

HOUSE OF
LORDS
BRIEFING

JUDICIAL WORK



OK battle goes to Lords

Lords ruling on torture and rights

Evidence from torture
can't be used in court,
say Law Lords

Lords give
part-time staff
equal rights
on pensions

Travellers have no
right to live in public
park say Law Lord

Lords tells KPMG
to fill pension hole



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The judicial work of the House of Lords

The House of Lords is the highest court in the land—the supreme court of appeal. It acts as the final court on points of law for the whole of the United Kingdom in civil cases and for England, Wales and Northern Ireland in criminal cases. Its decisions bind all courts below.

This is an unusual role for a legislative body that is part of Parliament. In most other democracies, the judiciary is separate from the legislature—usually in the form of a supreme court of appeal. The reasons are historical: the House of Lords has done this work for more than 600 years as part of the High Court of Parliament. The House of Commons was originally part of the High Court of Parliament but it has not been involved in judicial work since 1399. Only highly qualified professional judges appointed to be Law Lords take part in the judicial work of the House.

From October 2009 the UK will have a separate supreme court as a result of the Constitutional Reform Act 2005.



The House of Lords is in effect the UK supreme court.

The Constitutional Reform Act 2005



Provides for the separating of the Appellate Committee (supreme court) from the legislature (Parliament) and the executive (Government). The constitutional changes include:

- **reforming the office of Lord Chancellor** (transferring judicial functions to the Lord Chief Justice);
- the establishment of **a new supreme court** separate from the House of Lords and the removal of the Law Lords from the legislature;
- a new independent **Judicial Appointments Commission**.



The new supreme court will be housed opposite Parliament in Middlesex Guildhall.

For further information visit the Ministry of Justice website: www.justice.gov.uk

Law Lords

Since the Appellate Jurisdiction Act 1876, the judicial work of the House has been done only by professional Lords of Appeal in Ordinary—or ‘Law Lords’. There are 12 Law Lords. They are equivalent to supreme court judges in other countries and when the new UK supreme court comes into operation the Law Lords will become the first justices of the UK supreme court.

Appointment

Law Lords are appointed by the Queen on the advice of the Prime Minister, usually from the ranks of the senior appeal court judges in each part of the UK. In future they will be appointed by the Queen on the recommendation of the Judicial Appointments Commission. The first female Law Lord (Baroness Hale of Richmond) was appointed in 2004.



Lord Hoffmann (right) with the Head of the Judicial Office. The Law Lords work full-time on judicial business.



Baroness Hale giving a lecture to university students.



Lord Saville chairs the Bloody Sunday Inquiry.

Full-time judges

‘In Ordinary’ means that the Law Lords work full-time on the judicial business of the House and receive a salary, paid out of the Consolidated Fund (the revenues held in the Exchequer account at the Bank of England), not from House of Lords funds. This helps to ensure their independence from the legislature.

Law Lords and non-judicial business in the House

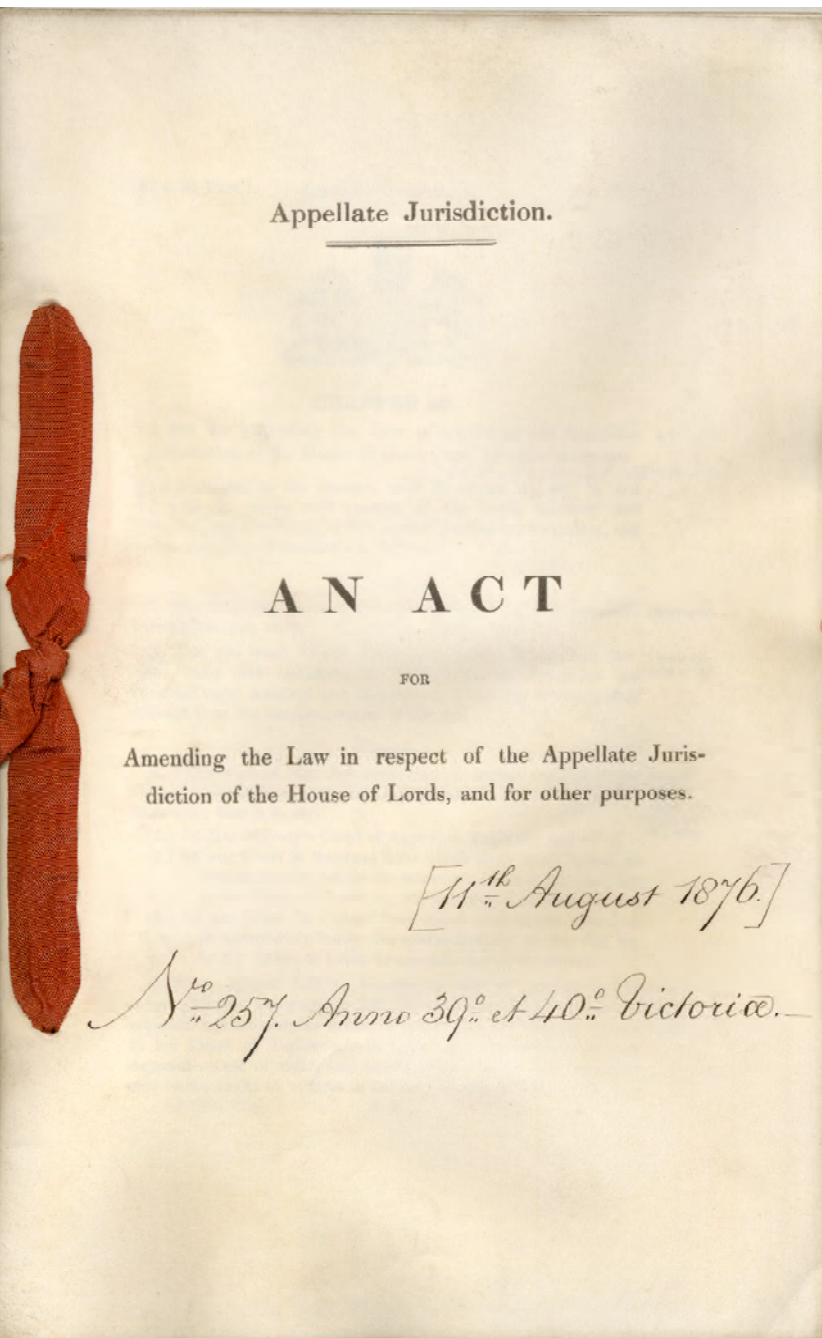
Law Lords are full Members of the House and may speak and vote on all business. In practice they rarely do so. A Law Lord chairs the EU sub-committee on law and institutions. Serving Law Lords, however, do not engage in matters where there is any element of party political controversy; and they bear in mind that they may render themselves ineligible to sit judicially if they express an opinion on a matter which might later be relevant to an appeal to the House. When a Law Lord retires, he or she remains a Member of the House and is then much more free to participate in debates on legislation and public policy, several do so regularly.

Work outside the House

In addition to their judicial work, Law Lords are sometimes asked to chair major public inquiries—e.g. the events of ‘Bloody Sunday’ in Northern Ireland and the death of the Ministry of Defence scientist Dr David Kelly. Law Lords regularly give lectures and talks and many are involved with law faculties of universities. They also have a diplomatic function as ambassadors for the UK legal system and common law, receiving distinguished foreign and Commonwealth judges at Westminster and travelling abroad.

Other Members and judicial business

Members who have held high judicial office may participate in judicial business if they meet the criteria in the 1876 Act. This means that the House can call on retired Law Lords and senior judges who are Members of the House. These usually include the Lord Chief Justice, the Master of the Rolls and the President of the Court of Session in Scotland. All such Lords are described as Lords of Appeal.



Jurisdiction

The jurisdiction of the House is ancient but the conditions under which an appeal can be made from the lower courts to the House have become closely defined since 1876. The **Appellate Jurisdiction Act 1876** was passed to regulate how the House hears appeals. In addition to that Act and later statutory provisions, the House regulates its own work through its standing orders and practice directions.

Leave to appeal

For every civil appeal from England, Wales and Northern Ireland, leave to appeal (permission for a case to be heard by the House of Lords) must be granted by the court appealed from or, more usually, by the House itself. Most civil appeals from Scotland do not require leave. Criminal appeals from England, Wales and Northern Ireland not only require leave but also a certificate from the court appealed from setting out that a point of law of general public importance is involved and stating what that point is. The House does not hear criminal appeals from Scotland.

A party (the petitioner) seeks leave to appeal by petition (all judicial business is conducted by petition to the House). Petitions are referred to an Appeal Committee of three Law Lords (see below). The Committee's decision to allow or refuse a petition is made depending on whether the case involves a point of law of general public importance that ought to be considered by the House.

The Appeal Committee may ask the other party (the respondent) for their observations on the petition. The Committee works mainly on the basis of written submissions but from time to time there is an oral hearing at which submissions are heard about whether or not to grant leave to appeal. The Law Lords deal with 200 to 250 applications for leave to appeal each year.

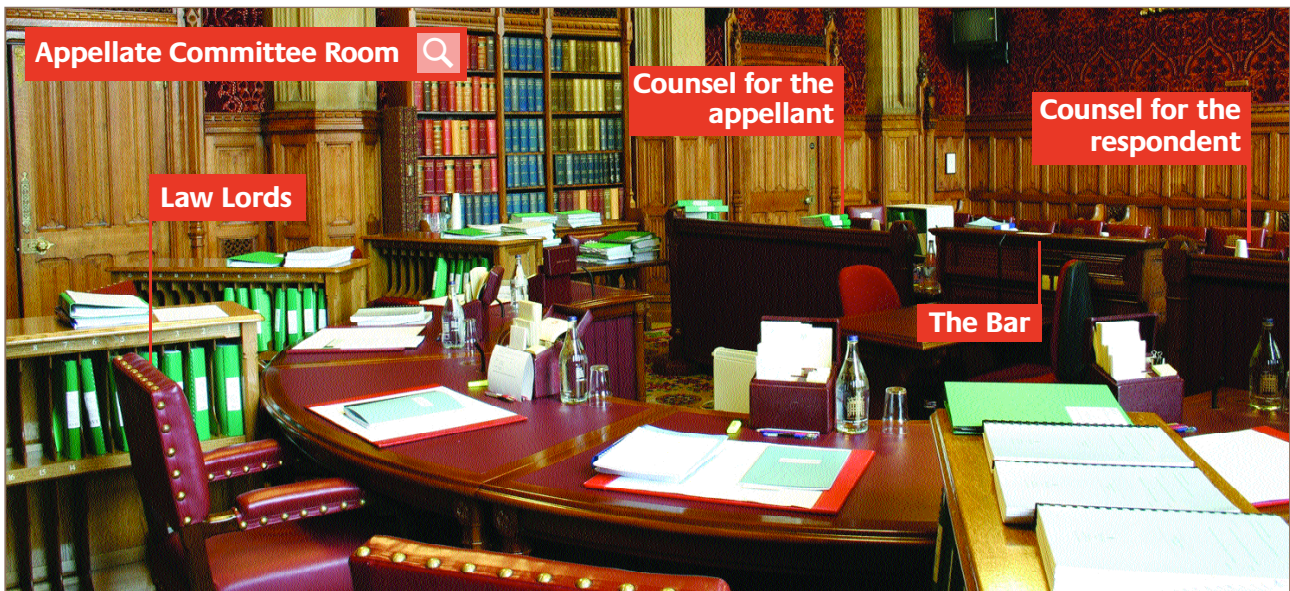
Appeal hearings

When

About 80 to 90 appeals are heard each year. The Law Lords sit from Monday to Thursday throughout the law terms. They hear appeals on days when the House of Lords is sitting but also during the parliamentary recess, prorogation and even (by special dispensation from the Queen) during a dissolution.

Where

Before the Second World War, the Law Lords used to hear appeals each day in the Chamber before public business began at 4.15pm. When the Commons was bombed in the Second World War MPs sat in the Lords Chamber and the Lords sat in the Queen's Robing Room. The Law Lords moved temporarily to a committee room to escape the noise of the building repairs. They were constituted into an **Appellate Committee** for this purpose, which first met on 26 May 1948.



The experiment proved so successful that the arrangement continued after the repairs had been completed. Today the Law Lords may occasionally hear appeals sitting as the House, in the Chamber, but most are heard by an Appellate Committee sitting in a committee room.

How

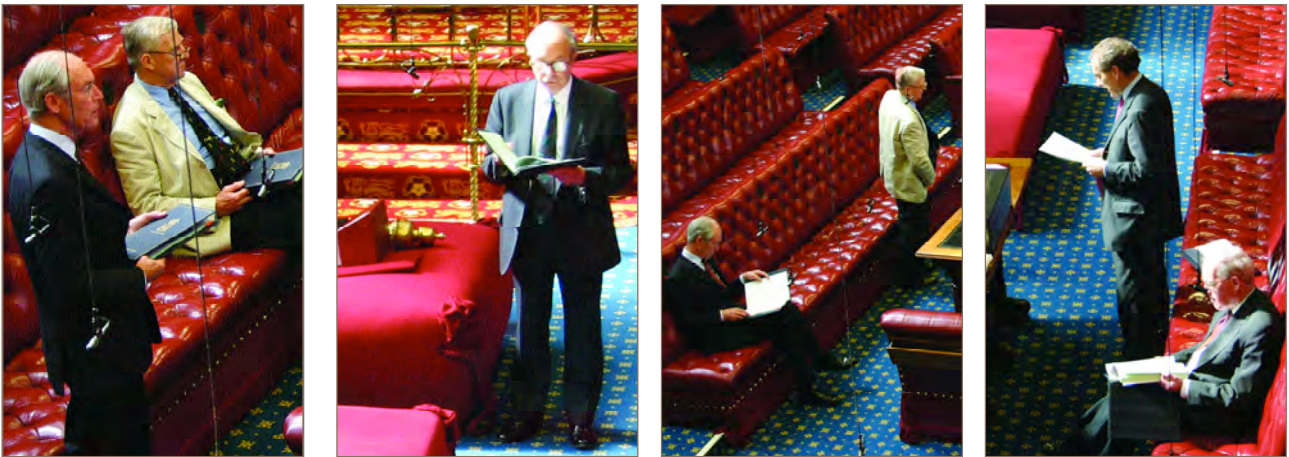
An Appellate Committee usually consists of five Law Lords (but sometimes seven or nine). Proceedings are much less formal than in the lower courts. The five Law Lords sit round a horseshoe table and the senior Law Lord present acts as chairman. They do not wear robes. Counsel appear in wig and gown at the Bar across the centre of the room, at which stands a lectern. Counsel for the appellant is heard first, then counsel for the respondent and finally counsel for the appellant is heard in reply. There are frequent questions from the Law Lords as arguments are developed and challenged. The length of hearing varies but the average is two and a half days.

Appellate Committee hearings are open to the public but, like other courts, are not televised. A notice at Cromwell Green Entrance shows what judicial business is going on each day: ask a visitor assistant for directions.

Judgment

Judgment is always given at a sitting in the House. Sittings for judgment are constitutionally proper meetings of the House but only the Law Lords take part in judgments, although any Member of the House may attend. This serves as a reminder that it is the High Court of Parliament that determines appeals. Judgment is given at 9.45am on Wednesdays a few weeks after the hearing. Each Law Lord who heard the appeal, starting with the senior, rises to state how he would dispose of the appeal.

The Law Lords' speeches are called 'opinions' and are the equivalent of a judge's reasoned judgment in the courts below. The Law Lords stopped reading out their opinions in full in 1963 and now just indicate briefly how they would dispose of the appeal, referring to a prepared speech. Copies of these are available to all those attending and the full text is posted on the judicial pages at www.parliament.uk/lords immediately after judgment. Every word of an opinion is the Law Lord's own—no one else is involved in the drafting.



The Law Lords giving judgments in the Chamber.

Once all of the Law Lords on the Appellate Committee have given their opinion, the Law Lord sitting on the Woolsack as Speaker (i.e. the senior Law Lord present) puts the question to the House: 'That the report from the Appellate Committee be agreed to.' He then puts further questions to dispose of the appeal. A judgment order based on the questions is drawn up and given to the relevant parties.

For enquiries about the judicial work of the House contact:

✉ Judicial Office, House of Lords, London SW1A 0PW

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🌐 www.parliament.uk/lords for details of:

- judicial business, hearings and judgments
- the Law Lords
- information on the judicial work of the House
- the Standing Orders and practice directions for civil and criminal appeals
- all Law Lords' opinions and judgment on appeals since 1996.