

Research Briefing

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Counsellors of State Bill 2022-23



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Attribution: Counsellors of State - PA Images / Alamy Stock (The Earl of Wessex and the Princess Royal, as Counsellors of State, receive Her Excellency the Ambassador of San Marino, Contessa Marina Meneghetti de Camillo, who presented her Letter of Credence at Buckingham Palace in February 2002)

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Summary

In response to a Message from His Majesty King Charles III on 14 November 2022, the [Counsellors of State Bill \[HL\] 2022-23](#) was introduced in the House of Lords on 15 November.

The Bill – which has been fast-tracked – received its second reading in the Lords on 21 November and passed its remaining Lords stages on 23 November. It was then sent to the Commons, where all its remaining stages are due to take place on Thursday 1 December.

The Counsellors of State Bill will modify the Regency Acts 1937 to 1953 by adding two specified members of the Royal Family to the “pool” of Counsellors of State to whom Royal functions can be delegated. These are His Royal Highness The Earl of Wessex and Forfar (Prince Edward) and Her Royal Highness The Princess Royal (Princess Anne).

Royal functions are usually delegated via Letters Patent if the Monarch is absent from the United Kingdom, ie on an overseas visit, or is unwell. Such functions can include holding Privy Council meetings, accepting diplomatic credentials or granting Royal Assent to legislation.

The Bill will not make any other changes to the existing provision for Counsellors of State, who are the Sovereign’s spouse and the next four in the line of succession.

The text of the Bill and its [Explanatory Notes](#) are available on the [Bill pages](#) on the Parliamentary website.

1 Background

As the United Kingdom’s head of state, the Monarch carries out certain functions described in statute or in accordance with ministerial advice.¹ These include:

- Granting Royal Assent to Acts of the UK, Scottish and Welsh Parliaments, and of the Northern Ireland Assembly (primary legislation)
- Assenting to Orders in Council (secondary legislation)
- Approving certain public appointments by the King’s personal signature (known as the “Royal Sign Manual”)
- Approving the appointment of Ministers of the Crown, sometimes via personal delivery of their seals of office
- Authorising the affixing of the Great Seal of the Realm (a symbol of Royal authority) to certain documents: for example, Royal Proclamations (which might dissolve Parliament) or Letters Patent (which can confer peerages or ratify a treaty).²

If the Monarch is unable to perform any of these functions personally, for example if the King is ill or absent from the UK, then as the Bill’s Explanatory Notes state, it is “essential to ensure that these functions can continue to be performed in a timely way” so that the “machinery of government” can continue.³

Other activities carried out by working members of the Royal Family, such as visits or a speech, do not require statutory or legal authority.

Prior to the [Regency Act 1937](#), Royal authority was generally delegated under the [Royal Prerogative](#) rather than via legislation.⁴

¹ The King also fulfils Royal functions in relation to the Channel Islands and the Isle of Man, as well as the British Overseas Territories.

² See Rodney Brazier, [Royal incapacity and constitutional continuity: The regent and counsellors of state](#), Cambridge Law Journal 64:2, July 2005, p352. See also Commons Library Briefing Paper CBP8885, [The Crown and the constitution](#).

³ [Explanatory Notes](#), p2.

⁴ See Commons Library Briefing Paper CBP9374, [Regency and Counsellors of State](#), pp9-10.

1.1

The Regency Acts 1937 – 1953

Following difficulties which arose in relation to the exercise of Royal functions during the illness of King George V in 1928 and 1936, Parliament passed the Regency Act 1937 following a Message from King George VI.⁵ Messages are written communications from the Monarch which usually relate to the exercise of Royal authority or prerogatives.⁶

[Section 6\(1\)](#) of the 1937 Act provides for the Monarch to delegate Royal functions to Counsellors of State “in order to prevent delay or difficulty in the dispatch of public business” in two circumstances:

1. “illness not amounting to such infirmity of mind or body as is mentioned in section two of this Act” (which deals with a Regency) and
2. “absence or intended absence from the United Kingdom”.

The delegation is made by the Monarch via Letters Patent (a legal instrument or document) for the period of the illness or absence. The Monarch may also revoke or vary the delegation by Letters Patent.⁷

“Royal functions” are defined in the 1937 Act as including “all powers and authorities belonging to the crown, whether prerogative or statutory, together with the receiving of any homage required to be done to his majesty”.⁸ However, section 6(1) expressly prohibits the following Royal functions from being delegated to Counsellors of State:

- dissolving Parliament otherwise than on the express instructions of the Sovereign;
- granting any rank, title or dignity of the peerage.⁹

The five Counsellors of State are the Sovereign’s spouse and “the four persons who [...] are next in the line of succession to the Crown”.¹⁰ They must be aged 21 before they can serve, except the heir to the throne who only has to be 18. This means the current Counsellors are:

- the Queen Consort

⁵ See [HC Deb 26 January 1937 Vol 319 cc766-67](#)

⁶ See Erskine May, [Communications by messages under the sign manual](#).

⁷ These are made public via [The Gazette](#). Any delegation automatically ceases on the Demise of the Crown or if events necessitate a Regency. See [section 6\(5\)](#) of the Regency Act 1937.

⁸ Bishops and archbishops in the Church of England pay homage to the Monarch upon their appointment. See Commons Library Briefing Paper CBP8886, [The relationship between church and state in the United Kingdom](#), p21.

⁹ The Royal Family’s website states that Commonwealth matters (ie the appointment of a Governor-General) and the appointment of a UK Prime Minister are functions that [may not be delegated](#). This is not a statutory restriction but one of convention.

¹⁰ See Royal Family website, [Succession](#).

- the Prince of Wales (Prince William)
- the Duke of Sussex (Prince Harry)
- the Duke of York (Prince Andrew)
- Princess Beatrice.¹¹

As the five Counsellors of State are not specified by name, they may change as a consequence of changes in the line of succession. For example, upon the death of Queen Elizabeth II, the former Prince of Wales ceased being a Counsellor because he became King, while his Consort, Queen Camilla, became a Counsellor for the first time as she was now the Monarch's spouse.¹²

Any person disqualified from acting as Regent is also disqualified from acting as a Counsellor of State. The disqualifying factors are:

- not being a British subject of full age and domiciled in some part of the United Kingdom;
- being incapable of inheriting, possessing and enjoying the Crown as a result of being a Roman Catholic;¹³ or
- being disqualified under section 3(3) of the [Succession to Crown Act 2013](#) from succeeding to the Crown as a result of marrying without the consent of His Majesty.

The concept of “domicile” is derived from common law. As the Bill's Explanatory Notes explain:

Everyone receives a domicile at birth; this is known as a ‘domicile of origin’. Every independent person can at any time change their domicile of origin and acquire a ‘domicile of choice’ by the fact of residing in a country other than that of their domicile of origin with the intention of continuing to reside there indefinitely. There is a strong presumption against a change from a domicile of origin to a domicile of choice.¹⁴

On this basis, the Duke of Sussex remains a Counsellor of State as his “domicile of origin” remains England & Wales despite him residing in the United States. If his domicile were to change, then he would be replaced by the next person of full age in the line of succession, which is currently Princess Eugenie.¹⁵

¹¹ See Royal Family website, [Counsellors of State](#).

¹² There were only four Counsellors of State during the last year of Queen Elizabeth's reign as her Consort, the Duke of Edinburgh, had died in April 2021.

¹³ See section 2 of the [Act of Settlement 1700](#).

¹⁴ [Explanatory Notes](#), p3 fn2. There is no UK domicile, only that of Scotland, England & Wales and Northern Ireland, thus the words “some part of the United Kingdom” in the 1937 Act (see [HL Deb 16 Feb 1937 Vol 104 c165](#)).

¹⁵ Craig Prescott, [Harry and Meghan, Regency, Counsellors of State and a “Slimmed Down” Royal Family](#), UK Constitutional Law Association blog, 21 January 2020.

Regency Act 1943

The [Regency Act 1943](#) added the discretionary provision that if it “appears to the Sovereign” that any eligible Counsellor will be “absent from the United Kingdom or intends to be so absent during the whole or any part of the period of such delegation”, then Letters Patent “may make provision” for excepting that person from among those acting as Counsellors of State.¹⁶

This took account of an anomaly under the 1937 Act whereby the then Queen Elizabeth remained a Counsellor of State even when she was accompanying her husband, King George VI, on an overseas tour. The 1937 Act had made no provision for any other individual to act as a substitute for an absent Counsellor, nor did it take account of a Counsellor being ill or “otherwise not available for the discharge of a Counsellor’s functions”.¹⁷ One Counsellor of State, Viscount Lascelles, was at that time a prisoner of war in Germany.

The Duke of Sussex is currently excepted from acting as a Counsellor of State under this provision.

Regency Act 1953

The [Regency Act 1953](#) dealt with the fact that Queen Elizabeth, The Queen Mother, ceased being a Counsellor of State following the death of her husband, George VI, in February 1952.

[Section 3](#) of the Act therefore allowed Queen Elizabeth The Queen Mother to act. As the Home Secretary argued in 1953, it:

would be most unfortunate that the Queen Mother’s long experience and wisdom should not be available to support those members of the Royal Family who would become Counsellors of State.¹⁸

On 20 November 1953, the Queen Mother once again acted as a Counsellor of State, and indeed did so frequently for the rest of her life. This provision of the 1953 Act became spent upon her death in March 2002.

The three Regency Acts are to “be construed as one” or read together.¹⁹

1.2

How do Counsellors of State act?

When the Monarch wishes to delegate Royal functions to Counsellors of State, they are delegated to **all** Counsellors of State (unless any Counsellors are

¹⁶ See [section 1](#) of the Regency Act 1943.

¹⁷ See Charles D’Olivier Farran, [The Regency Act 1953](#), *Modern Law Review* 17:2, 1954, p147.

¹⁸ [HC Deb 11 Nov 1953 Vol 520 c956](#)

¹⁹ See [section 4\(1\)](#) of the Regency Act 1953. See also Rodney Brazier, [Royal incapacity and constitutional continuity: The regent and counsellors of state](#) for a full account of all three Regency Acts.

excepted). Section 6(3) of the 1937 Act provides that any delegated functions must be:

exercised jointly by the Counsellors of State, or any such number of them as may be specified in the Letters Patent, and subject to such conditions, if any, as may be prescribed.

This means that any delegation of functions via Letters Patent creates a “pool” of Counsellors of State while usually specifying that Counsellors are required to act in pairs.²⁰

An example of this was seen in May 2022, when Buckingham Palace announced that the late Queen Elizabeth II would be unable to attend the State Opening of Parliament as she was experiencing “episodic mobility problems”.²¹ The Queen therefore delegated the authority to open Parliament. Letters Patent noted that under the Regency Acts, the Counsellors of State at that time were the then Prince of Wales (Prince Charles), the then Duke of Cambridge (Prince William), the Duke of Sussex (Prince Harry) and the Duke of York (Prince Andrew). They went on to state that:

by virtue of the said enactments we do hereby delegate to the said counsellors of state (excepting the Duke of Sussex while absent from the United Kingdom) full power and authority to open the new session of Parliament on the tenth day of May in the seventy-first year of our reign with the cause of summons [the Queen’s Speech] being declared by one counsellor of state in the presence of another.²²

The Queen’s Speech was declared by the then Prince of Wales in the presence of his son, Prince William.²³

During Lords consideration of the Counsellors of State Bill, Lord True, the Lord Privy Seal and Leader of the House of Lords, observed that in the past Counsellors had:

approved Privy Counsellor appointments, amended charters, agreed Channel Island orders, agreed university orders, approved statutory instruments and, [in] an unusual task which falls to the Privy Council, closed burial grounds. In 1999 the then Prince of Wales and the Princess Royal convened a Privy Council meeting required to approve a Prorogation of Parliament at the request of Mr Blair while the monarch was unavailable overseas. Counsellors of State can also undertake non-Privy Council business such as [...] receiving the credentials of ambassadors.²⁴

²⁰ [Explanatory Notes](#), p3.

²¹ [Queen to miss state opening of Parliament, says Buckingham Palace](#), Guardian, 9 May 2022.

²² [Warrants under the Royal Sign Manual](#), London Gazette, 27 May 2022.

²³ See Commons Library Briefing Paper CBP9501, [State Opening of Parliament – history and ceremonial](#). This was the only case during Queen Elizabeth’s reign of Counsellors acting on her behalf due to illness rather than her absence from the UK.

²⁴ [HL Deb 21 Nov 2022 Vol 825 c1194 \[Counsellors of State Bill\]](#)

1.3

Proposals for reform

As the Duke of Sussex is excepted from acting as a Counsellor of State and the Duke of York is no longer a working member of the Royal Family,²⁵ constitutional experts have long argued that the “pool” of available Counsellors is too small and ought to be expanded.²⁶ This argument resurfaced following the Accession of King Charles III given the prospect of the Queen Consort (now a Counsellor of State) accompanying the King on overseas visits.²⁷

The question of reform was also raised by Viscount Stansgate (Labour) in the House of Lords. He suggested it was time to consider amending the Regency Acts given the list of Counsellors of State included the Duke of York and the Duke of Sussex, “one of whom has left public life and the other of whom has left the country”.²⁸ In response, Lord True said he could not comment on specific circumstances but observed that “in the past we have seen that the point of accession has proved a useful opportunity to consider the arrangements in place”.²⁹

²⁵ See Royal Family website, [About The Duke of York](#).

²⁶ Craig Prescott, [Harry and Meghan, Regency, Counsellors of State and a “Slimmed Down” Royal Family](#).

²⁷ Craig Prescott, [Why Prince Andrew and Prince Harry can fill in for the King, and how the law might change](#), The Conversation website, 3 November 2022.

²⁸ [HL Deb 24 Oct 2022 Vol 824 cc1285-86 \[Regency Act 1937\]](#)

²⁹ [HL Deb 24 Oct 2022 Vol 824 c1286 \[Regency Act 1937\]](#)

2

Counsellors of State Bill 2022-23

The Counsellors of State Bill will modify the Regency Acts 1937 to 1953 by adding His Royal Highness The Earl of Wessex and Forfar and Her Royal Highness The Princess Royal to the statutory “pool” of persons to whom, acting as Counsellors of State, certain Royal functions can be delegated if the King is unwell or absent from the United Kingdom.

2.1

The King’s Message

On Monday 14 November, the Lord Chamberlain (the senior officer of the Royal Household), Lord Parker of Minsmere, read a Gracious Message from the King to the House of Lords:

To ensure continued efficiency of public business when I am unavailable, such as while I am undertaking official duties overseas, I confirm that I would be most content should Parliament see fit for the number of people who may be called upon to act as Counsellors of State under the terms of the Regency Acts 1937 to 1953 to be increased to include my sister and brother, the Princess Royal and the Earl of Wessex and Forfar, both of whom have previously undertaken this role.³⁰

The Princess Royal (Princess Anne) served as a Counsellor of State between 1971 (when she turned 21) and 2003 (when Prince William replaced her, having turned 21 in June of that year). The Earl of Wessex (Prince Edward) acted between 1985 (when he turned 21) and 2005 (when Prince Harry reached the same age in September of that year).³¹

Jo Churchill MP, the Vice-Chamberlain of the Household, later delivered the King’s Message to the House of Commons, where it was read by the Speaker.³²

Legislation in response to a Message from the Monarch is rare. The last occasion preceded consideration of what became the [Sovereign Grant Act 2011](#).³³ The Regency Acts of 1937, 1943 and 1953 also began with Messages from George VI and Elizabeth II.³⁴

³⁰ [HL Deb 14 Nov 2022 Vol 825 c691 \[Counsellors of State\]](#)

³¹ Princess Anne replaced Prince William of Gloucester while Prince Edward replaced Princess Margaret.

³² [HC Deb 14 Nov 2022 Vol 722 c408 \[Message from His Majesty the King\]](#)

³³ [HC Deb 29 June 2011 Vol 530 c976 \[Message from the Queen\]](#)

³⁴ See [HL Deb 22 Sep 1943 Vol 392 cc263-64](#) and [HL Deb 4 Nov 1953 Vol 184 c27](#). The Regency Act 1943 was introduced in the House of Lords and the Regency Acts of 1937 and 1953 in the Commons.

2.2

The Houses reply

On 15 November, the Leader of the Lords, Lord True, moved:

That an Humble Address be presented to His Majesty to return thanks to His Majesty for His most gracious message regarding the inclusion of Her Royal Highness the Princess Royal and His Royal Highness the Earl of Wessex and Forfar among those who may be called upon to act as Counsellors of State under the terms of the Regency Acts 1937 to 1953, and to assure His Majesty that this House will, without delay, proceed to discuss this important matter and will provide such measures as may appear necessary or expedient for securing the purpose set out by His Majesty.³⁵

The motion was agreed without dissent, and it was ordered that the Address be presented to the King by the Lord Chamberlain.

In the House of Commons, the Chancellor of the Duchy of Lancaster, Oliver Dowden MP, moved a motion for a similar Address which assured the King “that this House will provide such measures as may appear necessary or expedient for securing the purpose set out by His Majesty”.³⁶ The question was put and agreed to.

2.3

The Bill

The Counsellors of State Bill 2022-23 was introduced in the Lords on 15 November 2022.

Rather than increasing the number of those in the line of succession to the Crown eligible to serve as Counsellors of State,³⁷ the Bill provides for the Earl of Wessex and the Princess Royal to serve as Counsellors for the rest of their lives.³⁸ This means they will remain Counsellors when others are replaced. For example, as the children of the Prince and Princess of Wales (Prince George, Princess Charlotte and Prince Louis) reach the age of 21 they will replace Counsellors of State further down the line of succession.³⁹

The Bill only adds two specified members of the Royal Family to the current “pool” of Counsellors of State, it does not remove any existing Counsellors from that pool.

The Bill extends and applies to the whole of the United Kingdom and will extend to the Crown Dependencies and British Overseas Territories by

³⁵ [HL Deb 15 Nov 2022 Vol 825 c769 \[Counsellors of State\]](#)

³⁶ [HC Deb 15 Nov 2022 Vol 722 c524 \[Humble Address\]](#)

³⁷ The Earl of Wessex and The Princess Royal are, respectively, 13th and 16th in the line of succession.

³⁸ This follows the precedent of [section 3](#) of the Regency Act 1953, which added Queen Elizabeth The Queen Mother to the list of Counsellors of State for the duration of her life.

³⁹ See House of Lords Library Briefing, [Counsellors of State Bill \[HL\] HL Bill 66 of 2022-23](#), pp8-9.

necessary implication.⁴⁰ According to the Explanatory Notes, the Crown Dependencies and Overseas Territories were informed of the legislation in advance of its introduction.⁴¹ Although the Bill’s provisions do not affect the Commonwealth Realms, these were also notified.⁴²

The Bill relates to reserved matters and does not therefore require the consent of the Scottish Parliament and Senedd Cymru/Welsh Parliament under the [Sewel Convention](#).⁴³ Nevertheless, the Explanatory Notes state that the devolved administrations were informed of the legislation in advance.⁴⁴

The Government has asked Parliament to expedite the passage of the Bill. The Explanatory Notes state that it is being fast-tracked because:

it is an expedient measure, allowing for additional Counsellors of State to be in place before a delegation to Counsellors is next required (for example should His Majesty need to travel overseas).

The Explanatory Notes also describe the Bill as offering “more certainty and resilience to constitutional arrangements”, adding that it was clear “the existing legislation did not provide the requisite mechanism to expand the number of Counsellors of State”.⁴⁵

The Bill has no financial implications, and the Government considers that the Bill is compatible with the European Convention on Human Rights.⁴⁶ Lord True has also stated that the Bill does not contain provision which, if enacted, would constitute environmental law for the purposes of section 20 of the Environment Act 2021. House of Lords consideration

21 November – second reading

Lord True, the Lord Privy Seal and Leader of the House of Lords, moved the second reading of the Bill in the House of Lords on 21 November 2022. He observed that:

Seven decades ago, Parliament passed the Regency Act 1953 to deliver on Her late Majesty’s wishes [to make the Queen Mother an additional Counsellor of State]. Today, as we bring the Bill before this House, reflecting His Majesty’s

⁴⁰ See Commons Library Briefing Paper CBP8611, [The Crown Dependencies](#), p19 and CBP9583, [The UK Overseas Territories and their Governors](#). This follows the precedent of other Acts affecting the Sovereign, such as the [Accession Declaration Act 1910](#), the Regency Acts of 1937, 1943 and 1953, and the Succession to the Crown Act 2013.

⁴¹ [Explanatory Notes](#), p4.

⁴² The [Commonwealth Realms](#) are independent countries where King Charles III is also head of state. They are Antigua and Barbuda, Australia, The Bahamas, Belize, Canada, Grenada, Jamaica, New Zealand, Papua New Guinea, the Solomon Islands, St Christopher and Nevis, St Lucia, St Vincent and the Grenadines, and Tuvalu.

⁴³ See Commons Library Briefing Paper CBP8883, [Devolution: The Sewel Convention](#). The Northern Ireland Assembly is not currently fully functioning.

⁴⁴ [Explanatory Notes](#), p4.

⁴⁵ [Explanatory Notes](#), p5.

⁴⁶ This statement is required under [section 19\(1\)\(a\)](#) of the Human Rights Act 1998.

wishes, we are guided by precedent in the substantive approach and procedure.⁴⁷

Lord Janvrin (Cross Bench), a former Private Secretary to Queen Elizabeth II, said the addition of two Counsellors of State made “very good practical sense”. “If I may say, when many minds are on football,” he added, “it will give much-needed strength and depth to the bench.”⁴⁸ Viscount Stansgate (Labour) asked if it would “not be better if the Bill provided a sort of updated formula for identifying who can become Counsellors of State depending on circumstances”.⁴⁹

Lord Berkeley (Labour) said the “most important” question was whether the Duke of Sussex and Duke of York should “still be on the list” of Counsellors. “The Bill quite rightly adds two more members”, he added, “so, presumably, it can also exclude two members who, I suggest, are no longer working members.”⁵⁰

Baroness Jones (Green) said she “could not care less” about the Bill, which represented a “ridiculous and crazy” system of government. The sooner, she added, “we have a Scandinavian-style monarchy, the better”.⁵¹ Similarly, Lord Newby (Liberal Democrat) observed that given “the many other pressing issues facing the country, I suggest that we should not be spending a huge amount of time looking at this now”.⁵²

Lord Balfe (Conservative) suggested the Princess of Wales be added to the list of Counsellors of State while Lord Pannick (Cross Bench) urged the Government to “conduct a general review of the provisions of the 1937 Act, as amended, to see whether they are appropriate for the modern world or can be improved”.⁵³

Summing up, Lord True said the Royal Household had confirmed that in practice only “working members of the Royal Family will be called on to act as Counsellors of State” and that the Government was “not persuaded of the necessity” of a wider review of the Regency Acts. He said the Bill as introduced provided “the right balance between giving additional flexibility and maintaining the underlying structure of the original Act”.⁵⁴

⁴⁷ [HL Deb 21 Nov 2022 Vol 825 c1184 \[Counsellors of State Bill\]](#)

⁴⁸ [HL Deb 21 Nov 2022 Vol 825 c1184 \[Counsellors of State Bill\]](#). Lord Newby later continued the footballing analogy by observing: “They were on the bench and had what is normally the great ignominy of being dropped from the squad altogether. Now, at a rather more advanced age, they have been brought back to the squad and definitely strengthen it immeasurably.” And Lord Pannick said it was “a curious feature of the Bill to retain two people on the team sheet who will not play any part in the match.”

⁴⁹ [HL Deb 21 Nov 2022 Vol 825 c1186 \[Counsellors of State Bill\]](#)

⁵⁰ [HL Deb 21 Nov 2022 Vol 825 cc1187-88 \[Counsellors of State Bill\]](#)

⁵¹ [HL Deb 21 Nov 2022 Vol 825 c1188 \[Counsellors of State Bill\]](#)

⁵² [HL Deb 21 Nov 2022 Vol 825 c1192 \[Counsellors of State Bill\]](#)

⁵³ [HL Deb 21 Nov 2022 Vol 825 c1191 \[Counsellors of State Bill\]](#)

⁵⁴ [HL Deb 21 Nov 2022 Vol 825 cc1193-95 \[Counsellors of State Bill\]](#). Lord True’s remarks suggest that Princess Beatrice, who is not a working Royal, will not be called upon to act as a Counsellor of State.

23 November – committee stage and third reading

At the Bill’s committee stage, the House of Lords considered two amendments.⁵⁵

That in the name of Viscount Stansgate (Labour) added a subsection (c), which providing that:

on the death of a person named in paragraph (a) or (b) [the Earl of Wessex and the Princess Royal], any person named by His Majesty the King by Order in Council [could be added].

(1A) A statutory instrument containing an Order under subsection (1)(c) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

Viscount Stansgate said his amendment was “simple and straightforward”:

it proposes that, once the Bill has reached the statute book, if a Counsellor of State dies then the King may provide a replacement. It does not say the King has to do so; it simply says that he may if he wants to, and proposed new Section (1A) in the amendment provides the mechanism for doing so with the suitable involvement of Parliament. That is it.⁵⁶

Lord Pannick (Cross Bench) argued against the power to produce delegated legislation being conferred on the King (“I can think of no precedent for the Crown having a delegated power—certainly not since 1689”),⁵⁷ while Lord True, the Lord Privy Seal and Leader of the Lords, said the “steps in the amendment are not required and they are unwelcome”.⁵⁸ Lord True asked Viscount Stansgate to withdraw his amendment, to which he agreed.

Lord Berkeley (Labour) chose not to move his Amendment 3 but spoke to Amendment 2, which sought to alter clause 1(1) to say:

as if they excluded— (c) His Royal Highness the Duke of Sussex, (d) His Royal Highness the Duke of York, and (e) any other person who in the opinion of the Lord Chancellor has not in the immediately preceding 2 years undertaken Royal duties on a regular basis.

Lord Berkeley asked: “Why not name the people concerned, rather than having to interpret what a working royal is? I do not know whether this is from embarrassment or fear of a media frenzy. I hope it is not, but it is an important constitutional issue.”⁵⁹

Lord Pannick said subclause 1(e) left “rather open for analysis” what “regular” meant. “Does it mean once a month, once a week or once a year?” he added. “What if they are ill for a period of time? The idea that the Lord Chancellor should determine this question without any criteria seems rather

⁵⁵ See Counsellors of State [HL] Bill, [Marshalled list of amendments](#).

⁵⁶ [HL Deb 23 Nov 2022 Vol 825 cc1380=81 \[Counsellors of State Bill\]](#)

⁵⁷ [HL Deb 23 Nov 2022 Vol 825 c1381 \[Counsellors of State Bill\]](#)

⁵⁸ [HL Deb 23 Nov 2022 Vol 825 c1382 \[Counsellors of State Bill\]](#)

⁵⁹ [HL Deb 23 Nov 2022 Vol 825 c1382 \[Counsellors of State Bill\]](#)

unsatisfactory. Mr Dominic Raab has more than enough to do at the moment.”⁶⁰

Lord True said giving the Lord Chancellor this power would be “an unnecessary addition” and repeated his remarks from the Bill’s second reading:

the Royal Household has confirmed that, in practice, working members of the Royal Family will be called on to act as Counsellors of State and diaries will be arranged to make this practicable. I think it is well known and understood who those persons are.⁶¹

Lord True asked Lord Berkeley to withdraw his amendment, to which he agreed.

The Bill was reported without amendment and received its third reading. It was then passed and sent to the House of Commons for consideration.⁶²

⁶⁰ [HL Deb 23 Nov 2022 Vol 825 c1384 \[Counsellors of State Bill\]](#)

⁶¹ [HL Deb 23 Nov 2022 Vol 825 c1387 \[Counsellors of State Bill\]](#)

⁶² [HL Deb 23 Nov 2022 Vol 825 cc1435-36 \[Counsellors of State Bill\]](#)

3

The Bill – clause by clause analysis

Clause 1 provides for additional Counsellors of State.

Subsection (1) provides that section 6 of the Regency Act 1937 will have effect “as if the persons required [...] to be the Counsellors of State for the purposes of any delegation of royal functions under that section” included:

- (a) His Royal Highness The Earl of Wessex, during his lifetime;
and
- (b) Her Royal Highness The Princess Royal, during her lifetime.

Subsection (2) would make the additional Counsellors of State subject to the existing provisions in section 6 of the 1937 Act regarding disqualification and powers to except a person who is absent from the UK (see **Section 1.1**).

Clause 2 provides the Bill’s short title and commencement.

Subsection (1) establishes the short title as the Counsellors of State Act 2022.

Subsection (2) provides that the Bill will come into force the day after it receives Royal Assent.

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