



HOUSE OF LORDS

Leader's Group on Members Leaving the House

Interim Report
Session 2010–2011

Consultation on Members Leaving the House

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The Leader's Group on Members Leaving the House

The Group was appointed “to identify options for allowing members to leave the House of Lords permanently”.

Our Membership

The Members of the Group are:

Baroness Farrington of Ribbleton
Lord Hunt of Kings Heath
Lord Hunt of Wirral (Chairman)
Baroness Murphy
Baroness Scott of Needham Market
Baroness Sharples

A full list of registered interests of Members of the House of Lords can be found at <http://www.publications.parliament.uk/pa/ld/ldreg.htm>

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Consultation on Members Leaving the House

Introduction

1. We have been asked by the Leader of the House “to identify options for allowing members to leave the House of Lords permanently”. At the outset, we decided that we should conduct our consideration in as open and consultative a manner as possible and issued an invitation to all members of the House to volunteer their views. We are grateful to the 83 members who responded, and to the many more who have sought us out for individual discussion.
2. Inevitably, the views which have been expressed to us are many, varied, and strongly held. Although there is a degree of consensus that the House is too large, members have very differing ideas as to the right way forward and we should like to extend our consultation by providing another opportunity for a range of views to be put forward. We therefore invite the Leader of the House, to whom we make this report, to publish it and to make time available for a debate in the House. In this way we hope to hear, and take proper account of, all shades of opinion before we produce a final report. **In this report we make no expression of our own views, either individually or as a Group. We seek only to summarise the views presented to us, for the purposes of further consultation.** We invite members to comment further on the options which have been raised so far, either in debate or in writing to us by 23 November.
3. Of course, the context in which our work takes place includes the prospect of wider reform of the House. The cross-party committee chaired by the Deputy Prime Minister is preparing a draft bill for publication in the new year. In their comments to us, members have expressed differing views about the degree to which it is worthwhile to consider possible options for retirement from the House separately from considerations of wider reform. However, we note the commitment in the Coalition Agreement to “grandfathering”—although the term has not been precisely defined, the Deputy Prime Minister has assured us of the Government’s recognition that there needs to be an orderly process of transition should the composition of the chamber change. We hope, therefore, that to debate a range of possibilities will be helpful, whether ultimately they might be implemented in the current House or as part of a transition to a reformed House.
4. Inevitably, the implementation of any provision for retirement from the House would not be straightforward. In our final report we will seek to assess the likely impact of different provisions, and the means by which they might be given effect. In the meantime, we look forward to hearing the views of the House.

The case for retirement provisions

5. Most members who responded to our consultation favoured the introduction of some means by which members could leave the House permanently, in

order to reduce the size of the House. A variety of reasons were cited for desiring a smaller House—

- pressure on accommodation and other facilities
 - shortage of seats in the Chamber (particularly at Question Time) which, since no-one may speak from the gangways in the House, limits participation in business
 - increasing demand for services from the House administration, including the Library and procedural services
 - increasing costs
 - risks to the reputation of the House if members who were clearly no longer able to contribute constructively to the work of the House continued to attend
 - excessive size in comparison to the House of Commons
 - damage to the credibility of the House occasioned by the large number of members who take no active part in proceedings.
6. A number of members observed that, whilst the grant of a peerage was for life, it was right that members should serve in the House only for as long as was deemed appropriate for the efficient performance of the House.
7. It was emphasised that any provision for retirement from the House had no connection with the entirely separate matter of discipline within the House relating to breaches of the Code of Conduct.

The case against

8. A small minority of respondents expressed their opposition to any provision for retirement. They suggested that the decision to accept the honour of a peerage, and the Parliamentary duty which that involved, was not one which should subsequently be reversed because it was found to be an encumbrance or a liability. One member observed that “going in and out at one’s discretion reflects respect neither on the person nor on the system”.

The need for legislation

9. Responses from a number of members envisaged that provision for voluntary retirement from the House might be made without the need for legislation. We expect to return to this issue in our final report, but in the meantime we reproduce at Appendix 1 and Appendix 2 the advice we have received on this subject from the Clerk of the Parliaments and the Head of the Crown Office.
10. The Clerk of the Parliaments indicates that “the House does not, save in the case of suspension for misconduct within a Parliament, have power to regulate its own arrangements in a way which precludes any Member who wishes to do so from sitting, speaking or voting in the House in accordance with their obligations under their Writ of Summons. Such a change would require primary legislation.”
11. The Head of the Crown Office advises that “primary legislation would still appear to be required if the desire is for a peer voluntarily to give up the entitlement to receive a Writ of Summons”.

Leave of Absence

12. Some members proposed a development of the existing arrangements for Leave of Absence, either to make such Leave permanent once granted, or to grant Leave of Absence automatically to any member who did not comply with certain conditions. The Head of the Crown Office indicated that “it may be possible to adjust the provision made relating to leave of absence in Standing Order No 22. However, there are limits to what can be achieved through such a mechanism, in particular, granting a leave of absence could not interfere with the entitlement to receive a writ of summons.”

Current and previous legislative proposals

13. The House currently has before it relevant legislative proposals in the shape of Part 3 of the House of Lords Reform Bill [HL], introduced by Lord Steel of Aikwood and awaiting Second Reading. Clause 11 of the bill would allow members to apply for permanent leave of absence; clause 12 provides that a member who fails to attend the House during the course of a session should be deemed to have taken permanent leave of absence; clause 13 provides that a person granted permanent leave of absence shall no longer be a member of the House of Lords. A number of members who responded to our consultation reiterated their support—previously expressed in debate on comparable bills introduced by Lord Steel of Aikwood in previous sessions—for the provisions contained in the current bill.
14. The Constitutional Reform and Governance Bill introduced in the last session of the last Parliament contained a clause providing for resignation from the House of Lords by means of notice to the Clerk of the Parliaments, without any stipulation as to the circumstances in which such resignation could be effected. A number of members who responded to our consultation expressed regret that this provision had been lost from the Bill in the “wash-up” prior to the Dissolution of Parliament.

Voluntary retirement

15. Members who responded to our consultation envisaged a range of reasons which might prompt voluntary retirement, if a mechanism were in place, including increasing age, infirmity, or change in domestic or family circumstances. It was suggested that, if approached sensitively by their party leader or the convenor of crossbench peers, a significant number might agree to retire, particularly if the approach was based on an appeal to their public spirit and concern for the reputation of the House. One member suggested that the reality of the workload and working practices of the House was not always understood by a new member, who might after a short time decide that he or she could not contribute fully, and might agree to retire.
16. A number of other respondents suggested that very few members would be likely to retire voluntarily. One member remarked that introduction of a provision for voluntary retirement would put undue pressure on members.
17. Some members noted that the absence of a formula for the appointment of specified numbers of members by party or group could militate against the effectiveness of any provision for voluntary retirement. Members who might otherwise welcome the opportunity to retire from active participation in the work of the House would be reluctant to do so in the absence of any

expectation that their place would be taken by a new member of the same party or group.

Compulsory retirement

18. Our terms of reference, which mention options “for allowing members to leave the House of Lords permanently”, envisage only voluntary retirement. Interestingly, many members who responded to our consultation went further than this and outlined, or advocated, arrangements by which members could be required to retire. We therefore summarise these below. Members who proposed provisions for compulsory retirement also expressed a variety of views about the timing of their implementation.

Age limits

19. A number of respondents advocated that members should be required to retire from the House on reaching a specified age. Suggested ages included 75, 77, 80, 85 and 88 years. The application of an upper age limit in most other public positions (judges 75, clergy 70, bishops 70, Lord Lieutenants 75) was cited, as was the Canadian Senate where members are appointed until the age of 75 years.
20. Other respondents opposed the application of an age limit. They highlighted the wisdom and expertise that would be lost to the House; the fact that there is no correlation between increased age and reduced effectiveness; the increasing trend elsewhere in both the public and private sectors to abolish fixed retirement ages; and the implementation of legislation to prevent discrimination on grounds of age.
21. Table 1 shows the age profile of the current membership of the House.

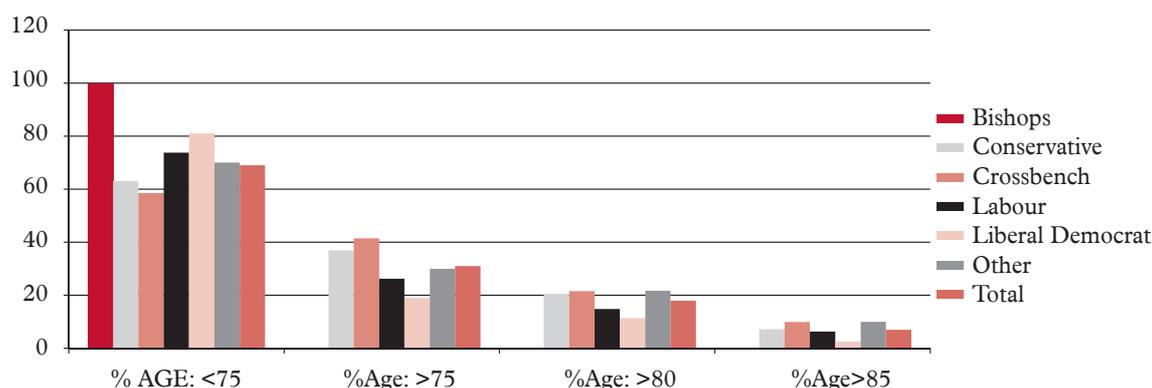
TABLE 1

Current House at 1 October 2010* by Age in %**

Affiliation	% Age: <75	% Age: >75	% Age: >80	% Age: >85
Bishops	100	0	0	0
Conservative	63	37	21	7
Crossbench	59	41	22	10
Labour	74	26	15	6
Liberal Democrat	81	19	11	3
Other	70	30	22	10
Total	69	31	18	7

* The figures include all members, both hereditary and life Peers, as well as those on leave of absence, disqualified as senior members of the judiciary and disqualified as an MEP.

** All figure have been rounded.



Length of service

22. Some respondents suggested that members should be required to retire after a specific period of service, and that future appointments to the House should be for a fixed term. Generally those who advocated this option did so on the basis that the expertise or experience for which a member was appointed became less current and applicable with the passage of time. Terms of 15 or 20 years were recommended. It was argued that this would make it easier to appoint younger people to the House, since currently there were objections to appointing a person of, say, 35 who might remain in the House for 50 years or more.
23. Our attention was drawn to the position of the bishops, who relinquish their membership of the House on retirement from office. It was noted that the bishops who sit in the House are, therefore, in active ministry and have a current connection with their communities, whilst other members appointed for their knowledge of specific areas of national life may continue in the House long after that connection ceases.
24. Those who opposed a fixed term of service mostly did so because it would result in some members retiring when still comparatively young and with much to offer. It was also suggested that a fixed term would alter the capacity of the House to take the long view, by comparison with the House of Commons where the timescale was often that of the current Parliament.
25. Table 2 shows the profile of the current membership of the House by length of service.

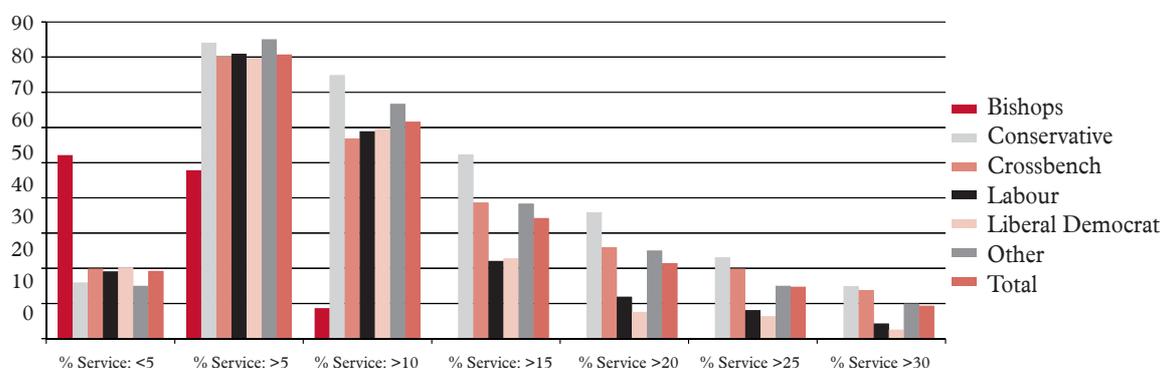
TABLE 2

Current House at 1 October 2010* by Length of Service in %**

Affiliation	% Service: <5	% Service: >5	% Service: >10	% Service: >15	% Service >20	% Service >25	% Service >30
Bishops	52	48	9	0	0	0	0
Conservative	16	84	75	52	36	23	15
Crossbench	20	80	57	39	26	20	14
Labour	19	81	59	22	12	8	4
Liberal Democrat	20	80	59	23	8	6	3
Other	15	85	67	38	25	15	19
Total	19	81	62	34	21	15	9

* The figures include all members, both hereditary and life Peers, as well as those on leave of absence, disqualified as senior members of the judiciary and disqualified as an MEP.

** All figure have been rounded.



Attendance

26. Attendance record was the factor most widely suggested as relevant to consideration of who should retire from the House. The provision in local government, whereby councillors are disqualified if their attendance falls below a certain level, was noted.
27. Some respondents suggested that members should retire if their past record of attendance fell below a certain threshold; others that members should retire if they could not commit to attending for a stipulated proportion of sitting days in future. It was acknowledged that such provisions would result in the retirement from the House of some members who, because of commitments in other walks of life, were able to attend only irregularly, but whose contributions were greatly valued when they did attend.
28. In advocating an attendance threshold for continuing membership, many respondents noted the need for arrangements to ensure that nobody was excluded because of a temporary change in circumstances, for example a period of illness or domestic difficulty. The need to accommodate those who undertook a role elsewhere, but who might subsequently return to the House with enhanced expertise as a result, was also noted, as was the position of those who were appointed to the House in order that they could fulfil roles elsewhere in public life and the position of ministers whose duties take them away from the House.
29. Some members suggested that consideration of attendance record could be accompanied by some measure of participation in the business of the House, including membership of committees and All-Party Parliamentary Groups. The difficulty of assessing this, including how to quantify informal parliamentary activity such as discussions with interest groups, was acknowledged.
30. Other respondents argued against any provision that infrequent attenders should be required to retire, since it would move in the direction of a full-time House and discourage acceptance of a peerage by those distinguished experts or holders of high office who could best contribute to the work of Parliament. Respondents also noted that a provision to exclude infrequent attenders would do nothing to solve the problem of overcrowding, and could even have the perverse effect of encouraging some to attend more frequently than they would otherwise have done, in order to avoid exclusion. It was also noted that frequent attendance does not necessarily coincide with constructive participation in the work of the House.
31. One member proposed that a new status be created allowing members to opt to restrict their attendance to, say, 30 days in any one session.
32. Table 3 shows the number of members attending for differing percentages of the total possible attendances, in each session of the last Parliament.

TABLE 3**Attendances as a percentage of total possible attendances****Session 2009–2010**

Percentage	Number of Members
75% or more	289
50% to 74%	135
25% to 49%	103
10% to 24%	67
At least once but less than 10%	68
Total attending at least once	662
Zero attendance	79
Grand total	741

Session 2008–2009

Percentage	Number of Members
75% or more	281
50% to 74%	165
25% to 49%	107
10% to 24%	75
At least once but less than 10%	85
Total attending at least once	713
Zero attendance	46
Grand total	759

Session 2007–2008

Percentage	Number of Members
75% or more	313
50% to 75%	146
25% to 50%	115
10% to 25%	68
At least once but less than 10%	80
Total attending at least once	722
Zero attendance	44
Grand total	766

Session 2006–2007

Percentage	Number of Members
75% or more	301
50% to 75%	168
25% to 50%	104
10% to 25%	70
At least once but less than 10%	67
Total attending at least once	710
Zero attendance	62
Grand total	772

Session 2005–2006

Percentage	Number of Members
75% or more	312
50% to 75%	170
25% to 50%	98
10% to 25%	71
At least once but less than 10%	74
Total attending at least once	725
Zero attendance	52
Grand Total	777

Election

33. Several members supported schemes by which the parties and groups should elect those members who should remain in the House, to achieve an agreed optimum number of members. It was suggested that the election of hereditary peers in 1999 had produced a logical and reasonable selection of those who had been most active, whether in the Chamber or in committees. It was also suggested that such a scheme would give elected status to all continuing members of the House.
34. Schemes of this sort were opposed by other members on a variety of grounds—
- that they would increase the power of the party whips to an undesirable degree
 - that they would occasion electioneering amongst existing members, adversely affecting the character of the House
 - that members might be unwilling to stand for election to a position to which they had already been appointed, and that valued members would be lost as a result.

Performance

35. A small number of members noted that in other walks of life continuation in a position was subject to satisfactory performance. It was suggested that some means should be devised for assessing the continuing ability of members to participate effectively in parliamentary business.

Financial provision

36. Some members who responded to our consultation raised the issue of financial provision for those who retired. Some were of the view that any financial provision would be entirely inappropriate, since members of the House held their seats as an honour and a privilege and so, unlike employees, were not eligible for either a pension or compensation for redundancy. Others suggested that financial provision would simply be publicly unacceptable and would bring the House into disrepute, particularly in the wake of controversy over Parliamentary expenses and at a time when cuts were being made to public spending.
37. On the other hand, some respondents pointed out that the financial circumstances of members differed widely. Some members had foregone opportunities of remunerative work in order to play an active role in the House, and for some there would also be a consequent loss of pension. While some members were in a position not to need to make claims for financial support, others were not and, for many, the allowances to which they were entitled were the principal means by which they were able to attend the House and carry out their parliamentary duties.
38. Some respondents therefore suggested that, to encourage a significant number of members to retire, some financial provision might be appropriate. Some members suggested a single gratuity on retirement, others suggested annual payments for a fixed number of years. The range of detailed suggestions reflected the varying ways in which individuals' personal circumstances might be affected by retirement from the House. One member suggested that it was reasonable for retiring members to be compensated for loss of office, if the House changed retrospectively the expectations of those who had accepted membership of the House for their lifetimes.
39. Most respondents suggested that any financial provision should be cost-neutral (that is, that it should pay out no more than a member might otherwise have expected to claim in expenses, on the basis of past patterns of attendance) and that it should be available only to those who had been regular contributors to the work of the House.
40. Some respondents drew our attention to schemes which had been implemented in local government in Scotland and Wales, whereby financial incentives were offered to longstanding councillors who did not stand for re-election, in order to encourage new candidates and greater diversity.

Further appointments to the House

41. Inevitably, many members who responded to our consultation were critical of the large numbers of new appointments to the House which continue to be made at a time when it is generally acknowledged that the membership is already too great. Some respondents suggested an immediate moratorium on new appointments until this issue has been resolved; others suggested a cap on the numbers of new appointments.

42. A number of respondents also proposed that, in future, the honour of a life peerage should not necessarily entail a seat in the House.

Arrangements after retirement

43. Most respondents suggested that members who retired from the House should retain their titles. One member suggested that those who opted to retire should retain their titles, but that those who remained should relinquish title and simply have the letters “ML” after their name.
44. Most respondents suggested that retiring members should be entitled to continue to use certain facilities of the House, including the Library (though not research services) and refreshment outlets, in the same way as those hereditary peers excluded from the House in 1999. One of the galleries in the Chamber could be allocated to retired members who wished to observe proceedings. Some suggested that such continuing privileges should be extended only to those who had played an active role in the House, and not to those who had attended infrequently.
45. A number of ways were proposed by which retiring members could have a continuing connection with the work of the House. For example, retired members might be invited to informal discussion groups of specific issues before the House, in order that their advice and expertise could still be drawn on. One respondent suggested a form of “semi-retirement”, whereby a member would be precluded from voting or initiating business, but could speak in the Chamber on matters on which they had acknowledged experience.
46. Another suggestion was to create a new category of “associate member” of the House, to which retired members could choose to belong. Associate members could be permitted to attend and speak in proceedings off the floor of the House, to be co-opted onto select committees, to have access to the House (with the exception of the Chamber) and to continue in membership of All-Party Parliamentary Groups. An annual event for associate members could be hosted by the Lord Speaker.
47. Other members suggested that the service of a retiring member should be acknowledged by some award or mark of recognition. One member suggested an honour on the lines of the armed services’ Long Service, Good Conduct medal; another, that a life peerage might be converted to a hereditary peerage.

APPENDIX 1: MEMORANDUM FROM THE CLERK OF THE PARLIAMENTS

Powers of the House with respect to the removal of Members' right to sit and vote

1. The Leader's Group is considering whether it would be possible, without the need for legislation, to introduce arrangements 'for allowing Members to leave the House of Lords permanently'. In this context, it is envisaged that the expression "allowing" might embrace a range of options which, towards one extreme (for instance, the introduction by resolution of the House of an upper age limit for membership, or a maximum period of service) could amount to the removal of a Member's right to sit and vote in the House.

2. As an illustration of the kind of arrangements that might be introduced, it has been suggested that Standing Orders might be amended so that a Member who failed to attain a prescribed minimum level of attendance in a Session would be deemed to have Leave of Absence for the whole of the following Session; and if the Member again failed to attain the minimum level of attendance during the Session after that, the Leave of Absence would thereafter be deemed to be permanent.

3. The constitutional principles, and the laws and customs of Parliament, relating to the right of peers to sit and vote in the House were examined extensively in 1955 and 1956 by the Select Committee on the Powers of the House in relation to the Attendance of its Members (HL Papers (7) (66-I) (67)). That Committee had been established to advise the House on the means open to it to enforce the attendance of peers, including steps which might be taken in relation to peers who did not attend. Many of the issues which arise from matters now being considered by the Group were examined by that Select Committee.

4. Several of the conclusions of the Select Committee (which included a number of Lords of Appeal and took extensive evidence, including evidence from the Attorney General) are relevant to the work of the Group and can be summarised as follows:

5. A Member's duty to attend the House arises from the issue and delivery of their Writ of Summons at the beginning of each Parliament.

6. It is not within the power of the House to regulate its own arrangements in a way that derogates from the right conferred upon a Peer by the Writ of Summons to attend the House and take part in its proceedings. It is settled law that the Writ of Summons cannot be withheld from a Peer.

7. A power to excuse attendance in accordance with Standing Orders ("Leave of Absence") has been exercised for many years; but it would not be legitimate for the House, under the guise of granting Leave of Absence, in effect to deprive a Peer of the right to sit, speak and vote. It should be noted that the Leave of Absence scheme introduced as a result of the work of the 1955–56 select committee was wholly permissive. Lords seeking Leave of Absence were "expected" to give a month's notice to end that Leave of Absence before taking part in proceedings, but were not formally excluded.

8. The issue of a Writ of Summons is not a matter for the House, but is an exercise of the Royal Prerogative, and for the Crown. That does not, however, mean that

the right to a Writ is incapable of modification. Because it is afforded legal recognition only via the common law, the Prerogative is always subject to relevant provision in Acts of Parliament. So an Act or instrument under an Act which, for instance, disqualifies a Peer for membership of the House has the effect of modifying, either expressly or by necessary implication, the right of that Peer to receive a Writ of Summons. For example, section 426A of the Insolvency Act 1986 (which disqualifies a person in respect of whom a bankruptcy restrictions order has effect from sitting or voting in the House) provides expressly at subsection (4) that no Writ of Summons is to be issued to a member of the House who is so disqualified. Section 1 of the House of Lords Act 1999 has a similar effect but by necessary implication.

9. The proposal described in paragraph 2 above for amending the Standing Orders in relation to deemed Leave of Absence envisages that a member would be precluded from attending the House, first for a whole Session, and then possibly permanently. Although the Select Committee itself envisaged ways in which Standing Orders might be modified to introduce certain conditions and formalities in connection with Leave of Absence, what was then being proposed would have involved no compulsion; and the Select Committee concluded that, as no right conferred by the Crown would thereby be diminished or taken away, the Prerogative of the Crown could not be in any way affected.

10. For the reasons given above, I am advised that the House does not, save in the case of suspension for misconduct within a Parliament, have power to regulate its own arrangements in a way which precludes any Member who wishes to do so from sitting, speaking or voting in the House in accordance with their obligations under their Writ of Summons. Such a change would require primary legislation. Any arrangements under consideration by the Group whereby a Member might voluntarily surrender membership of the House, by seeking to waive their right to a Writ of Summons, would raise issues under peerage law between the Peer concerned and the Crown, and this is a matter on which the Crown Office would need to be consulted in the first instance.

Michael Pownall

7 October 2010

APPENDIX 2: MEMORANDUM FROM IAN DENYER, HEAD OF THE CROWN OFFICE

1. In response to your request for the Crown Office view about the means by which Members of the House may voluntarily relinquish the right to receive a Writ of Summons. I am not aware of anything that counters the established view that Peers cannot resign from the House of Lords. This suggests that primary legislation would be required to enable a Member of the House of Lords to resign and voluntarily relinquish the right to a Writ of Summons.

Legal issues

2. Working through from first principles, membership of the House of Lords is synonymous with being entitled to receive a Writ of Summons to sit and vote in the House, see the decision of the Committee for Privileges in *Lord Mayhew of Twysden's Motion* [2002] 1 AC 109, p 118. The entitlement to receive such a Writ of Summons arises in various ways. Those Members who are Peers generally receive their entitlement from the Letters Patent establishing their peerage.

3. The authority that Peers are unable to resign, in the absence of statutory authority, stems from decisions of the Committee for Privileges and case law. In particular, it is clear that peerages cannot be surrendered, see the *Earldom of Norfolk Peerage Claim* [1907] AC 10 and *In re Parliamentary Election for Bristol South East* [1964] 2 QB 257, p 274 (Anthony Wedgwood Benn was unable voluntarily to renounce his peerage). Such authorities also suggest that it is not possible for a Peer to, in effect, renounce his or her entitlement to receive a Writ of Summons. Writs of Summons cannot be withheld from a Peer otherwise entitled to receive them, *the Earl of Bristol's case* 1626. And in the *Bristol South East* case, not applying for a Writ of Summons did not prevent the Peer concerned from being disqualified from being a Member of the House of Commons. Further, the Election Court there stated that “[b]y the fact of succession [the Peer] has entered a particular class of persons upon whom the duty of attending the House of Lords (unless granted Leave of absence) is imposed by law and immemorial usage”, p 289.

4. These authorities relate to the hereditary peerage, but the position does not appear to have been altered by statutory innovation (although, the Peerage Act 1963 permits Hereditary Peers to disclaim their peerage in certain circumstances). Going through each category of Peer:

5. The position for Life Peers is dealt with in the Life Peerages Act 1958. Section 1 enables Her Majesty to “have power by Letters Patent to confer on any person a peerage for life”. Such a peerage “shall, during the life of the person on whom it is conferred, entitle him ... [subject to any disqualification] to receive Writs of Summons”. The plain words of the statute are that Life Peerages are granted for life. There is no power, for example, to revoke the Letters Patent. Receiving the Writ of Summons is worded as an “entitlement” and this entitlement also continues during the life of the Peer. One generally thinks of entitlements as being rights which can be taken up or, if desired, rejected. However, the authorities discussed above suggest that simply being entitled to receipt of a Writ of Summons is synonymous with being a Member of the House of Lords.

6. For Hereditary Peers who are Members of the House by virtue of section 2 of the House of Lords Act 1999 (“the 1999 Act”), the underlying position is discussed above—although it should be noted that such Peers are explicitly

excluded from the disclaimer provisions of the Peerage Act 1963. In addition, section 2 of the 1999 Act states that “[o]nce excepted from section 1, a person shall continue to be so throughout his life (until an Act of Parliament provides to the contrary)”. This provision also suggests that such Hereditary Peers will remain in the House for the rest of their life.

7. Retired Lords of Appeal in Ordinary appear to be in essentially the same position as Life Peers, section 6 of the Appellate Jurisdiction Act 1876.

8. Archbishops and Bishops may already voluntarily leave the House by resigning their position in the Church, but I assume the group is not concerned with this issue.

Recent developments

9. Recent developments support the orthodox view.

10. The Constitutional Reform and Governance Bill, as introduced, included provision which would have permitted Peers for any reason to resign by giving notice to the Clerk of the Parliaments, see clause 56 of the Lords introduction print. Resignation would have removed those Peers’ right to receive a Writ of Summons, clause 54. There was separate provision to permit a Peer who left the House under the Bill to disclaim his or her peerage. The Explanatory Notes to the Bill explain that the reason for this provision was because “[t]here is presently no mechanism by which a peer can resign from the House of Lords”, paragraph 369 of the Lords introduction version. I do not recall anyone expressing any doubt about this point during the passage of the Bill. And indeed, if there had been a mechanism voluntarily to leave the House, there would have been no need to enact the transitional provision which permitted Peers to leave the House to avoid the tax status deeming provision.

11. I have considered whether the Committee for Privileges report, *The Powers of the House of Lords in respect of its Members* (1st Report 2008–09) HL Paper 87—which otherwise reached some unexpected conclusions—contains anything which would suggest that the orthodoxy is wrong. In fact, such as there is, tends to support the orthodoxy, for example, the paper submitted by Lord Mackay of Clashfern on which the Committee based its view suggests that the right to receive a Writ of Summons cannot be overridden, except by statute, paragraph 19.

Conclusion and future steps

12. Accordingly, primary legislation would still appear to be required if the desire is for a Peer voluntarily to give up the entitlement to receive a Writ of Summons. It may be possible to adjust the provision made relating to Leave of Absence in Standing Order No. 22. However, there are limits to what can be achieved through such a mechanism, in particular, granting Leave of Absence could not interfere with the entitlement to receive a Writ of Summons.

13. I should make it clear that this is the view of the Crown Office as distinct from any Ministry of Justice or Government view.

Ian Denyer

20 October 2010

APPENDIX 3: LIST OF MEMBERS WHO SUBMITTED WRITTEN COMMENTS

The following Members submitted comments in writing to the Group—

Lord Alderdice
Lord Alton of Liverpool
Lord Anderson of Swansea
Lord Ballyedmond
Lord Barber of Tewkesbury
Lord Blackwell
Lord Bowness
Lord Bradshaw
Lord Campbell of Alloway
Lord Christopher
Lord Cobbold
Lord Cotter
Baroness Deech
Lord Denham
Baroness D'Souza
Lord Dubs
Lord Ezra
Lord Faulkner of Worcester
Lord Fellowes
Earl Ferrers
Baroness Flather
Lord Foulkes of Cumnock
Lord Goodhart
Lord Gordon of Strathblane
Lord Graham of Edmonton
Baroness Greengross
Lord Grenfell
Lord Hameed
Lord Hamilton of Epsom
Baroness Hamwee
Lord Hannay of Chiswick
Baroness Harris of Richmond
Lord Haskell
Lord Higgins
Lord Hodgson of Astley Abbots
The Earl of Home
Lord Howie of Troon
Lord Inglewood
Lord Jay of Ewelme
Lord Jopling
Lord Judd
Lord Kimball
Lord Kirkwood of Kirkhope
Lord Lawson of Blaby
The Bishop of Lincoln
Lord Lipsey
Lord Luce
Lord McCluskey

Baroness McFarlane of Llandaff
Lord Mancroft
The Earl of Mar & Kellie
Lord Marlesford
Lord Moser
Baroness Nicholson of Winterbourne
Lord Nickson
Lord Phillips of Sudbury
Lord Ramsbotham
Lord Rea
Lord Rees-Mogg
Lord Rix
Lord Sanderson of Bowden
The Earl of Sandwich
Lord Selkirk of Douglas
Lord Sewel
Viscount Simon
Lord Simon of Highbury
Lord Skelmersdale
Lord Skidelsky
Lord Stewartby
Baroness Thomas of Walliswood
Baroness Thomas of Winchester
Lord Trefgarne
Baroness Trumpington
Lord Turnberg
Lord Tyler
Viscount Ullswater
Lord Waddington
Lord Wakeham
Lord Wallace of Saltaire
Lord Walton of Detchant
Baroness Williams of Crosby
Lord Williams of Elvel
Lord Wright of Richmond