

CHURCH OF SCOTLAND (LORD HIGH COMMISSIONER) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Church of Scotland (Lord High Commissioner) Bill as brought from the House of Commons on 5 March 2025 (HL Bill 79).

- These Explanatory Notes have been prepared 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.

Table of Contents

Subject	Page of these Notes
Overview of the Bill	3
Policy and legal background	3
Territorial extent and application	3
Fast-track legislation	3
Commentary on provisions of the Bill	5
Clause 1: Holding of office of Lord High Commissioner by Roman Catholic	5
Clause 2: Extent, commencement and short title	5
Commencement	5
Financial implications of the Bill	5
Parliamentary approval for financial costs or charges imposed	5
Compatibility with the European Convention on Human Rights	5
Duty under section 20 of the Environment Act 2021	5
Duty under section 13C of the European Union (Withdrawal) Act 2018	6
Annex A – Territorial extent and application in the United Kingdom	7

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Overview of the Bill

- 1 The purpose of this Bill is to make provision to allow a person of the Roman Catholic faith to be appointed Lord High Commissioner to the General Assembly of the Church of Scotland.

Policy and legal background

- 2 The Sovereign is represented at the General Assembly of the Church of Scotland by the Lord High Commissioner, who attends the proceedings as an observer. The Lord High Commissioner's role reflects the relationship between the State and the Church, and a long-standing tradition of appointing a Lord High Commissioner originated in the latter part of the 16th Century.
- 3 However, historic legislation currently prevents the appointment of Roman Catholics to the role. The Claim of Right 1689 sets out restrictions against Roman Catholics being appointed to public offices in Scotland, including the Lord High Commissioner. Whilst the Roman Catholic Relief Act 1829 removed most aspects of religious discrimination towards Roman Catholics, it explicitly did not remove the restrictions against Catholics holding the office of the Lord High Commissioner.
- 4 This means that there is an existing legislative restriction against someone of the Roman Catholic faith being appointed to this office. The restriction only applies to those professing the Roman Catholic faith and does not apply to those who are of different or of no faith or religion.

Territorial extent and application

- 5 The Bill extends to England and Wales, Scotland and Northern Ireland.
- 6 The Bill relates to the reserved matter of the Crown in the Scottish and Welsh devolution settlements, and the excepted matter of the Crown in relation to Northern Ireland. As such, legislative consent motions are not required.

Fast-track legislation

- 7 The Government has asked Parliament to expedite the parliamentary progress of the Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards¹, the House of Lords Select Committee on the Constitution recommended that the Government should provide more information as to why a piece of legislation should be fast-tracked.²

Why is fast-tracking necessary?

- 8 The Bill is being fast-tracked because it is an expedient measure, to facilitate the upcoming appointment of Lady Elish Angiolini as the Lord High Commissioner for 2025, ahead of the General Assembly in May.

¹ <https://publications.parliament.uk/pa/ld200809/ldselect/ldconst/116/116.pdf>

² <https://publications.parliament.uk/pa/ld200809/ldselect/ldconst/116/116.pdf> (paragraph 186)

What is the justification for fast-tracking each element of the bill?

- 9 The Bill has only one substantive clause and therefore it would not be possible for some elements of the Bill to be done at a slower pace than others.

What efforts were made to ensure the amount of time made available for parliamentary scrutiny was maximised?

- 10 It is a short Bill which is proposed to be debated in Committees of the Whole House in both Houses of Parliament.

To what extent were interested parties and outside groups given an opportunity to influence the policy proposal?

- 11 The Government did not deem it necessary to give other parties or outside groups an opportunity to influence the policy proposal given the limited impact of the Bill and that it will not trigger any financial provisions. The Scottish Government and Church of Scotland were informed of the Bill in advance.

Does the Bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why does the Government judge that their inclusion is not appropriate?

- 12 The Bill does not include a sunset clause. The Bill provides for a person of the Roman Catholic faith to hold the office of the Lord High Commissioner to the General Assembly of the Church of Scotland. The Government does not consider it appropriate to include a sunset clause, which would have the effect of reinserting the existing legislative restriction against someone of the Roman Catholic faith being appointed to this office.

Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the Government judge that their inclusion is not appropriate?

- 13 There are no mechanisms in place for post-legislative scrutiny and review. This is a simple and expedient provision that allows for a person of the Roman Catholic faith to hold the office of the Lord High Commissioner to the General Assembly of the Church of Scotland. Furthermore, it will have a limited impact on any external stakeholders.

Was an assessment made as to whether existing legislation was sufficient to deal with any or all of the issues in question?

- 14 Yes, an assessment was made and it was clear that the existing legislation did not provide the requisite mechanism to allow a person of the Roman Catholic faith to hold the office of Lord High Commissioner to the General Assembly of the Church of Scotland.

Has the relevant parliamentary committee been given the opportunity to scrutinise the legislation?

- 15 Parliamentary committees have not been scrutinising the legislation. It is a simple and expedient provision that allows for a person of the Roman Catholic faith to hold the office of Lord High Commissioner to the General Assembly of the Church of Scotland.

Commentary on provisions of the Bill

Clause 1: Holding of office of Lord High Commissioner by Roman Catholic

- 16 Clause 1 makes provision to allow a person of the Roman Catholic faith to hold the office of the Lord High Commissioner to the General Assembly of the Church of Scotland.

Clause 2: Extent, commencement and short title

- 17 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

- 18 The Bill will commence on Royal Assent.

Financial implications of the Bill

- 19 The Bill will not trigger any financial expenditure.

Parliamentary approval for financial costs or charges imposed

- 20 The Bill does not entail any financial or legal costs or charges so neither a money resolution nor a ways and means resolution was required during passage in the House of Commons.

Compatibility with the European Convention on Human Rights

- 21 Baroness Smith of Basildon, the Leader of the House of Lords, considers that the Bill is compatible with the European Convention on Human Rights ("ECHR"), and does not engage Convention Rights. Accordingly, a statement has been made under section 19(1)(a) of the Human Rights Act 1998 to this effect.
- 22 The principal human rights issue that could be said to be raised by the Bill is the right to freedom of religion (part of Article 9 of the ECHR), in connection with Article 14 (prohibition of discrimination, including on the basis of religion). However, the Bill is concerned with removing an existing restriction in relation to persons of the Roman Catholic faith, who are currently the only persons excluded from holding the office of Lord High Commissioner. It does not impose any restrictions.

Duty under section 20 of the Environment Act 2021

- 23 Baroness Smith of Basildon, the Leader of the House of Lords, is of the view that the Bill as introduced 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.

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Duty under section 13C of the European Union (Withdrawal) Act 2018

- 24 Baroness Smith of Basildon, the Leader of the House of Lords, is of the view that the Bill as introduced does not contain provision which, if enacted, would affect trade between Northern Ireland and other parts of the United Kingdom. Accordingly, no statement under section 13C of the European Union (Withdrawal) Act 2018 has been made.

Annex A – 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	No	Yes	No	Yes	No
Clause 2	Yes	Yes	No	Yes	No	Yes	No

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