (3)* provide that expulsion results in permanent loss of membership whilst suspension does not result in loss of membership, but removes entitlement to receive writs of summons and causes any writ of summons already issued to have no effect. Accordingly a suspended member will not be able to sit or vote in the House of Lords or any Parliamentary committee for the period of the suspension.
169. *Subsections (4) and (5)* have the effect that a member can be expelled or suspended on the basis of conduct occurring before the time the member became a member, but only if it was not public knowledge before that time. A transitional provision at paragraph 2 of Schedule 11 has the effect that the same rule applies for conduct occurring before the commencement of the clause.

Clause 45: Resignation

170. This clause provides that a member of the House of Lords may resign at any time, which at present they are unable to do. They may do so on any grounds. The clause applies to all members other than named Lords Spiritual. Ordinary Lords Spiritual may resign from the House of Lords without relinquishing their position in the Church

of England.

171. The resignation must be made in writing to the Clerk of the Parliaments and witnessed by two persons. The member ceases to be a member when the Clerk of the Parliaments signs a certificate of receipt of the notice of resignation.

Clause 46 and Schedule 9: Pay and allowances

172. *Subsection (1)* inserts new sections 7A to 7G into the Parliamentary Standards Act 2009. The new sections grant to the IPSA the power to set and provide pay and allowances for members of the House of Lords. The new sections also provide the IPSA with the authority to deal with claims under the allowances scheme and to provide members of the House of Lords with guidance on taxation. The Compliance Officer for the IPSA is given authority to review IPSA's determinations on claims for allowances. The IPSA and the Compliance Officer have similar responsibilities in relation to members of the House of Commons.

New Section 7A PSA: Pay of members of the House of Lords

173. New section 7A provides for elected, appointed and ministerial members of the House of Lords to be paid by the IPSA on a monthly basis in arrears (new sections 7A(1) and (2)). This does not apply to Lords Spiritual or to transitional members (the latter remaining eligible to receive allowances by virtue of a Lords resolution) or to an office holder salaried under the Ministerial and Other Salaries Act 1975 (new section 7A(7)). The IPSA is to determine the level of pay (new section 7A(3)). No payment is to be made until a member has taken the parliamentary oath (new section 7A(5)), and the IPSA's duty to pay is subject to anything done in the exercise of the disciplinary powers of the House of Lords (new section 7A(6)). This provision is made so that pay can be withheld, or deductions made from it, as a consequence of the exercise of disciplinary powers.

New Section 7B PSA: Determination of pay of members of the House of Lords

174. New section 7B provides further detail about how the IPSA is to determine the level of pay.
175. The IPSA's determination must connect a member's pay to their participation in the work of the House of Lords. What counts as participation and how this is ascertained is to be determined by the IPSA, and it can set different definitions of participation for different cases (new section 7B(2) and (3)). For example, the IPSA may set a different definition of participation for ministers (not in receipt of a ministerial salary under the Ministerial and other Salaries Act 1975) than that set for other members of the House, in recognition of their different roles.
176. New section 7B(6) allows the IPSA to decide that the pay of those holding an office or position specified for this purpose in a resolution of the House of Lords is to be higher than for other members. The maximum amount a member can be paid in a twelve month period is a backbench MP's salary for that period (new section 7B(4) and (5)) (although this cap does not apply to office holders receiving a higher rate of

pay by virtue of a Lords resolution).

New Section 7C PSA: Determination of pay: duty to review and procedure

177. New section 7C(2) imposes a duty on the IPSA to review pay of members of the House of Lords in the first year following each House of Lords election and whenever else it considers it appropriate. There is also a consequential duty to consult specific bodies and officials, before making its first determination and as part of its on-going reviewing process, prior to the review of a determination (new section 7C(3)).
178. New section 7C(4) states that after a review of pay the IPSA must publish the review and a statement explaining how the result was obtained. However, if after the review the IPSA decides not to make a new determination it must explain, in a statement, how the decision was reached (new section 7C(5)).
179. New section 7C(6) permits the IPSA to delegate its review power to the Review Body on Senior Salaries (SSRB). However, the section also adds that the IPSA may not delegate its power to decide whether to make a determination.

New Section 7D PSA: House of Lords allowances scheme

180. New sections 7D(1) and (2) grants the IPSA the power to pay allowances in accordance with the House of Lords allowances scheme. Allowances under this section may be claimed by all members other than transitional members, who will continue to be eligible to receive allowances under resolutions of the House.
181. The IPSA has a duty to devise the allowances scheme, review it and revise it (new section 7D(3)). In doing so it must consult a number of bodies and persons, listed in new section 7D(4).
182. As Members of the House of Lords will not have the same constituency function as Members of the House of Commons, new section 7D(9) prevents the IPSA paying an allowance to an elected member for the purposes of maintaining an office in their electoral district.
183. New section 7D(10) states that allowances may be paid in connection with a person ceasing to be a member of the House of Lords and may be paid to a former member of the House of Lords.
184. New section 7D(11) explains that the IPSA's duty to pay a claim for an allowance from a member is subject to the disciplinary powers of the House of Lords.

New Section 7E PSA: Dealing with claims under the scheme

185. New section 7E(1) sets out the process for dealing with claims under the House of Lords allowances scheme. No allowance is to be paid unless a claim for it is made. The procedure mirrors that in place for claims under the MPs' allowances scheme. The claim must be submitted by the member unless otherwise stated in the scheme

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

(new section 7E(2)).

186. New section 7E(3) provides that the IPSA, on receipt of a claim, must decide whether to allow the claim and the amount to be paid to the member.
187. The House of Lords allowances scheme may include additional explanation on how claims are to be dealt with, provisions regarding deductions in respect of amounts that should not have been paid to the member and provisions on how the deductions are to be made (including from pay) (new section 7E(4)).
188. New Section 7E(5) refers to amounts that a member has agreed to refund because the payment of the amount from the House of Lords allowances scheme should not have been allowed by the IPSA.
189. Under new section 7E(6) a member may ask the IPSA to pay an amount to which he or she is entitled under the scheme to another person (for example this might be a member of staff employed by the member).
190. New section 7E(7) requires the IPSA to publish information regarding all the claims made by members and all the payments of allowances made by the IPSA under the section. The IPSA can publish the information at any time and in whichever way the IPSA considers appropriate (new section 7E(8)). In order to decide the processes to be followed to publicise the information, new section 7E(9) imposes on the IPSA the duty to consult specific listed individuals and bodies and any other person the IPSA considers appropriate.

New Section 7F PSA: Review of determination under section 7E

191. New section 7F(1) provides a review mechanism for occasions when the IPSA decides to refuse or to pay only part of a claim made by a member. The section allows a member of the House of Lords, after having given the IPSA a reasonable amount of time to review the matter, to approach the Compliance Officer for the IPSA and ask for a review of the IPSA's decision. The Compliance Officer is a statutory office holder established by the Constitutional Reform and Governance Act 2010 to carry out functions in relation to claims for allowances made by members of the House of Commons. These provisions grant similar functions in relation to claims made by members of the reformed House of Lords.

New Section 7G PSA: Information and guidance for members of the House of Lords

192. Under new section 7G(1), the IPSA must prepare and publish guidance for House of Lords members on the pay scheme and how to make claims under the allowances scheme. It must also review the guidance, revise it when needed and provide further advice to House of Lords members on making claims. The IPSA must provide House of Lords members with information or guidance about taxation issues that it considers they should be aware of (new section 7G(2)).

193. Clause 46(2) introduces Schedule 9. Part 1 of Schedule 9 makes further changes to the PSA to reflect IPSA's new duty to set and administer pay and allowances for members of the House of Lords. Part 2 of Schedule 9 provides a power for the Minister to make an order in relation to the transfer of staff, property, rights, liabilities, documents and information from the House of Lords to the IPSA in accordance with a scheme.

Clause 47: Power to require IPSA to consider pension scheme

194. *Subsections (1) and (2)* provide that the IPSA can be required to prepare and publish a report on the merits of whether a pension scheme should be established for members of the House of Lords, if a minister has laid a draft order to that effect and this order has been approved by resolutions of each of the Houses of Parliament. However this order is not a statutory instrument as is clarified by provisions of clause 54(8).
195. *Subsection (4)* provides that the order approved by Parliament and made by the minister must set a deadline by which IPSA must complete the report. This provision also allows for the order to be able to require IPSA (when compiling the report) to consider certain specified matters, or not consider certain specified matters, or to consult certain specified persons or bodies.

Clause 48: Tax status of members

196. *Subsection (1)* provides that members of the House of Lords are deemed to be resident, ordinarily resident and domiciled ("ROD") in the UK for each tax year in which they are a member, regardless of whether they are a member for the whole or part of the tax year. This means that they will be deemed ROD from the start of the tax year in which they become a member, until the end of the tax year in which they cease membership. The provision operates for the purposes of income tax, capital gains tax and inheritance tax, without regard to the individual's actual status.
197. The provisions mirror those on tax status in the Constitutional Reform and Governance Act 2010 which apply to peers in the House of Lords.
198. *Subsections (2) and (3)* define the points at which membership commences and ceases for the purpose of the clause.
199. Holders of certain judicial offices selected under the transitional arrangements are, by virtue of their office, disqualified from sitting and voting in the House of Lords. *Subsection (4)* provides that any periods during which a member has held such a judicial office will not count for the purpose of determining whether they were a member in any part of a tax year under subsection (1).

Clause 49: Parliamentary privilege

200. This clause is a general saving provision, designed to ensure that nothing in the Bill affects the application of parliamentary privilege. There are two main aspects to parliamentary privilege: freedom of speech in parliamentary proceedings, and exclusive cognisance. (The former is sometimes considered to be an aspect of the latter.) Parliamentary proceedings include (among other things) debates, committee

hearings and published reports, but not anything said by a member of either House outside parliamentary proceedings. Freedom of speech is guaranteed by Article IX of the Bill of Rights and in the Claim of Right Act in Scotland. The exclusive cognisance of each House of Parliament can broadly be understood as the right of each House to regulate its own proceedings without interference from the courts.

201. The clause ensures that there is no doubt that both aspects of parliamentary privilege will continue to apply following the coming into force of this Act.

Clause 50: Peers not disqualified from voting or from membership

202. This clause provides that peers will not by virtue of their peerage be disqualified from voting or standing in elections to either House of Parliament. This reverses the existing position at common law whereby peers were prevented from standing and voting in Parliamentary elections (already changed by the House of Lords Act 1999 in relation to hereditary peers who left the House as a result of that Act, and by the Constitutional Reform and Governance Act 2010 in relation to peers who left the House of Lords under its provisions).
203. This provision reflects the fact that as a result of the Bill, holding a peerage will cease to automatically confer membership of Parliament, and so there is no longer any justification for disqualification.
204. *Subsection (2)* establishes that a person holding a peerage will not be disqualified from becoming an appointed or an elected member of the House of Lords, or a member of the House of Commons, by virtue of their peerage.
205. Related to clause 50 are *paragraphs 4 and 5* of Schedule 11 which enable sitting peers to register as Parliamentary and overseas electors from the point at which those provisions are commenced, but maintain the bar on sitting peers from voting in Parliamentary elections until polling day for the first House of Lords election, when the link between holding a peerage and automatic membership of Parliament is broken. This means peers will be able to complete the necessary registration requirements in order to vote in the first House of Lords election but will continue to be disqualified from voting in Parliamentary elections or by-elections that take place between commencement of the Bill and the date of poll of the first House of Lords elections.
206. Under the Representation of the People Act 1985, an individual can only register to vote as an overseas elector if they have previously been registered as a parliamentary elector on the basis of residence at an address in the UK in the last 15 years. As peers disqualified from the Parliamentary franchise by virtue of their peerage will not be able to meet this criterion (until commencement of this provision), the Bill provides that if a peer is included in the register of local electors published before clause 50(1) comes into force then they will be eligible to register as an overseas Parliamentary elector from the point the provisions are commenced, provided they meet the other relevant criteria.

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

207. *Paragraph 6* specifies that clause 50(2), which makes clear that peers are not disqualified from standing for election to both Houses, shall not have effect prior to the first qualifying Parliamentary election if it commenced before that point. This means that sitting peers will not be entitled to stand for election at a Parliamentary election (including a by-election) in the period between commencement of the provision and the first qualifying election.

Clause 51: Power to disclaim life peerage

208. This clause provides that a person who holds a life peerage may at any time disclaim that peerage by writing to the Lord Chancellor. The person will be divested of all rights and interests attaching to the peerage.

Clause 52: Peerage claims

209. *Subsection (5)* abolishes the jurisdiction of the House of Lords in relation to peerage claims, which include peerages in abeyance (*subsection 6*). *Subsection (1)* provides that any peerage claim is to be made to Her Majesty in Council. *Subsection (3)* makes provision for Her Majesty to refer such claims to the Judicial Committee of the Privy Council

Clause 53 and Schedules 10 and 11: Consequential, transitory and transitional provision and savings

210. *Subsection (1)* introduces Schedule 10 which contains minor and consequential amendments.
211. *Subsections (2) to (5)* give a power to the Minister to make any orders to modify any provision of existing primary or secondary legislation, including, in limited circumstances, this Act, if the Minister considers it necessary or desirable in consequence of anything done by or under this Act. Such orders are to be made by the affirmative resolution procedure.
212. *Subsection (6)* introduces Schedule 11 which makes transitional arrangements. *Subsection (7)* provides for the Minister to make orders to make transitional, transitory or saving provisions which the Minister considers necessary or expedient in connection with the commencement of any provision in the Bill. Such orders are to be made by the negative resolution procedure.

Schedule 10: Minor and consequential amendments

213. The first part of Schedule 10 deals with references in legislation to various types of election. At present the Interpretation Act 1978 contains a definition of “parliamentary election” which covers only elections to the House of Commons. The introduction of elections to the House of Lords means that it is desirable to have a definition which covers elections to both Houses as well as a separate definition for elections to the House of Commons and another for elections to the House of Lords.
214. Part 1 amends legislation in order to make it clear whether a House of Commons election or an election to both Houses is being referred to. Further amendments will be made by order when it is known what the arrangements for the conduct of House

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

of Lords will be.

215. Part 2 amends other legislation. *Paragraph 8* repeals provisions of the House of Lords Precedence Act 1539 which set out where people sit in the House of Lords and the Privy Council.
216. *Paragraph 10* provides that the Union with Scotland Act 1706 and Union with England Act 1707 have effect subject to this Act. A similar provision was made in the Scotland Act 1998. Article 23 of the Union with Scotland Act says that all peers of Scotland and their successors would enjoy all privileges of peers as fully as the peers of England do now or as they or any other peers of Great Britain may hereafter enjoy. The Bill entirely removes the link between the peerage and membership of the House of Lords, so the provision for Scottish peers receiving equal privileges to other peers in this regard no longer has any relevance.
217. *Paragraph 13* repeals various provisions of the Union with Ireland Act 1800. As the Bill breaks the link between peerages and election to the House of Lords, these provisions can now be repealed.
218. The same rationale applies for all points listed in *paragraph 14*, which repeals/amends the Act of Union (Ireland) 1800 which is an Act of the Parliament of Ireland.
219. The Forfeiture Act 1870 states that anyone convicted of treason is incapable of being elected, sitting or voting as a member of either House of Parliament. *Paragraph 16* amends this to apply just to the House of Commons. Clause 26 of the House of Lords Reform Bill states that a person is disqualified from the House of Lords if the serious offence condition has been met, as defined in clause 32. This would include treason.
220. *Paragraph 17* repeals the Bishops Act 1878, which prevents new Bishops being appointed to the House of Lords on the creation of a new bishopric (after 1846). It also ensures that the Lords Spiritual places for the named Sees of Canterbury, York, London, Winchester and Durham must always be filled. The Act will be superseded under the Bill by clauses 19 and 20.
221. *Paragraph 18* repeals subsections (2) and (3) of section 2 of the Welsh Church Act 1914, which provides that bishops of the Church of Wales may no longer sit as such in the House of Lords. This has been overtaken by the Bill's provisions on membership. The section also made provision for ecclesiastical office-holders in the Church of Wales to retain their title and precedence. As all such people will have died the provision is now obsolete.
222. *Paragraph 19* amends section 1 of the Life Peerages Act 1958 to remove the right of life peers appointed by the Queen to attend, sit and vote in the House of Lords.
223. *Paragraph 20* repeals provisions in the Peerage Act 1963. The Bill removes the link between peerages and membership of the House of Lords, thus rendering this

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

provision obsolete.

224. *Paragraphs 23, 34, 37, 40, 46, 50 and 52* exclude the appointment of members of the House of Lords from various equality provisions that otherwise apply to appointment to public office. The provisions affected are in the Equality Act 2010, the Disability Discrimination Act 1995 and the various secondary legislation in Northern Ireland that covers similar ground. Life peers appointed under the Life Peerages Act 1958 are already excluded from these provisions.
225. *Paragraph 24* updates the Senior Courts Act 1981 to reflect the fact that only transitional members can be both judges of the Queen's Bench Division of the High Court and members of the reformed House of Lords, and therefore need to be excluded from trials of parliamentary election petitions. All other members of the reformed House of Lords will be disqualified if they hold such judicial office under Schedule 8 to the House of Lords Reform Bill.
226. *Paragraph 25* stipulates that the amendment made to the Act of Settlement by Schedule 7 to the British Nationality Act 1981 does not apply in relation to the House of Lords. The amendment to the Act of Settlement excepts citizens of the Commonwealth and the Republic of Ireland from certain disqualification criteria that the Act of Settlement stipulates, including membership of either House of Parliament. The position on nationality is now governed by clause 29 of the Bill
227. *Paragraph 27* applies provisions from the Repatriation of Prisoners Act 1984 regarding the definition of "detained", in relation to the transfer of people detained in other countries or territories to the United Kingdom. This is for the purposes of disqualification from membership of the reformed House of Lords due to the serious offence condition under clauses 26 and 32 of the Bill.
228. *Paragraph 29* amends the Insolvency Act 1986 so that it no longer imposes disqualification from membership of the House of Lords. Disqualification on the grounds of insolvency is instead imposed by the Bill (see clauses 26 and 30).
229. *Paragraph 32* amends the Ministerial and Other Pensions and Salaries Act 1991 to allow for the Chairman of Committees and Deputy Chairman of Committees to continue to be paid a grant upon leaving office, calculated in a similar fashion to that provided for other office-holders.
230. *Paragraph 32* also removes section 5 of the Act, which provides for the payment of certain allowances to a number of office holders in the House of Lords who are not presently able to claim allowances as members of the House of Lords. The Bill makes provision for Ministers and office-holders in the House of Lords to be able to claim from the House of Lords Allowances Scheme established by clause 46.
231. *Paragraph 41* repeals the House of Lords Act 1999, which removed the right of all but 92 hereditary peers to sit in the House of Lords and made related provisions for

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

the holder of a hereditary peerage not to be disqualified by virtue of that peerage from voting at elections to the House of Commons, or as being elected as a member of that House. The Bill supersedes the Act by removing the link between hereditary peerages and a seat in the House of Lords entirely and by permitting current and former members of the House of Lords to vote in both House of Commons elections and elections to the reformed second chamber.

232. *Paragraph 44* amends the House of Commons (Removal of Clergy Disqualification) Act 2001 to omit its prohibition on Lords Spiritual being Members of Parliament. This is because Members of the House of Lords are disqualified from membership of the House of Commons under clause 39 of the Bill.
233. *Paragraph 47* amends the Constitutional Reform Act 2005 to omit the provisions disqualifying holders of certain judicial offices who are members of the House of Lords from sitting or voting in the Lords or its committees. Schedule 8 to the Bill disqualifies holders of judicial office from membership of the reformed House of Lords.
234. *Paragraph 51* revokes the European Parliament (House of Lords Disqualification) Regulations 2008. These regulations prevent a life peer who is returned as a Member of the European Parliament (MEP) from sitting or voting in the House of Lords or its committees for as long as they are an MEP. Clause 1 breaks the link between a life peerage and automatic membership of the House of Lords. Instead the Bill makes provision that no person can serve as an MEP and a member of the House of Lords at the same time – see *paragraph 45* of the Schedule, which amends. It will be possible for them to stand for election to both but they would have to resign from one if elected to both.
235. *Paragraph 54* omits section 12(3) of the Budget Responsibility and National Audit Act 2011, which stipulates that the Comptroller and Auditor General cannot be a member of the House of Lords. Schedule 8 to the House of Lords Reform Bill disqualifies the Comptroller and Auditor General from being a member of the reformed House of Lords.

Clause 54: Orders and directions

236. This clause makes provision in connection with the various powers in this Bill to make orders and directions. The affirmative resolution procedure applies to instruments made under the powers listed in *subsection (2)*. The effect of *subsection (3)* is that all other powers are subject to the negative resolution procedure, except for powers listed in *subsection (4)* which are subject to no parliamentary procedure.

Clause 55: Meaning of the “expected term” of a member

237. This clause sets out where in the Bill the “expected term” for the different descriptions of members set out in *subsection (1)* is defined. *Subsection (2)* clarifies that the expected term of a person whose membership is void, is to be considered (for the purposes of filling the vacancy) as the same period as it would have been had the

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

membership not been void.

Clause 56: Interpretation

238. This clause defines some terms which are used in the Bill.

Clause 57: Financial provisions

239. This clause authorises, out of money provided by Parliament, any expenditure incurred by a Minister of the Crown under the Bill. It also authorises any additional expenditure incurred under any other Acts, where that additional expenditure results from this Bill.

Clause 58: Extent

240. This clause sets out the extent of the provisions of the Bill.

Clause 59: Commencement

241. Clauses 54 to 60 come into force on Royal Assent. The other provisions of the Bill are to be brought into force by means of orders made by the Minister. Such orders may appoint different days for different purposes.

Clause 60: Short title

242. This clause sets out the short title of the Bill.

FINANCIAL EFFECTS

243. The net average annual cost of the House of Lords is estimated to rise by £7.4m in the first transitional period (2015-20), and £10.5m in the second transitional period (2020-2025). Once fully reformed in 2025, the House of Lords is estimated to cost an additional £13.6m per year.

244. This does not include the cost of elections to the reformed House as this is not an annual cost. This is projected to be £85.7m for every election, plus an additional one-off publicity drive at the first election at a presumed cost of £3.8m.

245. All values are in 2012/13 price terms.

PUBLIC SECTOR MANPOWER

246. The provisions have no substantial effect on public sector manpower.

IMPACT ASSESSMENT

247. The Bill does not have a direct impact on business or the third sector. However, given the level of political interest, a full Impact Assessment has been conducted.

EUROPEAN CONVENTION ON HUMAN RIGHTS

248. Section 19 of the Human Rights Act 1998 requires a Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act).

249. The Deputy Prime Minister has made the following statement:

“I am unable to make a statement of compatibility under section 19(1)(a) of the Human Rights Act 1998 in respect of the House of Lords Reform Bill. This is only because of clause 6, which applies to House of Lords elections the laws on entitlement to vote at House of Commons elections, including the rules which prevent prisoners serving sentences from voting. The Government nevertheless wishes the House to proceed with the Bill.”

Relevant convention rights

250. The article which is most frequently engaged by provisions in the Bill is Article 3 of Protocol 1 (right to free elections), which states that:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

251. In the first case under the article to be considered by the Court, *Mathieu-Mohin v Belgium* (1987) 10 EHRR 1, the Court stated that the rights in Article 3 of Protocol 1 were not absolute but could be made subject to limitations or conditions. It set out the test which has frequently been repeated in subsequent cases: ‘[the Court] has to satisfy itself that the conditions do not curtail the right in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate.’

252. In *Yumak and Sadak v Turkey* (App. No. 10226/03) the Grand Chamber said that ‘in examining compliance with Article 3 of Protocol No. 1, the Court has focused mainly on two criteria: whether there has been arbitrariness or a lack of proportionality, and whether the restriction has interfered with the free expression of the opinion of the people.’

253. In *Zdanoka v Latvia* (2007) 45 EHRR 478 the Grand Chamber said of Article 3 of Protocol 1 that ‘the Court reaffirms that the margin [of appreciation] in this area is wide ... There are numerous ways of organising and running electoral systems and a wealth of differences, *inter alia*, in historical development, cultural diversity and political thought within Europe, which it is for each Contracting State to mould into its own democratic vision...’

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

254. In *Mathieu-Mohin v Belgium* the Court, referring to the travaux préparatoires for the Convention (i.e. documents produced during the drafting of the Convention), stated that Article 3 of Protocol 1 applied to the election of the legislature, “or at least of one of its chambers if it has two or more.” It has therefore not been a breach of the Article for there to have been no elections to the House of Lords before now. If there are to be elections to a second chamber, however, the Court has held that “it is clear that Article 3 of Protocol No. 1 applies to any of a parliament's chambers to be filled through direct elections” (*Sejdic and Finci v Bosnia and Herzegovina*, App. Nos. 27996/06 and 34836/06, 22 December 2009). Consideration therefore needs to be given to the compatibility of the new system of elections to the House of Lords with Article 3.
255. Other articles which may be engaged are Articles 6 (right to a fair trial), 7 (no punishment without law), and 14 (prohibition of discrimination) and Article 1 of Protocol 1 (protection of property).

The composition of the House of Lords

256. In its eventual form the House of Lords is to consist of 360 elected members, 90 appointed members, up to 12 supernumerary, ex officio Archbishops and diocesan bishops of the Church of England and ministerial members. There has been criticism in some quarters of the continuing inclusion of representatives of the Church of England in the House.
257. The Government is not aware of any Strasbourg case-law on the composition of the second chamber of a member state of the Council of Europe. There is a variety of types of membership: in the Czech Republic all members of the Senate are directly elected; in Austria all members of the Bundesrat are indirectly elected; the Seanad in Ireland includes appointed members; the Senate in Italy includes a few appointed members and a few ex officio members; the Belgian Senate contains directly elected members, indirectly elected members, co-opted members and hereditary/ex officio members. In other words, while first chambers must be elected by the people in order to comply with the Convention, second chambers will frequently have a different form of composition, which may or may not involve direct election. If one looks beyond Council of Europe member states, all the members of the Canadian Senate are appointed. The Government does not consider that the proposed composition of the House of Lords, with its mixture of elected, appointed, ex officio Lords Spiritual and ministerial members, raises in itself any issues relating to the Convention rights. The Government considers that the European Court of Human Rights would regard the composition of a state's second chamber as a matter for that state.

The departure of existing members of the House of Lords

Loss of membership

258. Although it will be possible for current members of the House of Lords to become elected or appointed members of the House of Lords, the effect of clause 1 is that after

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

the end of the second electoral period all life peers and hereditary peers who are now members of the House of Lords will otherwise have ceased to be members of the House. Clause 25 and Schedule 7 provide for transitional members.

259. The question arises whether the loss of membership of the second House by existing members who do not become elected or appointed engages any Convention rights and, if so, whether it is compatible with them. The articles which may be engaged are Article 6 and Articles 1 and 3 of Protocol 1.
260. Whether Article 6 applies depends on whether there is a civil right or obligation. In *X v United Kingdom* (App. No. 8208/78) the Commission considered "that the right to participate in the work of the House of Lords cannot be regarded as a 'civil right' within the meaning of Article 6. It is of the opinion that such a right, connected as it is to the composition of part of the legislature, falls into the sphere of public law rights outside the scope of Article 6". The same reasoning applied to whether membership of the House of Lords was an obligation within the article. The same conclusion has been reached by the Strasbourg authorities in more recent cases in relation to other matters concerning elections and legislatures (see for example *Estrosi v France* (App. No. 24359/94), *Tapie v France* (App. No. 32258/96), *Gorizdra v Moldova* (App. No. 53180/99) and *Boskoski v FYROM* (App. No. 11676/04)).

Loss of allowances and salary

261. On leaving the House of Lords current members will no longer be entitled to receive pay or allowances. In *Pierre-Bloch v France* (1997) 26 EHRR 202 the Court held that proceedings relating to disqualification from elected office which also dealt with the repayment of money following the exceeding of expenditure limits for candidates were not civil proceedings within Article 6 merely because they raised an economic issue. The right to stand for election was a political right, not a civil one.
262. Although Article 1 of Protocol 1 was not raised in *X v UK* or *Pierre-Bloch v France* the Government considers that the clear implication of those cases is that the likelihood of the future salary or allowances of a member of a legislature, or membership itself, being taken to be a possession within the meaning of that article is very low. Even if the article was engaged, the Government considers that any interference with property rights would be justified as being a necessary part of the legitimate aim of the reform of the House of Lords, in which the public interest in reform outweighs any interest of an individual member in a possession relating to membership. The time-limited nature and eventual loss of the allowances is a necessary consequence of the loss of membership.

Article 3 of Protocol 1

263. Nor does the Government consider that the departure of members of the Lords in the capacity of peers would constitute a breach of Article 3 of Protocol 1. When the House of Lords Privileges Committee considered the departure of the majority of

hereditary peers by the House of Lords Bill in 1999, in *Lord Mayhew of Twysden's Motion* [2002] 1 AC 109, Lord Slynn said that he did not consider it “seriously arguable” that this was a breach of the United Kingdom's obligations under Article 3 of Protocol 1.

Frequency of elections

264. Clause 3 provides for House of Lords elections.
265. Article 3 of Protocol 1 requires there to be elections “at reasonable intervals”. There is very little case law about this phrase, but in *Timke v Germany* (App. No. 27311/95) the Commission declared inadmissible a challenge to an increase from four to five years between certain Land elections. It stated that “Too short an interval between elections may impede political planning for the implementation of the will of the electorate; too long an interval can lead to the petrification of political groupings in parliament which may no longer bear any resemblance to the prevailing will of the electorate. In the light of these considerations it cannot be said that a five year interval does not ensure the free expression of the opinion of the people in the choice of legislature.”
266. Under the Fixed-term Parliaments Act 2011 elections to the House of Commons will normally be every five years (with a possible extension of two months), which will therefore be the normal frequency for elections to the House of Lords. This would be a reasonable period according to *Timke*. However, it will be possible for there to be a period of up to seven years between Lords elections if there is an early Commons election. This meets the aim of ensuring that members serve a long (but non-renewable) term, which the Government considers to be a legitimate aim.
267. It should also be borne in mind that the House of Lords is only one part, and the subordinate part, of the legislature. There will continue to be elections to the House of Commons at least every five years and two months. Indeed, the reason why there could be a longer period than five years between Lords elections is that there will have been a shorter period between Commons elections. In the light of the provisions with regard to both Houses, taken as a whole, the Government believes that those relating to the House of Lords are reasonable. As has been noted, states have a wide margin of appreciation in their compliance with Article 3 of Protocol 1 and in the Government’s view it is likely that there could be several approaches to the frequency of House of Lords elections, all of which would be legitimate.

Elected (and appointed) members’ term of office

268. The question arises whether the term of office of elected and appointed members (normally three electoral periods) is so long that the presence of some members no longer gives effect to the will of the people. The Government regards it as a legitimate aim to differentiate between the two Houses of Parliament in this area. The House of Lords is intended to retain its more independent, less party-political nature. That is

partly achieved by having members of the reformed House serve longer terms. In the Government's view this is a proportionate measure, which does not interfere with the free expression of the will of the people. There will continue to be elections for a third of the elected members of the House of Lords about every five years, so that the composition of the House can still change to reflect the changing political will of the people. In addition, taking the legislature as a whole, there will continue to be elections of all members of the House of Commons at least every five years and two months. The Government considers that this provision falls within the margin of appreciation in the organisation of a state's legislative and electoral system. Similar arguments apply to appointed members, who will also be appointed in thirds about every five years.

Electoral system

269. Clause 5 provides for the voting system at elections to the House of Lords. For Great Britain the system will be a proportional representation system based on lists of candidates, more details of which are set out at Schedule 3. For Northern Ireland the system will be a single transferable vote system.
270. The Strasbourg jurisprudence shows that states are not obliged to follow any particular electoral system, provided that it is capable of complying with Article 3 of Protocol 1. The Court said in *Bompard v France* (App. No. 44081/02), 'as regards the method of appointing the "legislature", Article 3 provides only for "free" elections "at reasonable intervals", "by secret ballot" and "under conditions which will ensure the free expression of the opinion of the people". Subject to that, it does not create any "obligation to introduce a specific system".'
271. In *X v UK* (App. No. 7140/75), and *the Liberal Party, R and P v UK* (App. No. 8675/79) the Commission considered the system for elections to the House of Commons. In the latter case the Commission stated that "Article 3 of the First Protocol may not be interpreted as an article which imposes a particular kind of electoral system which would guarantee that the total number of votes cast for each candidate or group of candidates must be reflected in the composition of the legislative assembly. Both the simple majority system and the proportional representation system are therefore compatible with this article."

Franchise

272. Clause 6 provides that those who may vote in elections are to be the same electors who may vote in elections to the House of Commons. There are no longer any restrictions on peers voting and members and former members of each House may vote in elections to each House.
273. In 2005 in *Hirst v UK (No 2)* (2006) 42 EHRR 41 the Grand Chamber of the European Court of Human Rights found that the blanket ban on serving prisoners voting in House of Commons elections (in section 3 of the Representation of the

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

People Act 1983) was incompatible with Article 3 of Protocol 1. A wide margin of appreciation was afforded to the UK but the blanket ban was outside that margin as it was a “blunt instrument” which “strips the convention right to vote to a significant category of persons and does so in a way that is indiscriminate” (para 82).

274. In the case of *Greens and MT v UK* (App. Nos. 60041/08 and 60054/08) the Fourth Section of the European Court of Human Rights set a six month timeframe for the UK to bring forward legislative proposals to amend the legislation in compliance with the *Hirst* judgment. The Court later agreed to amend this deadline so that it expired six months after the Grand Chamber judgment in *Scoppola v Italy* (No. 3) (App. No. 126/05).
275. Judgment in *Scoppola* was given on 22 May 2012. The Grand Chamber accepted that decisions about disenfranchisement did not need to be taken by a judge in each individual case; they accepted that disenfranchisement could be achieved by legislation; they accepted therefore that such a ban could apply to anyone belonging to the group covered by the legislation; and they accepted that there was nothing objectionable in the Italian system where such a ban applied for the entirety of the sentence (and beyond) for those sentenced to three years imprisonment or more. But they did not depart from the conclusion in *Hirst* that such a ban would be incompatible as “general automatic and indiscriminate” if it applied to all those sentenced to imprisonment.
276. In *Sejdic and Finci v Bosnia and Herzegovina* the Grand Chamber said (at paragraph 40) that it was clear that Article 3 of Protocol No. 1 applies to any of a parliament's chambers to be filled through direct elections.
277. Since sentenced prisoners are legally incapable of voting at House of Commons elections under section 3 of the Representation of the People Act 1983, they will (under clause 6) be equally incapable of voting at House of Lords elections.
278. For these reasons the Deputy Prime Minister has said that he is unable to sign a statement under section 19(1)(a) of the Human Rights Act 1998. The Government wishes Parliament to proceed with the Bill notwithstanding that such a statement of compatibility cannot be made.
279. The Government is considering the issue of prisoners' voting rights and the implications of the *Scoppola* judgment for the UK.

Conduct of elections

280. Clause 7 gives the relevant Minister (the Lord President of the Council or the Secretary of State) power to make secondary legislation governing the conduct of elections to the House of Lords. This is similar to powers relating to elections to the European Parliament, the Scottish Parliament, the Northern Ireland Assembly and the

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

National Assembly for Wales. Such legislation will have to be drafted to allow for the elections to be free and to be conducted by secret ballot in order to comply with Article 3 of Protocol 1. The clause itself is compatible with the Convention rights.

Vacancies

281. Clauses 8 to 10 provide for the filling of vacancies where a person ceases to be an elected member for whatever reason.
282. Vacancies will not be filled by by-elections, as in the House of Commons. It would not be possible to hold a by-election for a single seat by using a proportional system. A single member system, such as first past the post or the alternative vote system, would have to be used. In addition to this inconsistency in voting systems, it is estimated that each by-election would cost some £8 to 10 million to hold and there is a risk of low turn outs for an election for a single Lords seat.
283. Although Article 3 of Protocol 1 requires the holding of elections to ensure the free expression of the opinion of the people, this requirement, as has been noted, is not absolute and may be made subject to conditions, provided that they do not curtail the relevant rights so as to impair their very essence and deprive them of their effectiveness, that they are imposed for a legitimate aim and that they are not disproportionate. In the Government's view these conditions are met in relation to the non-holding of by-elections. The right to elect members of the House of Lords is not being deprived of its effectiveness altogether. Although the length of a member's term is such that more vacancies can be expected than happens in the House of Commons, the number of vacant seats will still only be a small proportion of the number of seats in the House of Lords. An interim replacement elected member will only serve until the next Lords election. And in cases in which the vacancy is not filled, this will in most cases be for no more than six months, which the Government does not consider to be an unreasonably long period, particularly given that members of the House of Lords will not be representing constituents in the same way that MPs do. Nor will the choice of the person to fill the vacancy be arbitrary. Where the former member was a party candidate it will be filled by reference to the party in whose name the person causing the vacancy was elected. Financial expediency and the desirability of consistency in the voting system appear to be legitimate aims. The Government considers this to be a proportionate means of filling a vacancy without having a by-election.

Appointed members

284. Paragraph 5 of Schedule 5 provides that Her Majesty may remove the chair and other members of the Appointments Commission on an address of both Houses of Parliament. The question arises whether this engages Article 6 on the right to a fair trial or, even if it does not, whether a fair procedure is guaranteed.
285. In *Eskelinen v Finland* (2007) 45 EHRR 1, the Court said that it was permissible for

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

states to justify excluding a civil servant from the protections in Article 6 if the dispute in question was related to the exercise of State power or has called into question the "special bond of trust and loyalty" between the civil servant and the state. Given that under the Bill decisions to remove members of the Appointments Commission are considered sufficiently important to be given to Parliament, it is arguable that the criteria in *Eskelinen* apply and that Article 6 does not apply.

286. Whether or not Article 6 applies, the Government takes the same view as had been taken with regard to similar provisions about the removal of the Comptroller and Auditor General which had been in the Constitutional Reform and Governance Bill in 2009 and were then enacted in the Budget Responsibility and National Audit Act 2011, that it will be a matter for Parliament to ensure that the procedures for removal are fair and that there are appropriate safeguards for the office-holder.

Disqualification

287. Part 7 of the Bill sets out grounds for disqualifying prospective and serving members of the House of Lords. Many of these follow the provisions which apply to the House of Commons. Disqualification potentially engages Articles 6 (right to a fair trial), 7 (no punishment without law) and 14 (prohibition of discrimination) and Articles 1 (protection of property) and 3 (right to free elections) of Protocol 1.

Article 6 and Article 1 of Protocol 1

288. So far as Article 6 and Article 1 of Protocol 1 are concerned the Government takes the same view as has been set out in respect of the departure of members of the House of Lords. These two articles are not engaged because membership of a legislature has been held to be a political right and not a civil right or, implicitly, a possession (whether one considers the right itself or the trappings of the rights such as a salary). The Government relies again on *X v UK*, *Tapie v France* and *Pierre-Bloch v France*. The two French cases related to the disqualification of two MPs, the first on the grounds of bankruptcy and the second on the grounds of exceeding the limit on election expenses. Even if Article 1 of Protocol 1 was engaged, the Government believes that the public interest in maintaining and enhancing the reputation of Parliament justifies any interference with an individual's possessions.
289. Whether or not Article 6 is engaged, it is of course important that members and prospective members of the House of Lords are treated fairly when allegations of misconduct are concerned. In the case of a criminal offence and insolvency the disqualification would follow the finding of a court. In the case of expulsion it will be a matter for the internal procedures of the Lords to ensure fairness.

Article 3 of Protocol 1

290. As has been stated, so far as Article 3 of Protocol 1 is concerned it is clear that the right to stand for election, which is included within it, is not an absolute right and

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

conditions may be imposed on it. In *Krasnov and Skuratov v Russia* (App. Nos. 17864/04 and 21396/04) the Court said that “States enjoy considerable latitude to establish in their constitutional order rules governing the status of parliamentarians, including criteria for disqualification. Though originating from a common concern – to ensure the independence of members of parliament, but also the electorate's freedom of choice – the criteria vary according to the historical and political factors peculiar to each State. The number of situations provided for in the Constitutions and electoral legislation of many member States of the Council of Europe shows the diversity of possible choice on the subject. None of these criteria should, however, be considered more valid than any other provided that it guarantees the expression of the will of the people through free, fair and regular elections” (see also *Podkolzina v Latvia* and *Gitonas and others v Greece*).

291. It is considered that all the grounds of disqualification in the Bill satisfy the requirements of Article 3 of Protocol 1, that there is no arbitrariness or a lack of proportionality, and that the restriction does not interfere with the free expression of the opinion of the people.

Age

292. The age condition pursues the legitimate aim of ensuring that the House of Lords consists of people with sufficient maturity and experience and who are of voting age. In *W, X, Y and Z v Belgium* (App. Nos. 6745/74 and 6746/74) the Commission held that a qualifying age of 40 for the Senate was legitimate and that an age of 25 for the House of Representatives was 'obviously' not arbitrary or unreasonable.

Nationality

293. The nationality condition pursues the legitimate aim of ensuring that members have close links to the United Kingdom, for whose people they will be legislating and representing. The additional inclusion of certain Commonwealth citizens and citizens of the Republic of Ireland can reasonably be justified on the basis of the special historical traditions and special ties with those countries.

Disqualifying office

294. The list of disqualifying offices in relation to members of the House of Lords is much narrower than that which applies to members of the House of Commons. This reflects the fact that there are currently very few disqualifying offices in relation to membership of the House of Lords and that the Bill makes no change to the functions of the House, and the fact that it is considered important to have members of the House of Lords with a wide range of experience, including current experience, in a variety of fields. The disqualifications which the Bill contains relate to principles such as the separation of powers (for example, professional judges and civil servants may not be members) or the need to avoid clear conflicts of interest (so that, for example,

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

members of IPSA may not be members).

295. Disqualification on this ground will only last while the person holds the office and so it cannot be said to impair the very essence of the right (see *Ahmed v UK* (1998) 29 EHRR 1, in which the Court held that the prohibition on local government officers standing for election met the legitimate aim of securing the political impartiality of the officials). Furthermore, clause 34 provides that where a person has been disqualified on this ground (and certain others) but the ground no longer applies, the House of Lords may agree that the disqualification is to be disregarded. It would therefore be possible for a person to resign his disqualifying office and remain a member of the House.

Insolvency orders and serious offence condition

296. People who are subject to an insolvency order are disqualified from membership of the House of Lords. An insolvency order may be made against someone who is bankrupt and who has also been guilty of some misconduct. Bankruptcy itself is not a disqualifying ground.
297. Under the serious offence condition in clause 32, a member or prospective member will be disqualified while they are imprisoned or detained indefinitely or for more than a year for an offence, wherever committed.
298. These two limitations meet the legitimate aim of ensuring the credibility and reputation of the House of Lords as a House of Parliament by prohibiting people who have received a serious penalty from representing the public and legislating on their behalf. High standards are to be expected of members and prospective members of both Houses of Parliament. In the Government's view they are not arbitrary or disproportionate.

Retrospective nature of the serious offence condition

299. Under clause 32 the serious offence condition is to apply whether the offence or the conviction took place before or after commencement of the Act. The provision is similar to that which applies to the House of Commons, in section 1 of the Representation of the People Act 1981, which states that "A person found guilty of one or more offences (whether before or after the passing of this Act and whether in the United Kingdom or elsewhere), and sentenced or ordered to be imprisoned or detained indefinitely or for more than one year, shall be disqualified for membership of the House of Commons while detained anywhere in the British Islands or the Republic of Ireland in pursuance of the sentence or order or while unlawfully at large at a time when he would otherwise be so detained".
300. It is considered necessary to say that (assuming the commencement of the Act in 2015) a person who in 2025 was in prison for a crime committed in 2014 should be ineligible to become a member in the same way as a person whose crime was in 2016.

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

Similarly, a person who was elected in 2015 and was then imprisoned in 2017 for a crime committed in 2014 should be treated in the same way as a person imprisoned for a crime committed in 2016.

301. This retrospective aspect of the serious offence condition engages Article 7 (no punishment without law), which provides that “a heavier penalty [shall not] be imposed than the one that was applicable at the time the criminal offence was committed.” Compatibility turns on whether disqualification amounts to a penalty. In the leading case, *Welch v UK* (1995) 20 EHRR 247, the Court said that “the starting-point in any assessment of the existence of a penalty is whether the measure in question is imposed following conviction for a ‘criminal offence’. Other factors that may be taken into account as relevant in this connection are the nature and purpose of the measure in question; its characterisation under national law; the procedures involved in the making and implementation of the measure; and its severity.”
302. Clearly, the sanction would be imposed following conviction for a criminal offence. But taking the other factors into account the Government considers that there are good arguments for saying that disqualification is not a penalty for the purposes of Article 7. Disqualification is not an ordinary penalty like imprisonment or a fine. Its purpose is to preserve and enhance the reputation of Parliament, not to punish an offender. It would be applied automatically, without being linked to, or requiring any further consideration of, the culpability of the individual concerned. It is not of general application but only affects a specific group of members or prospective members of the House of Lords. Nor is it sufficiently severe to amount to a penalty (see *Tapie v France* and *Estrosi v France*, mentioned above).
303. The provision would apply only to periods of imprisonment or detention of more than one year, or indefinite ones. In other words, it would be limited to offences which may reasonably be classified as serious. Where the criminal proceedings were in the UK, fair trial safeguards would, of course, have applied to the individuals in respect of their conviction and sentence; where the criminal proceedings were outside the UK, the clause 35 relief provision is available. The provision would also apply, in the case of a prospective member, only while they were imprisoned or detained. If they had served their term they would be eligible for membership. And where a conviction was quashed or the sentence reduced to 12 months or less, the person would be entitled to become a member again (an exception to the ordinary provision that members may not be re-appointed or re-elected).
304. The Government considers that it is in the public interest to require a degree of personal probity in members and prospective members of the House of Lords and to take steps to ensure the reputation of that House of Parliament, and that it is necessary and proper, in achieving those aims, for the serious offence condition to include a retrospective element. The Government considers that giving the serious offence condition retrospective effect is a proper provision to make and one which does not infringe Article 7.

Cooling-off period

305. Clause 41 imposes a restriction on former elected or appointed members of the House of Lords being elected as MPs. Former members may not become members of the House of Commons for a period of four years and one month after their membership of the House ceases. A similar restriction was recommended by the Wakeham Commission and that Commission concluded that there would be no infringement of Article 3 of Protocol 1.
306. Restricting the limitation to four years and one month means that the essence of the right would not be impaired, as the restriction would not be permanent and would in most cases apply to only one general election. The Government also takes the view that it is a legitimate aim to prevent people from cultivating constituencies and using membership of the House of Lords as a springboard for a Commons career, to the neglect of their responsibilities as members of the House. (The same does not apply to people leaving the House of Commons and going to the House of Lords.) There is a particular concern that a person might resign well before the end of their term in order to stand for the Commons. The Government wishes the House of Lords to retain its independent character and hopes that it will not attract people whose aim is a party political career in the House of Commons. This is less likely to happen if members are unable to move straight from the Lords to the Commons.
307. In the Government's view the length of the period is proportionate and does not impose an arbitrary or unreasonable restriction on members of the House of Lords. It notes the statement of the European Court of Human Rights in *Gitonas v Greece*, that "States enjoy considerable latitude to establish in their constitutional order rules governing the status of parliamentarians, including criteria for disqualification."
308. Compatibility with Article 14, the right not to be discriminated against, might also be argued to arise in relation to the cooling-off period, because there is no restriction on a member of the European Parliament, Scottish Parliament, National Assembly for Wales or Northern Ireland Assembly or a local authority from standing for the Commons as soon as their membership ends. However, even assuming the likelihood (though this is not certain) that the courts would hold that this was a situation in which people in analogous circumstances were being treated differently on account of their status, the Government takes the view that the different treatment serves a legitimate aim and is proportionate. The two Houses of Parliament are parts of the same legislature, responsible to the same electors for the same macro-geographical area, and dealing with very largely the same issues. There is a relationship, and potential tensions, between them which does not exist between the House of Commons and the other bodies. The cooling-off period is part of the way in which that relationship is to be governed and it is legitimate to provide that the period should apply in relation to members of the House of Lords but not to members of other bodies.

Previous membership of the House of Lords

309. With limited exceptions (such as those relating to vacancies and the insolvency and

serious offence provisions) a person who has served a term as an elected or appointed member of the House of Lords will not be able to become a member of the House for a second time. Given that members will serve for about 15 years the Government does not believe that this restriction impairs the essence of the right, in the case of elected members, to stand for election. Furthermore, the fact that members will not be able to serve a second term may help to enhance their independence, as they will not have to follow a line advocated by their party or a section of the electorate. In any event, it will be possible for former members of the House of Lords to stand for election to the House of Commons after the end of the cooling-off period.

Transitional members

310. There are different provisions on disqualification for transitional members from those which apply to elected and appointed members. The insolvency and serious offence conditions will both apply to them. The age limit of 18 applies to them in theory, but not in practice, since the present age limit for membership of the House of Lords is 21. The disqualifying office ground will not apply, since it will not have done so when a transitional member entered the House of Lords and it is considered unreasonable to impose a condition in the middle of a person's term of membership. For the same reason, although the nationality condition may apply (although it is unlikely to do so in practice), it will do so in the terms which currently apply to members of the House of Lords. The Government considers that all these differences of treatment are justifiable and that there is no infringement of Article 3 of Protocol 1, whether on its own or taken with Article 14.

Expulsion and suspension

311. The Government considers that the legitimate aim which applies to disqualification also applies to the power to expel a member. It will be for the standing orders of the House of Lords to determine the circumstances in which the power may be exercised, but in so doing they will have to ensure that a person may only be expelled where this is a proportionate response to the misconduct, in order to ensure compliance with Article 3 of Protocol 1. It will also be for the standing orders to ensure that the process is fair, notwithstanding the fact that Article 6 is not engaged.
312. Clause 44 provides that when considering whether to expel or suspend a member the House of Lords may take into account conduct which took place before the person became a member, provided that the conduct was not public knowledge when the person was elected, appointed etc. This could therefore cover conduct before the commencement of the clause. The Government believes that this can be justified on the same grounds as the retrospective provision on the serious offence condition (see paragraphs above), in that there is a general public interest in ensuring the integrity of members of the legislature and enabling the House of Lords to enforce high standards. There is also a significant limitation to the retrospective nature of the provision in that it applies only to conduct which was not public knowledge at the relevant time. If information about the misconduct of a person is available to the electorate but the

person is nevertheless elected fairness to the person requires that it should not be possible to expel or suspend them for that misconduct.

Tax status of members

313. Clause 48 provides that a person who is a member of the House of Lords for any part of a tax year is to be treated for the purposes of income tax, capital gains tax and inheritance tax as resident, ordinarily resident and domiciled in the United Kingdom for the whole of that tax year. It very largely follows the existing provision in section 41 of the Constitutional Reform and Governance Act 2010 (which apply to both members of the House of Commons and members of the House of Lords).
314. This raises the question whether the provision is compatible with Article 1 of Protocol 1 (protection of property). It is clear from case law that states are afforded a very wide margin of appreciation with regard to this article and it is rare for courts to find that tax measures are incompatible with it.
315. In the present case, the provision has a legitimate aim, that of ensuring that members of a part of the United Kingdom's legislature pay UK taxes so as to strengthen the electorate's confidence in the legislature. This aim also provides a reasonable and objective justification when it comes to considering whether there is any breach of Article 14 on discrimination, to the extent that it can be argued that members of the Houses of Parliament are being treated differently from other people on account of their status (ie as members of a legislature).
316. The relevant question is whether a tax provision places "an individual and excessive burden" such as to render the provision "devoid of reasonable foundation" (*R (Federation of Tour Operators) v HM Treasury* [2008] EWCA Civ 752).
317. Although it might be argued that it is unfair and disproportionate for the length of the deemed tax status to be longer than the period of membership, since it begins at the start of the tax year in which membership begins and ends at the end of the tax year in which membership ceases, it is impracticable to amend a person's tax status in the middle of a tax year, and it is necessary for the provision to cover both the beginning and end of membership. Nor is it likely that the period between the beginning of the tax year and the beginning of membership will be very long, since the default position under the Fixed-term Parliaments Act 2011 is that elections will be held in May. The Government considers that it is unavoidable that a part of a year in which a person is not a member of the House of Lords is covered by the provision.
318. It will also be possible for the deemed tax status to be avoided. Candidates for election or appointment to the House of Lords would be aware in advance of the consequences of becoming a member. Furthermore, the (assumed minority of) members who do not already pay tax in the UK on an ROD basis will be able to rely on double taxation agreements and unilateral relief for tax paid overseas to prevent

*These notes refer to the House of Lords Reform Bill
as introduced in the House of Commons on 27 June 2012 [Bill 52]*

them being taxed twice on the same income or gains.

319. In the Government's view the provision has a legitimate aim which it effects fairly and proportionately, without imposing arbitrary or excessive requirements. The Government does not consider that there is any infringement of Article 1 of Protocol 1 or of Article 14.

HOUSE OF LORDS REFORM BILL

EXPLANATORY NOTES

These notes refer to the House of Lords Reform Bill as introduced in the House of Commons on 27 June 2012 [Bill 52]

*Ordered, by The House of Commons,
to be Printed, 27 June 2012.*

© Parliamentary copyright House of Commons 2012

This publication may be reproduced under the terms of the Parliamentary Click-Use Licence, available online through The National Archives website at

www.nationalarchives.gov.uk/information-management/our-services/parliamentary-licence-information.htm

Enquiries to The National Archives, Kew, Richmond, Surrey, TW9 4DU;

email: psi@nationalarchives.gsi.gov.uk

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON — THE STATIONERY OFFICE LIMITED

Printed in the United Kingdom by The Stationery Office Limited

£x.xx