

SUCCESSION TO THE CROWN BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Succession to the Crown Bill as introduced in the House of Commons on 13 December 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 Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Succession to the Crown Bill makes three changes to the law governing the succession to the Crown. It ends the system of male preference primogeniture under which a younger son displaces an elder daughter in the line of succession.
4. The Bill also removes the statutory provisions under which anyone who marries a Roman Catholic loses their place in the line of succession.
5. Thirdly, the Bill repeals the Royal Marriages Act 1772, which (with some exceptions) makes void the marriage of any of the descendants of George II who fails to obtain the Monarch's permission prior to their marriage. The Act probably applies to several hundred people, many of whom will be unaware of the Act or its impact on the validity of their marriages. It was passed in haste as a result of King George III's disapproval of the marriages of two of his brothers; it was highly controversial when passed and it has been the subject of considerable criticism since then. The 1772 Act is replaced with a provision requiring the consent of the Monarch to the marriage of any of the six people nearest in line to the Crown, rather than *anyone* in the line of succession as at present; and providing that if such a person marries without consent they and their descendants will lose their place in the line of succession (at present, their marriage would be void).

BACKGROUND

6. The Prime Minister announced at the Commonwealth Heads of Government Meeting in Perth on 28 October 2011 that, with the agreement of the fifteen other Commonwealth Realms of which Her Majesty is also Head of State, the United Kingdom would change the rules of royal succession to end the system of male preference primogeniture and the bar on those who marry Roman Catholics from succeeding to the Throne. At that meeting, the Prime Minister said:

“ Firstly, we will end the male primogeniture rule, so that in future the order of succession should be determined simply by order of birth....”

[...]

“Second, we have agreed to scrap the rule which says that no-one who marries a Roman Catholic can become monarch.”

7. The third element, on consent to royal marriages, was not mentioned in the Perth agreement, but had been referred to by the Prime Minister in an invitation to the Heads of Government of the Commonwealth Realms to consider issues relating to succession.
8. The Realms agreed to work together to bring forward the necessary measures and enable them to be effected simultaneously. The Government of New Zealand agreed to coordinate interaction between all the sixteen Commonwealth Realms.
9. The United Kingdom has worked closely with the Government of New Zealand to ensure that all the Realms are satisfied with the proposed changes.
10. It was agreed that the United Kingdom would be the first to draft legislation, but that this would not be introduced until the Government had secured the agreement of the other Commonwealth Realms to the terms of the Bill, and would not be commenced until the appropriate domestic arrangements were in place in the other Commonwealth Realms.
11. On 2 December 2012 the Government received final agreement in writing from the Prime Ministers and Cabinet Secretaries of all the other fifteen Commonwealth Realms, regarding all three elements in the reform of the rules governing royal succession.

TERRITORIAL EXTENT

12. The Bill extends to the whole United Kingdom.
13. The content of this Bill relates to reserved matters and will not need the consent of the devolved legislatures; nevertheless, the Devolved Administrations, Crown Dependencies and British Overseas Territories have all been kept informed throughout the drafting process.
14. The Bill has no provision on extent but it will extend to the Crown Dependencies and British Overseas Territories by necessary implication. This follows the precedent of other Acts affecting the Sovereign, such as the Accession Declaration Act 1910 and the Regency Acts of 1937, 1943 and 1953.

FAST-TRACK LEGISLATION

15. The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards, 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.¹

Why is fast-tracking necessary?

16. The Government promised at the Commonwealth Heads of Government Meeting in Perth on 28 October 2011 that the United Kingdom would be the first Realm of which Her Majesty is Head of State to introduce legislation to change the laws of succession. The introduction of this legislation was dependent on receiving the written consent of each Realm that they were in a position to take any steps necessary to make the same changes in their own country.
17. Agreeing to the content of the Bill has required much effort on the part of the Realms' Governments, ably coordinated by New Zealand. In the Government's view it is now incumbent on the United Kingdom to act quickly to introduce legislation which accords with what has been agreed. Moreover, following the recent announcement that the Duchess of Cambridge is pregnant, the Government believes that there is a general consensus that the law should be changed as soon as possible.
18. It is of fundamental importance for the Government to take the first step and pass this legislation, although it will not be commenced until the other Commonwealth Realms have put in place the changes which are necessary for them to implement the Perth Agreement.

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

19. Clause 1 of the Bill makes provision for succession to the Crown not to depend on gender and is of the highest priority in the current circumstances. However, it is desirable to fast-track all elements of the Bill because each element impacts on the laws of succession and should in the Government's view be brought into force simultaneously.

What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?

20. The Government could not foresee the precise date when all Realms would provide their consent to introduction, but this point has now been reached. This has meant that the Bill has been introduced relatively late in the parliamentary session, which has necessarily restricted the ability to schedule time for parliamentary scrutiny. The principles behind the Bill have been in the public domain for some time and have attracted considerable Parliamentary and other debate – the vast majority of which, in the Government's view, has been supportive across the political parties. The Government believes that a broad consensus has been reached on the content of the Bill.

¹ House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I, para. 186

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

21. There has been a long period of consultation with the Realms both leading up to the Perth Agreement and latterly to agree that the Bill provides an appropriate framework for changes to the laws of succession across the Commonwealth Realms. In addition, the Government has taken steps to engage with various interested parties including religious organisations, the devolved administrations, the British Overseas Territories and Crown Dependencies.

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?

22. The Bill does not include a sunset clause as it will form part of the United Kingdom's enduring constitutional settlement.

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

23. The resulting Act will form part of the United Kingdom's enduring constitutional settlement and therefore there are no mechanisms for post-legislative scrutiny and review, whose main purpose is to ensure the effective implementation of legislation. The Government considers that this is not appropriate in this case.

Has an assessment been made as to whether existing legislation is sufficient to deal with any or all the issues in question?

24. Existing legislation is not sufficient to deal with the issues covered in this Bill.

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

25. The Government is grateful to the Political and Constitutional Reform Committee for its consideration of issues relating to the rules of royal succession, and for its Report on this matter published on 7 December 2011².

COMMENTARY ON CLAUSES

Clause 1: Succession to the Crown not to depend on gender

26. Clause 1 provides that the gender of a person who was born after the Perth Agreement on 28 October 2011 will have no relevance when determining succession to the Throne. At present, so far as the gender of the Sovereign is concerned, succession is governed by common law rules which largely follow the feudal rules of hereditary descent that apply to land. The Crown passes lineally to the issue of the reigning monarch in birth order, but subject to male preference over females. An effect of the proposed change is that if the Duke and Duchess of Cambridge were to have a daughter and then a son, the daughter would precede the son in the line of succession. The words "(whenever born)" make it clear that subsection (1) applies even where the "other person" was born on or before 28 October 2011.

² <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpolcon/1615/1615.pdf>

Clause 2: Removal of disqualification arising from marriage to a Roman Catholic

27. *Subsection (1)* provides that a person will not be disqualified from succeeding to the Crown or from being the Monarch due to their marriage to a Roman Catholic. The current prohibition dates from the Bill of Rights and the Act of Settlement at the end of the 17th and beginning of the 18th centuries. There is no comparable statutory provision about any other religion. The prohibition on the monarch being a Roman Catholic is not changed by the Bill.
28. *Subsection (2)* provides that subsection (1) applies to marriages contracted both prior to this section being brought into force and after. This will mean that people in the present line of succession who lost their places in it because of their marriages to Roman Catholics will regain their places. However, this does not affect anyone with a realistic prospect of succeeding to the Throne.

Clause 3: Consent of Sovereign required to certain Royal Marriages

29. *Subsection (1)* provides that any of the first six people in the line of succession to the Crown must obtain the consent of Her Majesty prior to their marriage. This effects a substantial decrease from the number of people affected by the Royal Marriages Act 1772.
30. *Subsection (2)* provides that such consent must be signified under the Great Seal of the United Kingdom, declared in Council and recorded in the books of the Privy Council. This is similar to the arrangements in the 1772 Act.
31. *Subsection (3)* provides that a failure to obtain consent as described in subsection (1) will lead to the disqualification of the person marrying and their descendants from the line of succession. Under the 1772 Act the marriage of a person who marries without consent is void. *Subsection (4)* repeals the 1772 Act.
32. *Subsection (5)* provides that marriages made void under the 1772 Act are not to be regarded as invalid if four conditions apply: (a) the parties involved were not among the first six people next in line to the Throne; (b) the parties did not seek consent to the marriage under section 1 of the 1772 Act or give 12 months' notice to the Privy Council prior to their marriage, without consent of the Sovereign, under the exception in section 2 of the Act; (c) it was reasonable for the parties involved not to be aware that they were caught by the Act and, (d) no one took action on the basis that the marriage was void prior to this section coming into force.
33. *Subsection (6)* provides that subsection (5) applies for all purposes except those relating to the succession to the Crown. The exception means that the validity of the descent of the Crown from King George II down to the present day is not to be affected by the changes.

Clause 4: Consequential amendments etc

34. *Subsection (1)* gives effect to the Schedule which deals with consequential amendments.
35. *Subsection (2)* provides that references in legislation to those parts of the Bill of Rights and the Act of Settlement which deal with the succession to the Crown are to be read in conjunction with this Bill.
36. *Subsection (3)* provides that Article II of the Union with Scotland Act 1706, Article II of the Union with England Act 1707, Article Second of the Union with Ireland Act 1800 and Article Second of the Act of Union (Ireland) 1800 are subject to the provisions in this Bill. All four

of these Acts cover the succession to the Crown, the first two referring among other things to the prohibition relating to marriage to a Roman Catholic and the second two referring to succession according to existing laws and to the terms of union between England and Scotland.

Schedule: Consequential Amendments

37. *Paragraph 1* amends the Treason Act 1351, which includes among the acts which constitute treason compassing the death of the King's eldest son and heir and violating the wife of the eldest son and heir. These references need to be amended as the eldest son and the heir will not necessarily be the same person.
38. *Paragraphs 2 and 3* amend the Bill of Rights and the Act of Settlement. The provisions remove all references to marriage to a Roman Catholic as a bar on succession to the Throne. This paragraph is to be read in conjunction with clause 2.
39. *Paragraph 4* amends section 3(2) of the Regency Act 1937, which lists the persons disqualified from being Regent. The Bill's provision in clause 3 that a person who is one of the first six in line to succeed and who fails to obtain the consent of Her Majesty before marrying loses their place in the line is to be an additional ground for disqualification from being Regent.
40. *Paragraph 5* provides that paragraphs 2 and 3 refer to marriages occurring before the date of the commencement of clause 2 where the relevant person is alive at that date.

Clause 5: Commencement and short title

41. *Subsection (1)* provides that section 5 of the Bill will come into force on Royal Assent.
42. *Subsections (2) and (3)* provide that other provisions of the Bill are to be brought into force by means of orders made by the Lord President of the Council. The government expects to bring the rest of the Bill into force at the same time as the other Realms bring into force any changes to their legislation or other changes which are necessary for them to implement the Perth agreement. There is power to specify the time of day of commencement. Assuming that the other Realms make the same provision, this will enable the changes on succession to be brought into force at the same time – but at different local times – in all sixteen Commonwealth Realms. *Subsection (3)* allows for flexibility in commencement should unforeseen circumstances arise.

FINANCIAL EFFECTS

43. It is considered that the provisions contained within the Bill will have no substantial effect on public expenditure.

PUBLIC SERVICE MANPOWER

44. The provisions contained within the Bill have no substantial effect on public service manpower.

IMPACT ASSESSMENT

45. The provisions contained within the Bill do not require an Impact Assessment.

EUROPEAN CONVENTION ON HUMAN RIGHTS

46. 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).

47. The Deputy Prime Minister has made the following statement –

“In my view the provisions of the Succession to the Crown Bill are compatible with the Convention rights.”

Clauses 1 and 2

48. The Government does not consider that any Convention right is engaged by clause 1 or clause 2. The right to succeed to a throne does not appear to have been litigated in the Strasbourg courts and the Government’s view is that they would hold that decisions on a state’s constitutional arrangements such as succession were a matter for that state and not for them. This would be in line with the Commission’s decision in *Moureaux v Belgium* (App. No. 9267/81) (on Article 3 of Protocol 1) and with the Grand Chamber’s comments on the wide margin of appreciation which states have in constitutional matters, in *The Former King of Greece v Greece* (App. No. 25701/94) (on Article 1 of Protocol 1).

49. In the Government’s view the right to succeed to the Crown would not be held to be a property right under Article 1 of Protocol 1, an aspect of family life under Article 8 or a civil right under Article 6, but a public right to the office of head of state, which is governed by statute. The right to the Crown is not a private right which falls within the types of inherent rights with which the Convention is concerned.

50. So far as Article 1 of Protocol 1 is concerned, although there are historical links between kingship and the ownership of land and the Crown brings with it the right to property, the Government does not consider that the Strasbourg courts would say that the right to the Crown itself was a property right but a right related to the constitution. Similarly, although inheritance rights can be connected to family life under Article 8 and the right of succession to the Crown can be called an inheritance right, it is a right to inherit not property but the office of head of state. Such a right cannot in the Government’s view be considered to relate to the state’s Article 8 obligation “to allow everyone to lead a normal family life”. Finally, the Commission has held that a prohibition on running for president did not concern civil rights under Article 6; nor did the choice of head of state engage Article 3 of Protocol 1 on the right to free elections (*Habsburg-Lothringen v Austria* (App. No. 15344/89)).

51. Even if the Strasbourg Courts accepted that Article 1 of Protocol 1 or Article 8 was engaged, perhaps because of the associated entitlement to property, the Government has no doubt that they would hold that any interference with a right was justified, since the removal of provisions which are discriminatory on the grounds of sex and religion would be in the public interest and proportionate to the aim pursued (Article 1 of Protocol 1) and necessary in a democratic society for the protection of the rights and freedoms of others (Article 8). In both cases the Government considers that the Courts would recognise a wide margin of appreciation where a state was making a change to its constitutional system involving the succession to its monarchy.

52. The Government takes the same view on the outcome of a claim under Article 14 (discrimination) linked with Article 8 or Article 1 of Protocol 1, if it was held that one of those articles was engaged. The claim would have to be on the basis that male-preference

primogeniture and the bar on succeeding to the throne if a person marries a Roman Catholic are justified and should not be changed. In the Government's view the Strasbourg courts would say that a state had a wide margin of appreciation when making changes to its constitutional arrangements and would accept that there was an objective and reasonable justification for clauses 1 and 2: the removal of discriminatory provisions is a legitimate aim and it is achieved proportionately.

Clause 3

53. Clause 3(1) provides that a person who is one of the six persons next in the line of succession to the Crown must obtain the consent of Her Majesty before marrying. This engages Article 12 on "the right to marry ... , according to the national laws governing the exercise of this right." The Court has said that the phrase "according to the national laws" gives states a wide margin of appreciation, and they may choose what rules on capacity and formal requirements to marriage to lay down, provided that they do not "deprive a person or a category of persons completely of the right to marry" or apply arbitrary standards (*Van Oosterwijk v Belgium* (1980) 2 EHRR 557). In the Government's view there is a public interest in having special provisions on consent to marriage for members of the Royal Family. Furthermore, because the sanction is no longer to be that a marriage entered into without consent is to be void, as is the position under the Royal Marriages Act 1772, but relates only to the order of succession to the throne, there is in the Government's view no impairment of the very essence of the right to marry. The first six people in the line of succession are not prevented from marrying but only lose their place in that line should they do so without the Sovereign's consent.
54. The Government believes that the same arguments would apply if a member of the Royal Family were to challenge the provisions under Article 14, claiming discrimination on grounds of birth or of another status, ie membership of the Royal Family. There is an objective justification for the provision, in that requiring the sovereign to consent to the marriage of those closest in line to the throne is a legitimate aim, and limiting the sanction for breach to removal from the line of succession rather than invalidating the marriage is proportionate. Other European monarchies also have requirements of consent to the marriage of members of the Royal Family.
55. It should, of course, be noted that the likelihood of a member of the Royal Family bringing a claim in relation to any provision of the Bill must be extremely remote.

COMMENCEMENT

56. The substantive provisions of the Bill will come into force on such day and at such time as is specified by order made by the Lord President of the Council.

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These notes refer to the Succession to the Crown Bill as introduced in the House of Commons on 13 December 2012 [Bill 110]

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