HOUSE OF LORDS

Library Note

# Succession to the Crown Bill (HL Bill 81 of 2012–13)

The Succession to the Crown Bill makes three changes to the law on succession to the Crown: it ends the system of male preference primogeniture which favours male over female heirs in the line of succession; it removes the statutory provisions under which a person who marries a Roman Catholic may not succeed to the Crown; and it repeals the Royal Marriages Act 1772, replacing the current requirement that all the descendants of George II must obtain the Monarch's permission for their marriage with a requirement that the Monarch must approve the marriage of the six people nearest in line to the Crown.

The Bill was introduced in the House of Commons on 13 December 2012, as Bill 110 of 2012–13. A debate on the allocation of time, second reading and committee stage debates took place on 22 January 2013. The Bill completed report stage and was read for a third time on 28 January 2013. The Bill was introduced in the House of Lords on 29 January 2013 as Bill 81 of 2012–13, and will be read for a second time in the Lords on 14 February 2013. This Library Note summarises proceedings on the Bill during its passage through the House of Commons. It is complemented by a House of Commons Library Research Paper which provides background information on the Bill (*Succession to the Crown Bill 2012–13*, 19 December 2012, RP 12/81).

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11 February 2013
LLN 2013/005

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## 1. Introduction

The Succession to the Crown Bill was introduced in the House of Commons on 13 December 2012, as Bill 110 of 2012–13. The parliament website offers a page of information on the Bill, including the text of the Bill and links to each debate. The Bill's Explanatory Notes provide the following summary of what the Bill seeks to do:

> 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.
>
> The Bill also removes the statutory provisions under which anyone who marries a Roman Catholic loses their place in the line of succession.
>
> Thirdly, the Bill repeals the Royal Marriages Act 1772, which 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 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.

Before the publication of the Bill, the Government consulted on these changes to the system of royal succession with the 15 other Commonwealth countries in which Her Majesty the Queen is also Monarch (known as her "Realms"). The Heads of Government of these countries announced at a meeting in Perth on 28 October 2011 that they agreed to these changes in principle ('Agreement in Principle among the Realms', 28 October 2011). On 4 December 2012, Deputy Prime Minister Nick Clegg announced that he had received formal letters of consent from the 15 Realms of the Commonwealth, which enabled the UK Government to move forward with legislation (Deputy Prime Minister, 'Royal Succession Rules will be Changed', 4 December 2012). The legislation would have a retrospective effect, applying to any child born after the 'Perth Agreement' of October 2011. On 3 December 2012, St James' Palace had announced that the Duke and Duchess of Cambridge were expecting their first child (BBC News website, 'Kate and William: Duchess Pregnant, Palace Says', 3 December 2012).

Following the announcement made by the Commonwealth Heads of Government in Perth, the Government's proposals on the succession to the Crown were examined by the House of Commons Political and Constitutional Reform Committee, which published a report, *Rules of Royal Succession*, on 7 December 2011 (HC 1615 of session 2010–12). The Government issued a response, *Rules of Royal Succession: Government Response to the Committee's Eleventh Report of Session 2010–12* on 10 September 2012 (HC 586 of session 2012–13). After the Bill had received its first reading in the House of Commons on 13 December 2012, the House of Lords Constitution Committee published a report on the Bill: *Succession to the Crown Bill* (21 January 2013, HL Paper 106 of session 2012–13).

The House of Commons Library published a Research Paper ahead of the Bill's second reading in the Commons which provides background information on the Bill: *Succession to the Crown Bill 2012–13* (19 December 2012, RP 12/81). This offers an account of some previous discussions which have taken place in parliament on changes to the royal succession; another House of Commons Library Note provides a list of Private Members

Bills on this subject: *Attempts to Amend Crown Succession since 1979* (19 January 2011, SN04663).

The Bill's Explanatory Notes state that the Government suggests it is necessary to expedite or "fast-track" proceedings on the Bill. The Bill received its second reading in the Commons on 22 January 2013, when the programme motion was also agreed. The committee stage debate took place on the floor of the House of Commons on the same day. The Bill completed report stage and was read for a third time on 28 January 2013. The Bill was introduced in the House of Lords on 29 January 2013 as Bill 81 of 2012–13, and will be read for a second time in the House of Lords on 14 February 2013. Section 2 of this Library Note considers the decision to fast-track the Bill and the remaining sections summarise proceedings on the Bill during its passage through the House of Commons.

## 2. Fast-Tracking of Legislation

The Bill's Explanatory Notes provide information on why it is necessary for the Bill to be "fast-tracked", stating that:

> 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.

Following first reading in the Commons, the Government tabled a programme motion which proposed that the Bill should complete all of its stages in one day. This issue was addressed during Deputy Prime Minister's Questions on 8 January 2013:

> Sir Alan Beith (Berwick-upon-Tweed) (LD): I congratulate my right hon. Friend on bringing forward legislation on the succession to the Crown. However, does he think that it is necessary to push it through in one day as if it was emergency terrorism legislation, when Parliament has a job to do to ensure that it is correctly drafted and that any concerns or unforeseen difficulties are addressed properly?
>
> The Deputy Prime Minister: This is something that has been on the statute book for more than 300 years. Let us remember that this is a very specific act of discrimination against one faith only. The heir to the throne may marry someone of any religion outside the Church of England—Muslim, Hindu and so on—but uniquely not a Catholic under the terms of the Act of 1700 or 1701. This is a precise change and it is being co-ordinated precisely with all the other realms that have to make the identical change in their legislation.
>
> (HC *Hansard*, 8 January 2013, col 147)

On 10 January 2013 the Leader of the House of Commons, Andrew Lansley, announced that the Bill would be considered over two days in the House of Commons (HC *Hansard*, 10 January 2013, col 474). The House of Lords Constitution Committee's report on the Bill notes that the new programme motion appeared "following our meeting with the Deputy Prime Minister" and suggests that "in light of the undoubted constitutional significance of the Succession to the Crown Bill, the House will no doubt wish to reflect on whether a similar approach would allow for proper deliberation and scrutiny in the Lords". The Committee, which published a report on fast-track legislation in 2009 (*Fast-track Legislation: Constitutional Implications and Safeguards*, 7 July 2009, HL Paper 116–I of session 2008–09), stated that "in our view, the use of fast-track legislation, while it may be necessary for reasons of emergency and overriding public interest, will rarely, if ever, be appropriate for significant constitutional matters" (*Succession to the Crown Bill*, House of Lords Constitution Committee, 21 January 2013, HL Paper 106 of session 2012–13).

On 22 January 2013, Members of the House of Commons debated an allocation of time motion on the Bill, which proposed that the second reading and committee stage of the debate should take place later that day, the report stage and third reading should take place on a second day, and consideration of Lords amendments should be limited to one hour (HC *Hansard*, 22 January 2013, cols 186–9). Several Members suggested that two days were insufficient to discuss the Bill. Jacob Rees-Mogg, MP for North East Somerset, said:

> We are discussing what may be the most important constitutional issue to which the House has ever turned its mind, namely, who shall be our sovereign? The allocation of time motion allows us two days in which to treat this Bill as if it were anti-terrorism legislation. As far as I am aware, the only constitutional Bill that has been treated to such a small amount of time is the Bill that became His Majesty's Declaration of Abdication Act 1936, which, I believe, completed its passage in the House of Commons in under a minute.
>
> (HC *Hansard*, 22 January 2013, col 189)

Keith Vaz, Labour MP for Leicester East and Chair of the Home Affairs Select Committee, suggested that fast-tracking was necessary:

> The first argument for getting on with this is the royal event that will take place shortly. Of course, the Commonwealth agreed the measure on 28 October 2011 and, as the Prime Minister has said, it is retrospective, but it would be absurd if the royal child was born before Parliament deliberated changing the law.
>
> (HC *Hansard*, 22 January 2013, col 193)

Chloe Smith, Parliamentary Secretary at the Cabinet Office, responded that:

> The usual channels in the House have reflected on the timetable and taken the pragmatic decision to allow two days for debate, rather than any less time. We think that that will provide ample time for any issues to be debated before the Bill goes the House of Lords. I note that since 2007 a number of Bills have taken a shorter amount of time for the parliamentary process, and among them is another

> constitutional Bill, the Sovereign Grant Act 2011, which took a shorter time in the House of Commons and in the House of Lords.
>
> (HC *Hansard*, 22 January 2013, col 201)

## 3. Succession to the Crown Not to Depend on Gender

Clause 1 of the Succession to the Crown Bill states that:

> In determining the succession to the Crown, the gender of a person born after 28 October 2011 does not give that person, or that person's descendants, precedence over any other person (whenever born).

The Bill's Explanatory Notes explain that:

> 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.

The House of Commons Library Research Paper *Succession to the Crown Bill 2012–13* (19 December 2012, RP 12/81) provides further information on the current law in this area.

Opening the second reading debate, Deputy Prime Minister Nick Clegg, stated that the Bill "ends the system of male-preference primogeniture so that, in the royal succession, older sisters will no longer be overtaken by their younger brothers". He suggested that:

> On female succession, the real question that we need to ask is why it has taken us so long. This is a nation that prides itself on pioneering equality between the sexes: a nation of great Queens such as Queen Victoria and Elizabeth II. A woman can, and has, been Head of the UK Government, yet still on our statute books, with Parliament's official backing, we have succession laws based on the supposed superiority of men. That anachronism is out of step with our society, it sends the wrong message to the rest of the world, and it is time for the rules to change.
>
> (HC *Hansard*, 22 January 2013, col 210)

Responding for the Opposition, Wayne David, MP for Caerphilly and the then Shadow Minister for Wales, stated that "the Opposition strongly support the Bill", and that the Labour Government "began the work on the changes that we see in it" (HC *Hansard*, 22 January 2013, col 216). During all the stages of debate on the Bill in the Commons, the principle of ending the system of male preference primogeniture received support across the House; no Member expressed disagreement with this proposal. However, several Members raised concerns about connected issues, which are covered below.

### 3.1 Retrospective Effect

Clause 1, if implemented, would have retrospective effect, ending the system of male preference primogeniture for all children born after 28 October 2011. Clause 2, which

removes the disqualification arising from marriage to a Roman Catholic, would also have a retrospective effect, applying to "marriages occurring before the time of the coming into force of this section where the person concerned is alive at that time". During the second reading debate, Christopher Pincher, Conservative MP for Tamworth, suggested that this created a disparity which was unfair:

> Clause 2 attempts to restore to the line of succession those people who have married Catholics down the years... If we are prepared to make changes to the order of succession by dint of restoring Catholics to that order, is it not right that we make clause 1 retrospective, so that female heirs of the Queen move up the order of succession?
>
> (HC *Hansard*, 22 January 2013, col 235)

During the report stage debate, Paul Flynn, Labour MP for Newport West, moved an amendment to clause 1, which sought to replace the words "born after 28 October 2011" with "whenever born". He said:

> I cannot see why we should not apply this provision now. If this is such a good idea—there is an almost universal approval in the House for the main proposition of getting rid of discrimination against women—why not do it immediately?... This Government seem to be saying 'God, make me gender neutral—but not yet'.
>
> (HC *Hansard*, 28 January 2013, cols 728–9)

Chloe Smith, Parliamentary Secretary at the Cabinet Office, responded that the amendment would "change the current line of succession":

> Specifically—I suspect he has this in mind—their Royal Highnesses Prince Andrew and Prince Edward, and their descendants, would move below Her Royal Highness Princess Anne and her descendants. The Government do not believe it is fair or reasonable to alter the legitimate expectations of those currently in line to the throne.
>
> (HC *Hansard*, 28 January 2013, col 728)

Mr Flynn withdrew his amendment (HC *Hansard*, 28 January 2013, col 729).

## 3.2 Royal Titles and Lands

It was reported on 9 January 2013 that the Queen had issued Letters Patent which stated that: "All the children of the eldest son of the Prince of Wales should enjoy the style, title and attribute of Royal Highness with the titular dignity of Prince or Princess prefixed to their Christian names" (BBC News website, 'Royal Baby Girl "Would Be Princess"', 9 January 2013). During the second reading of the Bill, Wayne David, MP for Caerphilly

and the then Shadow Minister for Wales, asked about the title which would be conferred upon the future heir to the throne:

> Let me refer to an issue that is, in some ways, particular to the people of Wales: the title of Princess of Wales. Since 1301 the eldest male heir has usually been invested with the title of Prince of Wales, and as I understand, that position is bestowed at the discretion of the Monarch. Edward II did not invest his eldest son, the future Edward III, with the title, but investiture later became custom and practice. The position confers no automatic rights or responsibilities, but it follows that if there is to be no gender discrimination in the royal succession, consideration ought to be given to the title of Princess of Wales being given to a female heir apparent.
>
> (HC *Hansard*, 22 January 2013, cols 219–20)

Chloe Smith, Parliamentary Secretary at the Cabinet Office, responded that "the granting of royal titles is a matter for the sovereign, and it is not within the scope of the Bill" (HC *Hansard*, 22 January 2013, col 255).

Several Members expressed concern about the titles of Duke of Lancaster and Duke of Cornwall. These titles, which have traditionally passed to the Monarch and the Monarch's eldest son respectively, are connected to tracts of land known as "duchies", which have traditionally supplied income for the holder of the title. During the second reading debate on the Bill, Ben Wallace, Conservative MP for Wyre and Preston North, said:

> As the Member of Parliament for Wyre and Preston North, I represent huge tracts of Duchy of Lancaster land. Henry IV set up the Lancastrian inheritance separately from the Crown and its entities to follow through the male heirs, except where the Monarch was a female. Under that separate arrangement for passing on the private possessions of the Duke of Lancaster, inheritance currently remains with the male heir where a male is a child of a Monarch. Therefore, if the Queen were to have both a boy and a girl, would we not be in danger of splitting an inheritance so that the changes ensured that the female inherited the position of Monarch but the title of Duke of Lancaster went to the son?
>
> (HC *Hansard*, 22 January 2013, col 210)

Deputy Prime Minister, Nick Clegg, responded that:

> This Bill deals only with the succession to the throne and not with issues relating to the succession of hereditary titles. We can have a perfectly valid separate argument about that, but it is not within the very narrow scope of this Bill.
>
> (HC *Hansard*, 28 January 2013, col 210)

Mr Wallace suggested that "this measure, without clarity, will disinherit the Monarch of the lands that the Monarch holds in the title of Duke of Lancaster, given that that is a separate division from the Crown" (HC *Hansard*, 28 January 2013, col 210). Jacob Rees-Mogg, MP for North East Somerset, expressed concern that "under the provisions of this

Bill the Duchy of Lancaster would be separated from the Crown for the first time since the reign of Henry IV" (HC *Hansard*, 28 January 2013, col 211) and asked that "in the other place the technicalities and the detail can be gone through, so that we do not find that the Duke of Lancaster ends up being one person and the sovereign another" (HC *Hansard*, 28 January 2013, col 250).

Mr Clegg went on to speak about the Duchy of Cornwall:

> The Sovereign Grant Act 2010 makes a very important change that touches on the succession to the Crown as far as the Duchy of Cornwall is concerned… The convention is that the male heir to the throne has the title of Duchy of Cornwall conferred on him, but a female heir to the throne does not. The Bill does not change that situation, but the provisions of the Sovereign Grant Act mean that the financial support provided via the Duchy of Cornwall can, in future, be provided to female heirs to the throne as well. To that extent, there is a link between this very tightly circumscribed Bill and the provisions of the Sovereign Grant Act.
>
> (HC *Hansard*, 22 January 2013, col 211)

The Sovereign Grant Act enables revenues from the Duchy of Cornwall to be passed to the heir to the throne, where that person is not the Duke of Cornwall. The HM Treasury website provides guidance (HM Treasury website, 'Sovereign Grant Act Frequently Asked Questions', accessed 6 February 2013).

Dan Rogerson, Liberal Democrat MP for North Cornwall, suggested that the charters that established the Duchy of Cornwall should be amended to allow the heir to hold the Duchy in their own right, regardless of gender (HC *Hansard*, 22 January 2013, col 219). He said:

> The question of who becomes the Duke of Cornwall is not just financial; it is far more important than that, because it also involves a constitutional issue. The Bill makes it more likely that there will be periods without a Duke of Cornwall when the heir to the throne is female.
>
> (HC *Hansard*, 22 January 2013, col 252)

The House of Lords Constitution Committee's report on the Bill also recommends that the Letters Patent for the Duchy of Cornwall should be altered to ensure the Duchy is held by the heir to the throne (House of Lords Constitution Committee, *Succession to the Crown Bill*, 21 January 2013, HL Paper106 of session 2012–13). Chloe Smith, Parliamentary Secretary at the Cabinet Office, suggested that such questions about the Duchy of Cornwall were a "matter of title", and therefore were "a matter for the sovereign" (HC *Hansard*, 22 January 2013, col 255).

## 3.3 Hereditary Peerages

Although certain Peerages may pass to women, the vast majority of titles follow the system of male preference primogeniture. Further information on this subject is available in the House of Lords Library Note *Women in the House of Lords* (14 March 2012,

LLN 2012/005; in particular see pages 2, 13 and 14). In October 2011, Lord Trefgarne tabled a parliamentary question on this subject, asking whether, in light of the Government's proposal that the system of male preference primogeniture should be ended in the royal succession, they also planned to change the law of succession with regard to hereditary peerages. He suggested that "uncertainty in this matter" is "unsettling for those who will be affected". Lord Strathclyde, then the Chancellor of the Duchy of Lancaster, responded that "the Government have no plans to change the laws of succession with regard to hereditary peerages" (HL *Hansard*, 20 October 2011, col 380).

The House of Commons Political and Constitutional Reform Committee 2011 report on the rules of succession to the Crown recommended that the Government should also consider ending the system of male preference primogeniture in hereditary peerages:

> The proposal to end the preferential treatment of men in the line of succession has been widely welcomed, and with good reason. It does, however, cast the spotlight on the hereditary aristocracy, to which women are for the most part ineligible to succeed, and, where they are eligible, male heirs take preference.
>
> … 92 seats in the House of Lords continue for now to be reserved to holders of hereditary aristocratic titles. Only two of these 92 seats are currently occupied by women. While the holders of hereditary peerages continue to be eligible for membership of the House of Lords, the way in which their titles are inherited, and its effect on the gender balance in Parliament, remain matters of public interest.
>
> (House of Commons Political and Constitutional Reform Committee, *Rules of Royal Succession*, 7 December 2011, HC Paper 1615 of session 2010–12, paras 15–17)

The Government published a response to this report which stated:

> We entirely accept that the matter of hereditary peerages is of public interest. However, the Government has no plans to change the laws of succession with regard to hereditary peerages. Changes to the law on succession to the Crown can be effected without any change to the legitimate expectations of those in the line of succession. Changes to the rules governing succession to hereditary titles would be far more complicated to implement fairly. For this reason, we do not believe that changes to the rules governing succession to the Crown should serve the purpose of addressing what is quite a separate issue.
>
> In addition, the Perth agreement between the Commonwealth Realms is limited to removing the male bias in the line of succession and the bar on Catholic marriages. The other Commonwealth Realms have also agreed to amend the Royal Marriages Act. The Government feels that this agreement, which took some considerable time to negotiate, precludes the addition of any other measures into legislation designed to effect these changes.
>
> (*Rules of Royal Succession: Government Response to the Committee's Eleventh Report of Session 2010–12*, 10 September 2012, HC 586 of session 2012–13)

During the second reading debate on the Bill, Deputy Prime Minister Nick Clegg addressed the subject as follows:

> I have heard it suggested that we should use the Bill to tackle the gender bias in hereditary titles whereby titles and the benefits that come with them leapfrog eldest daughters and are handed down to younger sons, or can be lost entirely when there is no male heir. Personally, I am sympathetic to that reform and can see why this seems like the natural time to do it, but, for purely practical reasons, it cannot and will not be done in this Bill. Nor can we can use the Bill to mop up any other constitutional odds and ends. Put simply, it cannot be broadened to include UK-specific reforms, because they are not relevant to the realms of the Commonwealth.
>
> (HC *Hansard*, 22 January 2013, col 212)

Despite this assurance, Nicholas Soames, Conservative MP for Mid Sussex, suggested that the Bill could "damage... peerage law" and asked:

> Anticipating the very considerable and entirely understandable trouble that my hon. Friend the Minister and my right hon Friend the Deputy Prime Minister will have in their lordships' House, where their lordships will do what they do so well, can this House be assured that the proposed changes to the primogeniture rule for royal succession do not in any way pre-empt whether the same changes should apply to the separate rules for the descent of hereditary titles of honour?
>
> (HC *Hansard*, 22 January 2013, col 222)

There have been previous discussions on this issue. Lord Diamond introduced a Private Member's Bill in 1992 which aimed to allow hereditary Peers to petition the Crown to amend their letters patent so that the Peerage could descend to the eldest legitimate child, male or female (HL *Hansard*, 26 November 1992, cols 1118–66). He introduced a similar Bill in 1994. Neither of these Bills moved beyond second reading (HL *Hansard*, 7 March 1994, cols 1283–330). In 2012, Lord Lucas introduced a Private Member's Bill, the Hereditary Peerages (Succession) Bill [HL] 2012–13. This Bill seeks to enable a hereditary Peer to petition the Lord Chancellor's office to allow them to be succeeded by a female heir. It has yet to receive a date for second reading.

In 2008, the Hereditary Peerage Association held an online debate on this subject (Hereditary Peerage Association website, 'Debate: Peerage Succession: May 2008', accessed 6 February 2013). The matter has also been raised in the press; for example in September 2011, the *Telegraph* newspaper quoted comments made by Lord Fellowes of West Stafford on the position of his wife, the niece and only surviving relative of Earl Kitchener who was not able to inherit his title, as a woman (*Telegraph*, 'Julian Fellowes: Inheritance Laws Denying my Wife a Title are Outrageous', 13 September 2011). In December 2012 the *Telegraph* newspaper published an article by Victoria Lambert, wife of the Earl of Clancarty, about how their family titles will die out because they have daughters not sons (*Telegraph*, 'My Daughter is the Victim of a Flawed System', 17 December 2012). On 6 February 2013, the BBC News website published an article on this subject; it quoted Bob Morris, of the UCL Constitution Unit, who suggested that it would not be easy to reform the law in this area: "'You will have to deal with a lot of

private law issues' Professor Morris says. 'There have been a number of arrangements made in private families, sometimes going back generations, and there are the legitimate expectations of heirs'" (BBC News website, 'The Downton Dilemma: Is it Time for Gender Equality on Peerages?', 6 February 2013).

## 4. Removal of Disqualification Arising from Marriage to a Roman Catholic

Clause 2 of the Succession to the Crown Bill states that "A person is not disqualified from succeeding to the Crown or from possessing it as a result of marrying a person of the Roman Catholic faith". According to the Bill's Explanatory Notes:

> 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.

The House of Commons Library Research Paper *Succession to the Crown Bill 2012–13* (19 December 2012, RP 12/81) provides further information on the history of this area of the law. Another House of Commons Library note offers information on the role of the Monarch as the Supreme Governor of the Church of England, which means that the Monarch must not be a Roman Catholic, must make a public declaration that he or she is a Protestant, must join in communion with the Church of England and must swear to maintain the established Churches of England and Scotland (*The Act of Settlement and the Protestant Succession*, 24 January 2011, SN/PC/683).

The Bill's Explanatory Notes comment on the retrospective nature of the clause, stating:

> 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.

Introducing the Bill at second reading, Deputy Prime Minister Nick Clegg said:

> The coalition Government are seeking to remove the current ban on heirs to the throne marrying Catholics; or, as the current legislation says, rather insultingly, depending on one's point of view, from "marrying a Papist". That law is a reflection of the times in which it was written. It followed nearly two centuries of religious strife within England, Scotland and Ireland; the threat of conflict with Louis XIV's France and other Catholic powers; and tension with Rome. It was an era when legal defences seemed vital against a dangerous threat from abroad.
>
> (HC *Hansard*, 22 January 2013, col 213)

He said that representatives of the Catholic Church and the Church of England had both expressed support for the Bill (HC *Hansard*, 22 January 2013, col 214). During debates on this clause of the Bill, several issues were raised, which are covered below.

## 4.1 Children Born to a Monarch or Heir Married to a Catholic

The House of Commons Political and Constitutional Reform Committee 2011 report on the rules of succession to the Crown suggested that there was a potential problem with removing the bar on the heir or Monarch marrying a Roman Catholic, while maintaining a bar on the heir or Monarch being a Catholic:

> There is one possible consequence of allowing a Monarch to be married to a Catholic that might be considered of contemporary relevance. Catholics are normally obliged under canon law to bring up as Catholics any children from an inter-faith marriage. The proposal thus raises the prospect of the children of a Monarch being brought up in a faith which would not allow them to be in communion with the Church of England. This would prevent them from acceding to the throne.
>
> (*Rules of Royal Succession*, 7 December 2011, HC 1615 of session 2010–12)

It has been reported that the Prince of Wales, Prince Charles, has suggested that this might be problematic (*Daily Mail*, 'My Fears on Rushed New Laws Over Kate's Baby, by Charles: Shake-up to Let a Daughter Succeed to the Throne "Has Not Been Thought Through", says Prince', 7 January 2013). It has also been reported that representatives of the Church of England have expressed concerns (*Telegraph*, 'Church Of England Concerned Over Royal Succession Reforms', 8 January 2013).

Jacob Rees-Mogg, Conserative MP for North East Somerset, raised concerns about this issue repeatedly during debates on the Bill. During the debate about the allocation of time, Mr Rees-Mogg tabled an amendment which sought to "allow for an instruction to be debated that would widen the scope of the Bill to include the consequence of a marriage to a Catholic" (HC *Hansard*, 22 January 2013, col 190). He argued that the clause was unfair:

> It is proposed in the Bill that a Catholic may marry an heir to the throne but may not then maintain the succession by bringing up a child of that marriage as a Catholic. The reason I object to that is because it is an attack on the teaching of the Catholic Church. Canon 1125 states specifically that the bishop, who can give a dispensation for a Catholic to marry a non-Catholic, is not to do so unless 'the Catholic party is to declare that he or she is prepared to remove dangers of defecting from the faith and is to make a sincere promise to do all in his or her power so that all offspring are baptized and brought up in the Catholic Church'.
>
> (HC *Hansard*, 22 January 2013, col 190)

During the second reading debate, Deputy Prime Minister Nick Clegg responded to these comments:

> The Catholic Church does not have any blanket rule dictating that all children in mixed marriages must be brought up as Catholics. Indeed, if we look at the current royal family, we see that Prince Michael of Kent is an Anglican, his wife a

> Catholic and their heirs, Lord Frederick and Lady Gabriella Windsor, are Anglican and retain their places in line to the throne.
>
> (HC *Hansard*, 22 January 2013, col 213)

Mr Rees-Mogg suggested, however, that "It is unreasonable of an Act of Parliament to allow a Catholic to do one thing then deny that Catholic the ability to carry out the requirements of his faith" (HC *Hansard*, 22 January 2013, cols 248–9). He suggested that he would rather the clause was not introduced at all, but that if it was, the consequences should be examined, saying "I would happily accept no change at all, because that is the history of our nation... but once we start fiddling we have to do it properly" (HC *Hansard*, 22 January 2013, col 192).

Other Members expressed concern that the clause could endanger the established Church, if a child who was brought up as a Catholic might one day become Supreme Governor of the Church of England. Sir Gerald Howarth, Conservative MP for Aldershot, suggested that a "risk to the established Church arises from the Bill" because:

> We will be allowing the heir to the throne to marry a Catholic and, as my hon. Friend the Member for North East Somerset has pointed out, under the rules of the Catholic Church the children have to be brought up in the Catholic faith. There would therefore arise a potential conflict of interest in the mind of that person as to which was going to command their loyalty—their loyalty to their faith or their loyalty to the Crown.
>
> (HC *Hansard*, 22 January 2013, col 253)

Ian Paisley, DUP MP for North Antrim, asked the Government to amend the Act so as to explicitly state that the heir to the throne "will be brought up in the communion of the Anglican Church" (HC *Hansard*, 22 January 2013, col 239). Chloe Smith, Parliamentary Secretary at the Cabinet Office, sought to "reassure all hon Members that the Bill does not allow a Roman Catholic to accede to the throne and in no way touches the basis of the established Church" (HC *Hansard*, 22 January 2013, col 254).

Discussion took place as to the moment at which a person might be barred from becoming heir to the throne due to their Catholic faith. Jacob Rees-Mogg suggested that, if a child was baptised Catholic this would bar them from the throne:

> The Act of Settlement mentions 'all and every Person and Persons that then were or afterwards should be reconciled to or shall hold Communion with the See or Church of Rome', so if a child were baptised a Catholic, I do not think there would be any subsequent opportunity for them to abandon Catholicism. The decision would be that of their parents at the time of their birth.
>
> (HC *Hansard*, 22 January 2013, col 264)

Sir Alan Beith, Liberal Democrat MP for Berwick-upon Tweed, suggested that this could not be the case, since "it has always been possible for a person to renounce the religion in which they were brought up" (HC *Hansard*, 22 January 2013, col 264). Kevin Brennan,

Labour MP for Cardiff West, asked whether a Catholic heir to the throne might not be able to renounce their faith "simply by taking the oath of accession?" (HC *Hansard*, 22 January 2013, col 270). During the report stage debate on the Bill, Jacob Rees-Mogg spoke to two amendments which sought to ensure that "a child who had been brought up as a Catholic would not be deemed forever incapable of succeeding to the Crown". He suggested that "the question of eligibility could be clarified at the point of succession" (HC *Hansard*, 28 January 2013, col 695). Alan Beith supported the amendments on the grounds that they would enable a child to "be free to make a choice at a later stage in their life" (HC *Hansard*, 28 January 2013, col 702).

Chloe Smith, Parliamentary Secretary at the Cabinet Office, commented on this question, stating that "the Government's understanding of the Act of Settlement" was that "the bar appears to be on anyone who has ever 'professed' the Roman Catholic faith, or held communion with the Roman Catholic Church. Once disqualified, they are excluded for ever from succeeding to the throne" (HC *Hansard*, 28 January 2013, cols 719–20). Miss Smith suggested that Jacob Rees-Mogg's amendments "would add greater uncertainty to the line of succession":

> For example, let us consider someone who is brought up as the heir to the throne and is clearly in preparation for that vocation over their lifetime. In the Government's view, it would make that person's position, and the position of their immediate family, very difficult, if they could be superseded at any stage by someone who converted from Roman Catholicism to the Protestant faith. By extension, that could also raise the prospect of the reigning Monarch being subsequently supplanted by someone who was theoretically higher in the line of succession on that latter person's converting from Catholicism and joining in communion with the Church of England.
>
> (HC *Hansard*, 28 January 2013, col 721)

Mr Rees-Mogg withdrew his amendments (HC *Hansard*, 28 January 2013, col 724).

## 4.2 Bar on Heir or Monarch Being a Catholic

The House of Commons Political and Constitutional Reform Committee 2011 report on the rules of succession to the Crown questioned "whether it remains appropriate for the Monarch to be required to be in communion with the Church of England" (*Rules of Royal Succession*, 7 December 2011, HC 1615 of session 2010–12).

During the second reading debate on the Bill, some MPs suggested that the bar on Catholics becoming heir or Monarch should be removed. Chris Bryant, Labour MP for Rhondda, suggested that: "As an Anglican, I would have no fear of a Roman Catholic who accepted a series of oaths to protect the Church of England" (HC *Hansard*, 22 January 2013, col 232). Nia Griffith, Labour MP for Llanelli, suggested that the role of "defender of the faith" should be "decoupled" from that of Monarch, "enabling people of all faiths or none to succeed to the throne" (HC *Hansard*, 22 January 2013, col 237).

During the report stage debate, the House discussed a new clause, tabled by Jacob Rees-Mogg, which sought to introduce the possibility that a person could succeed to the

throne without "joining in communion with the Church of England", if "the person who is next in line of succession to the Crown and who is in communion with the Church of England" could be appointed to "perform the functions of Supreme Governor of the Church of England in the name of and on behalf of the Sovereign" (HC *Hansard*, 28 January 2013, col 695). Mr Rees-Mogg suggested that he supported an established Church, but stated that the arrangements made in the Act of Settlement with regard to Catholics were no longer relevant:

> The modern world is different from the early 18th century. There may have been many glories in the early 18th century, but one of the glories of this modern age is that we are tolerant—we are tolerant of different religions. We believe that people practising other faiths is something to be welcomed and encouraged, and that has made us a stronger nation rather than a weaker one. Therefore there should no longer be a bar on the grounds of faith in respect of the sovereign, as long as we can make provision for the established Church of England, which there is and which I support.
>
> (HC *Hansard*, 28 January 2013, col 699)

John McDonnell, Labour MP for Hayes and Harlington, expressed his support for new clause 1 on the grounds of equality: "If someone in this country is born Catholic or into any other religion, or if they have no faith, and they are still discriminated against, that is unacceptable, as successive Governments and Members of this House have said. Now is the opportunity to legislate on it" (HC *Hansard*, 28 January 2013, col 706).

Chloe Smith, Parliamentary Secretary at the Cabinet Office, said:

> In new clause 1, my hon Friend proposes a perhaps rather ingenious solution: splitting the role of Supreme Governor of the Church of England from the role of sovereign, in a method akin to a regency. Such a split would represent a fundamental change to the role of the Monarch in English society in relation to the established Church, and could not be considered without extensive consultation... The Government have no intention of going further than the limited scope of the Bill as presented.
>
> (HC *Hansard*, 28 January 2013, col 723)

Mr Rees-Mogg pressed his new clause to a vote; 38 voted in favour, 371 voted against (HC *Hansard*, 28 January 2013, col 724).

## 5. Consent of Monarch Required for Certain Marriages

Under clause 3 of the Bill, "A person who (when the person marries) is one of the six persons next in the line of succession to the Crown must obtain the consent of Her Majesty before marrying". The Bill's Explanatory Notes provide the following information on this clause:

> 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. 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 from that marriage will lose their place in the line of succession (at present, their marriage would be void).

The Explanatory Notes suggest that this clause is compatible with the European Convention on Human Rights, in that it does not impair the right to marry because "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".

When the House of Commons Political and Constitutional Reform Committee published their 2011 report on the rules of succession the Government had not announced the detail of this proposal but the Committee expressed their support for the principle that there should be a reduction in the number of members of the royal family who require the Monarch's permission to marry (*Rules of Royal Succession*, 7 December 2011, HC 1615 of session 2010–12).

The House of Lords Constitution Committee's report on the Bill suggests that: "There is a lack of explanation in the Explanatory Notes for retaining a requirement of consent to certain royal marriages" (*Succession to the Crown Bill*, 21 January 2013, HL Paper 106 of session 2012–13). During the second reading debate on the Bill, several Members questioned why a requirement of consent was being retained. For example, Angus Brendan MacNeil, Scottish National Party MP for Na h-Eileanan An Iar, suggested that the clause "leaves with the Monarch the bizarre, arcane requirement for marital approval of six people in the line of succession. Some cultures have an adaptation of that requirement in the form of arranged marriages, but here in Westminster, we are institutionalising it" (HC *Hansard*, 22 January 2013, col 228). Chloe Smith, Parliamentary Secretary at the Cabinet Office, responded to this point during the committee stage debate:

> The role of the sovereign in giving consent to a royal marriage is part of our tradition and is entrenched in law. The Government also consider that there is a public interest in the marriages of those closest to the throne, so we believe that the requirement to seek the sovereign's consent continues to serve a valuable purpose.
>
> (HC *Hansard*, 22 January 2013, cols 278–9)

Members discussed several other key issues in relation to this clause, which are covered below.

## 5.1 Grounds for Permission

Several Members asked for clarification about the grounds on which the Monarch would give permission for a marriage. During the second reading debate Chris Bryant, Labour MP for Rhondda, said:

> I simply do not understand why the Monarch would want to retain the right to forbid somebody to marry. On what basis would they refuse to grant consent —because someone involved was illegitimate, not wealthy enough, a commoner or an actress? Those are reasons that have previously been used for not consenting.
>
> (HC *Hansard*, 22 January 2013, col 208)

Speaking for the Opposition, Wayne David, MP for Caerphilly and the then Shadow Minister for Wales, said that he supported the Monarch's right to approve marriages in principle (HC *Hansard*, 22 January 2013, col 217). However, during the committee stage debate, he asked whether it might be possible for a Monarch to refuse consent on the grounds of religion, thereby presenting "a potential contradiction between clause 2(1) and clause 3 (1)" (HC *Hansard*, 22 January 2013, col 277). The House of Lords Constitution Committee's report on the Bill also raised this point, drawing attention to the relationship between clauses 2 and 3 of the Bill and pointing out that "conceivably the Monarch could be expected to decide whether or not a person high in the line of succession should be allowed to marry a Roman Catholic" (*Succession to the Crown Bill*, House of Lords Constitution Committee, 21 January 2013, HL 106 of session 2012–13). The UCL Constitution Unit suggested that the Bill was sufficiently clear on the matter:

> There is no doubt that any heirs who professed the Catholic faith would be excluded from the throne. There would be no need for the sovereign to withhold marriage consent to prevent a Catholic succeeding because the law would in any case prevent it. A clash of the kind envisaged would not therefore be possible.
>
> (UCL Constitution Unit, 'Succession To The Crown Bill—Possible Untoward Effects?', 21 January 2013)

Deputy Prime Minister Nick Clegg said, during the second reading debate, that the grounds for permission were "a matter for the Monarch" (HC *Hansard*, 22 January 2013, col 208), stating "we are not seeking to specify in legislation the terms in which the Monarch provides that consent. We are certainly not specifying that that should be done according to the faith of the person who is marrying an heir to the throne" (HC *Hansard*, 22 January 2013, col 215). Chloe Smith, Parliamentary Secretary at the Cabinet Office, suggested, in the committee stage debate, that in practice the Monarch's decision would be informed by advice from Members of the Government:

> In 1967, when there was a question about the marriage—in that case, marriage following a divorce—of a member of the royal family, the then Prime Minister, Harold Wilson, devised a formula that ran along these lines: "The Cabinet has

> advised the Queen to give her consent and Her Majesty has signified her intention to do so." That provides an insight into how such advice to the Monarch might operate.
>
> (HC *Hansard*, 22 January 2013, col 260)

## 5.2 Figure of Six

Several Members asked why the figure of six had been chosen, for the number of people in the line of succession who require permission to marry. During the second reading debate, Wayne David asked for clarification, suggesting "there has to be some rationale behind it. The constitutional expert Vernon Bogdanor has suggested that the figure might be five, and others have suggested larger or smaller numbers. Perhaps the Minister could clarify why six has been the number chosen" (HC *Hansard*, 22 January 2013, col 217). Christopher Pincher, Conservative MP for Tamworth, suggested that the figure was too small:

> Imagine a scenario where a Monarch has three children, who each have two or three children. The Monarch will soon be in the invidious position where grandchild No 4, who is fifth in line to the throne, must seek consent of the Monarch to marry, but grandchild No 6, who is seventh in line to the throne, need not seek that consent.
>
> (HC *Hansard*, 22 January 2013, col 235)

Deputy Prime Minister Nick Clegg argued that the figure was arbitrary but pragmatic:

> I accept that there is a certain arbitrariness about the figure of six; it could be seven or five. The principle to limit the powers of the Monarch to grant permission to marry to those who are in the immediate line of succession seemed to us to be the right balance to strike, but I accept that perfectly valid arguments of principle could be made otherwise. It is, however, a very dramatic change—pragmatic, but dramatic none the less—from the precedent that has been set from the days of George III.
>
> (HC *Hansard*, 22 January 2013, col 209)

Chloe Smith, Parliamentary Secretary at the Cabinet Office, suggested during the committee stage debate that the figure was based on historical precedent, saying "since the 1772 Act was enacted, the throne has never passed to anybody who was more than six steps away in the line of succession. Therefore, subsection (1) limits the requirement to seek the Monarch's consent to the first six people" (HC *Hansard*, 22 January 2013, col 278).

## 5.3 Civil Partnerships and Gay Marriages

Several Members raised questions in relation to same sex couples. During the committee stage debate, Chris Bryant asked: "Would it be legitimate to refuse consent on the basis

of there being a same-sex marriage?" (HC *Hansard*, 22 January 2013, col 281). Chloe Smith responded that:

> There is no bar on the heir or other members of the royal family marrying in a civil ceremony. Moreover, I am unaware of any legal bar to somebody who is in a same-sex relationship acceding to the throne. I would envisage that the sovereign's consent measures in clause 3 would continue to be the case for same-sex relationships. I will not comment on legislation that this House has not yet considered, which, as the hon Gentleman might understand, would cover the notion of same-sex marriage.
>
> (HC *Hansard*, 22 January 2013, col 281)

During the second reading debate, Paul Flynn, Labour MP for Newport West, asked whether children from a same-sex relationship would be eligible for the throne, asking "would the progeny of that marriage, either by adoption or artificial insemination, be next in line?" (HC *Hansard*, 22 January 2013, col 224). Chloe Smith responded to this question during the committee stage debate, saying that "It is only the children of a husband and wife who are entitled to succeed, not adopted children or those born from artificial insemination" (HC *Hansard*, 22 January 2013, col 256).

## 6. Commencement

Clause 5 of the Bill covers commencement. The Explanatory Notes state that, at Perth on 28 October 2011:

> 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.

The Notes explain that, under clause 5:

> 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.

The House of Commons Library Research Paper *Succession to the Crown Bill 2012–13* (19 December 2012, RP 12/81) provides information on why the decision was taken to coordinate implementation between the Realms, including political reasons and legal precedent.

During the second reading debate, Sir Gerald Howarth, Conservative MP for Aldershot, asked when the Government expected the Bill to be commenced: "Will the Bill come info effect only once the relevant legislation has been enacted in all those

countries? If so, when does he expected that that might happen?". Deputy Prime Minister Nick Clegg answered:

> My understanding is that it needs to come into force in all the realms. Interestingly, two of the realms, Jamaica and Papua New Guinea, do not, for their own reasons, need to go through the full legislative process. That is partly why we are so keen to keep the precision of the terms of the Bill and the narrowness of its scope, such that it can be easily adopted and digested under all the different parliamentary and legislative conventions that exist in the 16 Commonwealth realms.
>
> (HC *Hansard*, 22 January 2013, col 212)

During the committee stage debate, Wayne David, MP for Caerphilly and the then Shadow Minister for Wales, asked about the legal necessity of reaching agreement: "Is my understanding correct that, under the Statute of Westminster 1931, although individual Parliaments in the respective states of the Commonwealth might give their assent in different ways, they do have to give their assent?" (HC *Hansard*, 22 January 2013, col 282). During the third reading debate the Deputy Leader of the House of Commons, Tom Brakes, addressed this question. He said that the preamble to the Statute of Westminster 1931 stated that the Commonwealth Parliaments must agree to changes in the rules of succession to the throne, but "a statement in a preamble is different from a section in an Act" meaning that "the Statute of Westminster 1931 is politically rather than legally binding" (HC *Hansard*, 28 January 2013, cols 729–30).

In a letter to the *Telegraph*, Lord Trefgarne suggested that:

> It is proposed that the Bill will come into force at a time "specified by the Lord President of the Council", at present Nick Clegg, the Deputy Prime Minister. For this important Bill to come into force on the decision of a single minister seems wholly inappropriate. Amendments will no doubt be moved seeking to change that provision.
>
> (Lord Trefgarne, *Telegraph*, 22 January 2013)

An article on the *Spectators'* Coffee House blog expresses concern that the other Realms will not give their assent to the legislation (Coffee House blog, 'The Succession to the Crown Bill is a Constitutional Can of Worms', 22 January 2013).