

SUCCESSION TO THE CROWN ACT 2013

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Succession to the Crown Act 2013, which received Royal Assent on 25 April 2013. They have been prepared by the Cabinet Office in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Succession to the Crown Act 2013 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 Act also removes the statutory provisions under which anyone who marries a Roman Catholic loses their place in the line of succession.
5. Thirdly, the Act 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 Sovereign's permission prior to their marriage.

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 Royal Marriages Act 1772 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 Sovereign 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 from that marriage will lose their place in the line of succession (at present, their marriage would be void and their descendants would lose their place).

9. 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.
10. The United Kingdom has worked closely with the Government of New Zealand to ensure that all the Realms are satisfied with the proposed changes.
11. 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 it would not be commenced until any appropriate domestic arrangements were in place in the other Commonwealth Realms.
12. 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

13. The Act extends to the whole of the United Kingdom.
14. The content of this Act relates to reserved matters and does not need the consent of the devolved legislatures; nevertheless, the Devolved Administrations, Crown Dependencies and British Overseas Territories were all kept informed throughout the drafting process.
15. The Act 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.

COMMENTARY ON SECTIONS

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

16. **Section 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 Sovereign 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.

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

17. **Subsection (1)** provides that a person will not be disqualified from succeeding to the Crown or from being the Sovereign 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 Sovereign being a Roman Catholic is not changed by the Act.

18. *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.

Section 3: Consent of Sovereign required to certain Royal Marriages

19. *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. The recent practice under that Act is for Ministers to be informed of a proposed marriage of a person close in the succession to the Throne, and to have the opportunity of giving formal advice to Her Majesty as to whether consent should be given. The Government expects this practice to continue.
20. *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.
21. *Subsection (3)* provides that a failure to obtain consent as described in subsection (1) will lead to the disqualification of the person marrying without consent as well as any descendants from that particular marriage. Under the 1772 Act the marriage of a person who marries without consent was void. *Subsection (4)* repeals the 1772 Act.
22. *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.
23. *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.

Section 4: Consequential amendments etc

24. *Subsection (1)* gives effect to the Schedule which deals with consequential amendments.
25. *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 Act.
26. *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 Act. 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

27. *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.

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28. *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 section 2.
29. *Paragraph 4* amends section 3(2) of the Regency Act 1937, which lists the persons disqualified from being Regent. The Act's provision in section 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.
30. *Paragraph 5* provides that paragraphs 2 and 3 refer to marriages occurring before the date of the commencement of section 2 where the relevant person is alive at that date.

Section 5: Commencement and short title

31. *Subsection (1)* provides that section 5 of the Act will come into force on Royal Assent.
32. *Subsections (2) and (3)* provide that the other provisions of the Act are to be brought into force by means of an order or orders made by the Lord President of the Council. There is power to specify the time of day of commencement and to appoint different days and times for different purposes.

COMMENCEMENT

33. The substantive provisions of the Act will come into force on such day and at such time as is specified by order made by the Lord President of the Council.
34. The Government expects to bring these provisions into force at the same time – but at different local times – 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. Section 5(3) allows for flexibility in commencement should unforeseen circumstances arise.
35. Some Commonwealth Realms have decided that they do not need to legislate as the changes made by the Act will have effect in their countries automatically. Other Realms have legislated or will legislate to ensure that the changes to the rules on royal succession take effect in their countries.
36. The Government has undertaken to inform Parliament when the commencement order or orders are made by the Lord President of the Council.

HANSARD

37. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard Reference</i>
House of Commons		
Introduction	13 th December 2012	Vol. 555 Col. 471
Commons consideration of time	22 January 2013	Vol.557 Cols 186 - 207
Second Reading	22 nd January 2013	Vol. 557 Cols. 207 - 257
Committee	22 nd January 2013	Vol. 557 Cols. 257 - 284
Report	28 th January 2013	Vol. 557 Cols. 695 - 729
Third Reading	28 th January 2013	Vol. 557 Cols. 729 - 739
House of Lords		

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<i>Stage</i>	<i>Date</i>	<i>Hansard Reference</i>
Introduction	29 th January 2013	Vol. 742 Col. 1439
Second Reading	14 th February 2013	Vol. 743 Cols. 782 - 838
Stage	Date	Hansard Reference
Committee	28 th February 2013	Vol. 743 Cols. 1185 1196 and 1212 - 1264
Report	13 th March 2013	Vol. 744 Cols. 267 - 311
Royal Assent	25 th April 2013	Lords Hansard: Vol. 744 Col. 1563
		Commons Hansard: Vol. 561 Col. 1068