

LORDS SPIRITUAL (WOMEN) ACT 2015 (EXTENSION) BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Lords Spiritual (Women) Act 2015 (Extension) Bill [HL] as introduced in the House of Lords on 30 July 2024 (HL Bill 10).

- These Explanatory Notes have been drafted by the Cabinet Office in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The purpose of this Bill is to extend the limited period in which, if a female diocesan bishop is eligible when a Lords Spiritual seat becomes vacant, she will be appointed to the seat.

Policy and legal background

- 2 The two Church of England Archbishops and 24 of its other diocesan bishops are entitled to sit in the House of Lords as the Lords Spiritual. They do so by virtue of ancient usage and statute. Five of the 26 bishops automatically receive writs of summons to attend the House of Lords on the basis of the sees they occupy (Canterbury, York, Durham, London and Winchester; 'the five ex officio sees'). The remaining 21 are issued with writs of summons on the basis of seniority (i.e. length of tenure as a diocesan bishop) when a vacancy arises. This mechanism is set out in section 5 of the Bishops Act 1878.
- 3 On 17 November 2014 the General Synod of the Church of England enacted the final legislation necessary to allow women to become bishops. However, due to the arrangements under the Bishops Act 1878, it would have taken over seven years before a newly appointed female diocesan bishop would have become sufficiently senior to take a place in the House of Lords (unless she were appointed to one of the five ex officio sees). Consequently, the Archbishop of Canterbury, after consultation with the Lords Spiritual and others, requested on behalf of the Church of England that amendments be made to the arrangements under the Bishops Act 1878 to enable the accelerated entry of female bishops to the House of Lords.
- 4 Parliament subsequently passed the Lords Spiritual (Women) Act 2015 ('the 2015 Act'), which came into effect on 18 May 2015. The 2015 Act modified the application of the procedure under the Bishops Act 1878 for a time-limited period so that vacancies among the 21 places, which are normally filled by seniority, are filled as they arise by eligible female bishops, if there are any available at that point (an eligible bishop is a bishop of a diocese in England who is not already entitled as such to a writ of summons). If there is more than one eligible female bishop then the one whose election as a bishop of the diocese was confirmed first will receive the writ. In practice, for a period of 10 years between 2015 and 2025, the most senior eligible female bishop at any time now fills a vacant Lords Spiritual seat in preference to the most senior eligible male bishop.
- 5 The effect of the 2015 Act has been that six bishops who are women have sat in the House of Lords sooner than would have been possible under the procedure in place prior to the 2015 Act. Five of these bishops still sit in the House; one has retired.
- 6 Male bishops have continued to enter the Lords under the 2015 Act, in accordance with the arrangements under the Bishops Act 1878 for determining seniority of precedence, if there were no eligible female bishops at the time a Lords Spiritual vacancy arose.
- 7 The relevant provisions of the 2015 Act are due to expire on 17 May 2025. The Lords Spiritual (Women) Act 2015 (Extension) Bill seeks to extend the provisions of the 2015 Act for a further five-year period so that the appointment process in the 2015 Act expires on 17 May 2030. This is designed to increase the number of female bishops in the House of Lords more quickly.
- 8 After the end of this period, the provisions made by the 2015 Act and extended by this Bill will come to an end, and the arrangements under the Bishops Act 1878 for determining which bishops are to fill vacancies among the Lords Spiritual will be restored. The arrangements in relation to the five ex officio sees are left unchanged since any woman appointed to one of those sees will in any event become a Lord Spiritual immediately. For example, Sarah Mullally became Bishop of London in March 2018 and took her seat in the House of Lords in April 2018, outside of the provisions of the 2015 Act.

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Territorial extent and application

- 9 The Bill extends to England and Wales, Scotland and Northern Ireland.
- 10 The Bill relates to the reserved matter of the Parliament of the United Kingdom in the Scottish and Welsh devolution settlements, and the excepted matter of the Parliament of the United Kingdom in relation to Northern Ireland. As such, legislative consent motions are not required.
- 11 See the table in Annex B for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Amendment of Lords Spiritual (Women) Act 2015

- 12 Clause 1 amends section 1 of the Lords Spiritual (Women) Act 2015 Act so that its provisions are extended and continue to have effect for all vacancies arising before 18 May 2030, rather than ceasing to have effect on 17 May 2025. This will mean that a vacancy within the 21 Lords Spiritual who do not hold an ex officio see will be filled by the most senior eligible female diocesan bishop in England, who is not already entitled to sit in the House of Lords, for a further five years, if one is available. The vacancy will be filled by the issue of a writ of summons to that bishop. She will be entitled to a writ in subsequent Parliaments until she ceases to be a diocesan bishop or is appointed to one of the five ex officio sees. The most senior eligible bishop will be the person whose election as a bishop of a diocese was confirmed first (this reflects the arrangements under the Bishops Act 1878 for determining seniority of precedence). If there is no eligible female bishop, the most senior male bishop will become a member of the House of Lords, as per the 1878 Act. A summary of how these arrangements operate can be found at Annex A.

Clause 2: Extent, commencement and short title

- 13 Clause 2 sets out the territorial extent of the Bill, as per the 'Territorial Extent and Application' section above; and the commencement of the Bill, as per the 'Commencement' section below.

Commencement

- 14 The Bill will commence on Royal Assent. Given that the 2015 Act - if left unamended - would have effect until 17 May 2025, the provisions of this Bill will only have substantive effect from 18 May 2025.

Financial implications of the Bill

- 15 The Bill in itself will not trigger any financial expenditure.

Parliamentary approval for financial costs or charges imposed

- 16 The Bill will be introduced in the House of Lords. This section will be completed when the Bill transfers to the House of Commons.

Compatibility with the European Convention on Human Rights

- 17 The Government considers that the Bill is compatible with the European Convention on Human Rights ("ECHR"). Accordingly, a statement has been made under section 19(1)(a) of the Human Rights Act 1998 to this effect.
- 18 The principal human right issue raised by the Bill relates to whether a male bishop who would have otherwise become a member of the House of Lords has any Convention Rights in respect of the loss of that entitlement to a female bishop appointed under the provisions extended by this Bill. However, membership of Parliament, including as a member of the House of Lords, is a public law right, which has been held by both domestic courts and the European Court of Human Rights ("ECtHR") as being outside the scope of the relevant ECHR articles.
- 19 In respect of Article 6 (right to a fair trial), the Commission affirmed in *X v United Kingdom* (App. No. 8208/78) that "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". This decision has been affirmed in subsequent cases in Strasbourg.
- 20 The principle has been followed domestically and extended to other articles of the ECHR. In *Baron Mereworth v Ministry of Justice* [2011] EWHC 1589 (Ch), Lewison J held that the right to receive a writ of summons and to sit and vote in the House of Lords was a public right and that Article 6 was therefore not engaged. Nor was the right to receive a writ a part of private life for the purposes of Article 8 (right to respect for private or family life), or a possession for the purposes of Article 1 of Protocol 1 (protection of property).
- 21 Article 14 (prohibition on discrimination) only arises where other Convention rights are in question - it follows from the above that there can be no breach of Article 14 on discrimination either.
- 22 It is worth noting, given that this Bill extends the provisions of the 2015 Act, that Act was also considered to be compatible with Convention Rights. That position has not subsequently been challenged. An ECHR memorandum was prepared for the 2015 Act when it was progressing through Parliament.

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Duty under section 20 of the Environment Act 2021

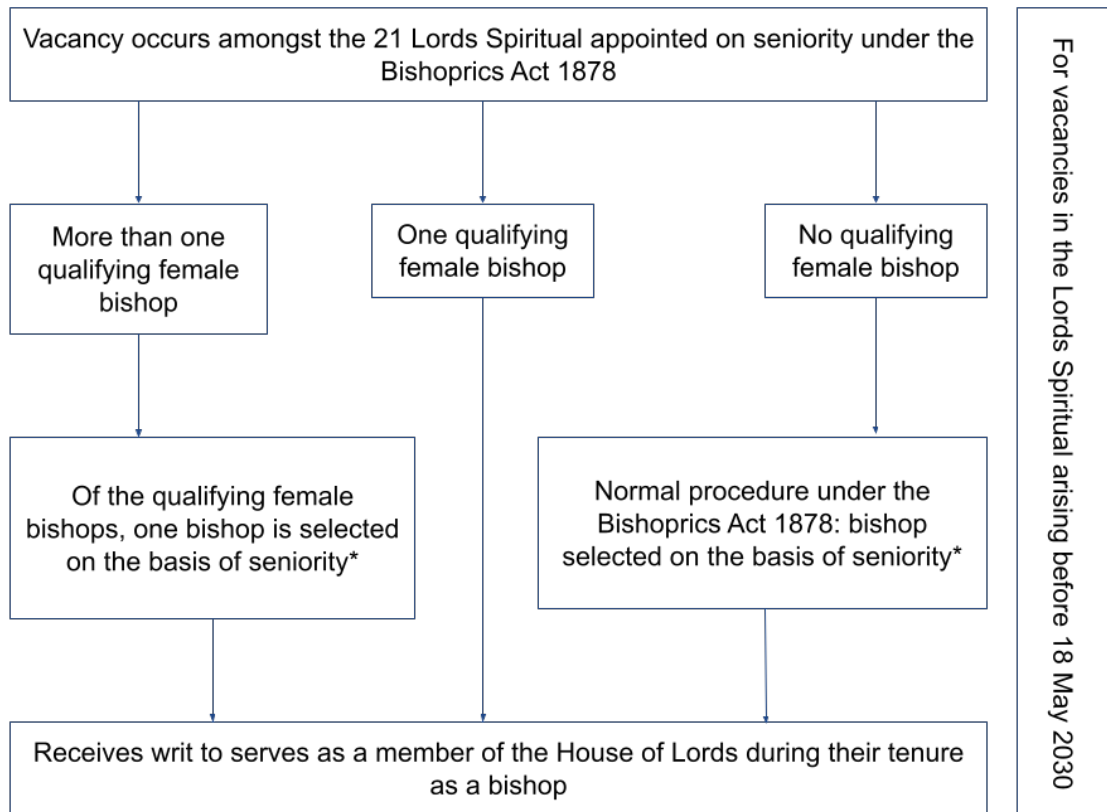
- 23 The Rt Hon Baroness Smith of Basildon is of the view that the Bill as introduced into the House of Lords does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

Related documents

- 24 The following documents are relevant to the Bill and can be read at the stated locations:

- Bishopricks Act 1878, <https://www.legislation.gov.uk/ukpga/Vict/41-42/68/contents>.
- Bishops and Priests (Consecration and Ordination of Women) Measure 2014, <https://www.legislation.gov.uk/ukcm/2014/2>.
- Lords Spiritual (Women) Act 2015, <https://www.legislation.gov.uk/ukpga/2015/18/contents/enacted>.
- Lords Spiritual (Women) Act 2015, ECHR memorandum: <https://www.gov.uk/government/publications/lords-spiritual-women-bill-european-convention-on-human-rights-echr-memorandum>.

Annex A – Appointment Process



*That is to say, their length of tenure as a diocesan bishop.

Annex B – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 2	Yes	Yes	N/A	Yes	N/A	Yes	N/A

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