



Succession to the Crown Bill 2012-13

Bill No 110 2012-13

RESEARCH PAPER 12/81 19 December 2012

The Bill would change the rules governing succession to the Crown in two ways. First, there would be no gender discrimination in determining succession, in contrast to the present rules, under which brothers stand ahead of sisters in line to the throne even if they are younger. Secondly, a person marrying a Roman Catholic would no longer be barred from becoming or remaining monarch.

The Bill would also remove a requirement for descendants of George II to seek permission to marry from the monarch, and replace it with a broadly similar requirement for the first six people in the line of succession.

The provisions in the Bill build on a consensus for change among those states of which the Queen is Head of State, which was embodied in a declaration at the Perth Commonwealth Heads of Government Meeting in October 2011. Those states have now indicated that they are ready to move forward with implementation of changes in their own laws to reflect the new UK arrangements. The Bill will be brought into force once the necessary measures have been taken abroad, with the intention that all the changes will commence simultaneously.

The Bill will have retrospective effect, so that a child born after 28 October 2011 will be subject to the new arrangements on gender, and marriages to Roman Catholics, including those already contracted, will not lead to disqualification for any person alive when the Bill comes into force.

The Bill extends to the whole of the UK and, by necessary implication, to the Crown Dependencies and British Overseas Territories.

Paul Bowers

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Summary

The rules of succession to the Crown include two discriminatory provisions: male siblings take precedence over female siblings regardless of age, and a person may not marry a Roman Catholic and remain on or in line to the throne. In addition, the descendants of George II must, with some exceptions, gain permission from the monarch to marry, otherwise their marriages are void.

In 2011 the governments of the 16 states of which the Queen is Head of State (her “realms”) agreed to change the rules. Work was needed to ensure that each of the realms was in a position to reflect the same changes in its own constitution and laws. This concluded in December 2012, at about the same time that it was announced that the Duchess of Cambridge was pregnant. Her child would be third in line to the throne in current circumstances. The UK Government has now decided to press ahead with the necessary legislation to ensure that the changes are in place as soon as possible.

The Bill would ensure that gender is no longer a factor in determining the order of succession to the Crown, that a person may marry a Roman Catholic and still succeed to or remain on the throne, and that only the first six people in the line of succession must gain permission from the monarch to marry. If they do not gain consent, they will leave the line of succession, but their marriages will be valid.

The Bill does not change the rule that the monarch must not be a Roman Catholic.

The Bill makes amendments to various constitutional statutes, and it makes others subject to its provisions.

Elements of the Bill have retrospective effect. The disregard of gender will apply to a child born after the agreement between the realms in October 2011. The allowance of marriage to a Roman Catholic will apply to anyone living at the time of entry into force, so that a number of people will return to the line of succession, although none of them is near the top. The rules on consent to marry will, in effect, validate existing marriages which are technically void, but, due to remoteness from the Crown, have not been understood as such.

The Government intends to invite Parliament to expedite proceedings on the Bill. The justifications are mainly that there is consensus for the changes, that much work has gone on to bring the realms into concert, that the UK undertook to move first in introducing legislation, and that a new addition near the top of the line of succession is anticipated. It is worth noting, however, that the legislation will not necessarily be brought into force immediately, as it must await further internal processes in the other realms. Also, because it has elements of retrospective effect, unless a succession occurs soon, the new arrangements will apply to future successions regardless of the precise date that a new statute comes into force.

It is the Government’s intention to bring the provisions into force simultaneously with the other realms.

1 Introduction

On 3 December 2012 St James's Palace announced that the Duke and Duchess of Cambridge were expecting their first child. As the Duke, Prince William, is second in line to the throne, the child would be third in line in present circumstances. Under the current law, if the child is a boy, he would stay in that position or move higher over time. The Bill makes changes to ensure that the same applies if the child is a girl. At present, a girl would be displaced in the event that any younger brothers were born. This answers longstanding concerns over gender inequality in the rules of succession, given the changes in attitudes and legislation affecting the rest of society, and given the long and stable reign of the present Queen.

The Bill makes two other changes in related areas. First, it allows the monarch, or a person in the line of succession, to marry a Roman Catholic without being disqualified as a result. Secondly, it repeals the *Royal Marriages Act 1772*, which, subject to exceptions, requires descendants of George II to obtain the monarch's permission to marry. The Bill replaces this with a requirement for the first six people in the line of succession to seek this permission.

The Bill is tied into an international process. The Queen is Head of State of 16 states, including the UK, and her status is entrenched separately in each of these. The decision has been taken to move forward with changes at the same time in each of these "realms." In October 2011 the political leaders of the realms agreed to change the rules of succession in two ways, to treat men and women equally, differentiating solely on the basis of age, and to remove the bar on the monarch or any person in the line of succession being married to a Roman Catholic (though the bar on the monarch being a Roman Catholic will remain). Work then began to bring all 16 of these states into a position in which the legislation could be introduced.

On 4 December 2012 the Deputy Prime Minister, Nick Clegg, announced that the other realms had consented formally to the changes, and had indicated that they could take the necessary measures in their own legislation to give effect to the new arrangements. As a result, the UK Government would introduce a bill as soon as possible. The [Succession to the Crown Bill](#) was introduced to the Commons on 13 December 2012, as Bill 110 of 2012-13.

2 Current rules of succession

The current rules of succession to the Crown derive from the *Bill of Rights 1689*, the *Act of Settlement 1700* and the common law, forming part of the aftermath of the Glorious Revolution and the accession of William and Mary. They were designed to secure the Protestant succession, and to prevent alliances with Catholic states in Continental Europe, as well as to further assert and entrench Parliament's constitutional supremacy. The combined effect, in the context of the times, was to secure the freedoms and status of Parliament against the possibility of monarchical absolutism.

2.1 Restrictions on Roman Catholics

The monarch may not be a Roman Catholic, nor may a person marry one and remain on the throne or in the line of succession. This derives from the introductory text to the Bill of Rights, which included the following:

And whereas it hath beene found by Experience that it is inconsistent with the Safety and Welfaire of this Protestant Kingdome to be governed by a Popish Prince or by any King or Queene marrying a Papist the said Lords Spirituall and Temporall and Commons doe further pray that it may be enacted That all and every person and persons that is are or shall be reconciled to or shall hold Communion with the See or Church of Rome or shall professe the Popish Religion or shall marry a Papist shall be

excluded and be for ever uncapable to inherit possess or enjoy the Crowne and Government of this Realme and Ireland and the Dominions thereunto belonging or any part of the same or to have use or exercise any Regall Power Authoritie or Jurisdiction within the same.

During the events that led to the ousting of James II, Parliament, concerned over his Catholicism, belief in the Divine Right of Kings and potential Continental allegiances, offered the Crown to his daughter, Mary, a Protestant. She agreed on the condition that her husband, William of Orange, could rule beside her. The pair became William III and Mary II. However, Mary died without a surviving heir. There seemed little prospect of William marrying again and producing an heir, while Mary's sister, who later became Queen Anne, had suffered a great many miscarriages, stillbirths and infant deaths, before losing the only one of her children who had survived infancy. The prospect of instability arose once more.

Parliament addressed this by passing the Crown, after William, Anne and their hypothetical successors, to Princess Sophia, Electress of Hanover and granddaughter of James I, and to her Protestant heirs. This was effected by section 1 of the *Act of Settlement 1700*:

[...] the most Excellent **Princess Sophia** Electress and Dutchess Dowager of Hannover Daughter of the most Excellent Princess Elizabeth late Queen of Bohemia Daughter of our late Sovereign Lord King James the First of happy Memory be and **is hereby declared to be the next in Succession in the Protestant Line to the Imperiall Crown** [...] **the Crown** and Regall Government of the said Kingdoms of England France and Ireland and of the Dominions thereunto belonging with the Royall State and Dignity of the said Realms and all Honours Stiles Titles Regalities Prerogatives Powers Jurisdictions and Authorities to the same belonging and appertaining **shall be remain and continue to the said most Excellent Princess Sophia and the Heirs of Her Body being Protestants** [...]

[Emphasis added]

In fact, Sophia never became Queen. Anne succeeded William III, and outlived Sophia. As a result, Sophia's son, George, became King in 1714.

Section 2 of the Act of Settlement restated the restriction in the Bill of Rights on Roman Catholics or those married to them succeeding to the Crown. It is notable that the descendants of Roman Catholics, or of those who marry one, do not lose their place in the line of succession as a result. There are no other restrictions on the religion of the monarch's spouse.

In Scotland the position of the established Protestant Presbyterian Church was safeguarded in the *Acts of Union 1706* and *1707*. Article II of the Acts confirmed the provisions of the Act of Settlement and reiterated provisions relating to the succession:

That the Succession to the Monarchy of the United Kingdom of Great Britain and of the Dominions thereto belonging after Her most Sacred Majesty and in default of Issue of Her Majesty be remain and continue to the most Excellent Princess Sophia Electoress and Dutchess Dowager of Hanover and the Heirs of her body being Protestants upon whom the Crown of England is settled by an Act of Parliament made in England in the Twelfth year of the reign of His late Majesty King William the Third intituled an Act for the further Limitation of the Crown and better securing the rights and Liberities of the Subject And that all Papists and persons marrying Papists shall be excluded from and for ever incapable to inherit possess or enjoy the Imperial Crown of Great Britain and the Dominions thereunto belonging or any part thereof and in every such Case the Crown and Government shall from time to time descend to and be enjoyed by such person being a Protestant as should have inherited and enjoyed the same in case such

Papist or person marrying a Papist was naturally dead according to the Provision for the descent of the Crown of England made by another Act of Parliament in England in the first year of the reign of Their late Majesties King William and Queen Mary intituled an Act declaring the Rights and Liberties of the Subject and settling the Succession of the Crown.

In addition, the Acts of Union with Ireland make reference to succession according to existing laws and to the terms of union between England and Scotland, thus implying the bar on marrying a Roman Catholic:

That it be the Second Article of Union, that the succession to the imperial crown of the said United Kingdom, and of the dominions thereunto belonging, shall continue limited and settled in the same manner as the succession to the imperial crown of the said kingdoms of Great Britain and Ireland now stands limited and settled, according to the existing laws and to the terms of union between England and Scotland.¹

2.2 Male preference primogeniture

At present, male heirs to the throne take precedence over their female siblings, regardless of their relative ages. Among the male heirs, and subsequently among the females as well, age determines precedence. These two principles, brothers before sisters, and older before younger, create a system known as “male preference primogeniture.”

This principle has developed gradually over many centuries. During the Anglo-Saxon period there was no normative rule on succession, which was instead claimed on a range of bases, including inheritance, but also nomination by the previous monarch, conquest or election. In practice, the King tended to be the person who could secure the Crown, not a person who was emplaced according to an abstract principle.

The Normans continued broadly similar practice, with the early Kings nominating their successors from their own children or their nephews (generally women were not nominated, although this too was not an absolute rule). In this, the Kings did not respect primogeniture. William I, for instance, bequeathed the Crown to his second son, also called William, who was succeeded by his younger brother, Henry, despite an agreement to pass the Crown to his older brother, Robert. The situation remained complex, if viewed in terms of age, with just one extended period of primogeniture covering four successions (from Henry III to Edward III), until it finally collapsed into the War of the Roses. Even after this period, there was still a tendency to choose a successor rather than to follow a principle, with the authority to do so gradually moving from the reigning monarch to Parliament.

These periods of English history could be characterised as having a political monarchy in which succession took account of heredity in the male line, but was primarily determined by the realities of power. The deviation from this approach, under which male preference primogeniture became the controlling principle, happened when Parliament decided to entrench the succession in statute, as mentioned above, by conferring it on the heirs to the body of Princess Sophia:

By the Act of Settlement, the Crown shall “be remain and continue to the said most excellent Princess Sophia” (the Electress of Hanover, granddaughter of James I) “and the heirs of her body being Protestant.”² The limitation to the heirs of the body, which has been described as a parliamentary entail, means that the Crown descends in principle as did real property under the law of inheritance before 1926. That law *inter alia* gave preference to males over females and recognised the right of primogeniture.

¹ Article Second of *Union with Ireland Act 1800* and *Act of Union (Ireland) 1800*.

² The text of the Act of Settlement on legislation.gov.uk has “Protestants”.

The major exception to the common law rules of inheritance is that for practical reasons the right of two or more sisters to succeed to real property as co-parceners does not apply: as between sisters, the Crown passes to the first born.³

Male preference primogeniture therefore derives from common law, the law on property inheritance, as entailed by the *Act of Settlement 1700*, section 1.

3 Decision to change the rules

3.1 Labour Governments

There have been discussions over the rules of succession for some time. The Blair Government did not support reform in this area, arguing that the complexities outweighed the benefits:

Ms Roseanna Cunningham: To ask the Prime Minister if he will make it his policy to seek to amend the law to (a) allow members of the Royal family to marry a Catholic without losing their right to inherit the throne and (b) allow Roman Catholics to inherit the throne; and if he will make a statement. [99658]

The Prime Minister [*holding answer 26 November 1999*]: The Government have always stood firmly against discrimination in all its forms, including against Roman Catholics, and it will continue to do so.

The Government have a heavy legislative programme aimed at delivering key manifesto commitments in areas such as health, education, crime and reform of the welfare system. To bring about change to the law on succession would be a complex undertaking involving amendment or repeal of a number of items of related legislation, as well as requiring the consent of legislatures of member nations of the Commonwealth. It would raise other major constitutional issues. The Government have no plans to legislate in this area.⁴

Gordon Brown, perhaps responding to the greater sensitivity to the matter among Scottish Catholics, changed this position, and gave his support to a process of discussion within the Commonwealth with a view to change:

Dr. Evan Harris (Oxford, West and Abingdon) (LD): In March, when the Lord Chancellor talked out my private Member's Bill to end the discrimination against Catholics in royal marriages and against women in the line of succession, he said that the Government recognised that this discrimination should end. Can the Prime Minister confirm that he is, as the Lord Chancellor said, ready to consult the relevant Commonwealth Heads of Government this week and that he is confident that we will then be able to sort this out, so that the all-party-

Mr. Speaker: Order. We get the drift. I call the Prime Minister.

The Prime Minister: The Act of Settlement is outdated, and I think that most people recognise the need for change. Change can be brought about only by not just the United Kingdom, but all realms where Her Majesty is Queen making a decision to change. That is why it is important to discuss this with all members of the Commonwealth, including countries such as Australia and Canada. That is the process that will be undertaken in due course.⁵

³ *Constitutional and Administrative Law*, A Bradley and K Ewing, 15th ed, 2011, p234

⁴ HC Deb 13 December 1999, c57

⁵ HC Deb 25 November 2009, c532

The Labour Party manifesto for the 2010 General Election stated that:

Our constitutional monarchy is the source of deep pride and strength for our country. We believe that there is a case for reform of the laws concerning marriage to Roman Catholics and the primacy of male members of the Royal family. However, any reform would need the agreement of all the Commonwealth countries of which the Queen is the Sovereign.⁶

3.2 Private Members' Bills

There have been regular attempts by backbenchers in both Houses, increasing in frequency in the 21st century, to amend the rules of succession in various ways, primarily in respect of gender and religious discrimination. These are the subject of a Parliamentary Information List, [Attempts to amend Crown succession since 1979](#), published as Standard Note 4663, 19 January 2011. In addition, Research Paper 09/24, [Royal Marriages and Succession to the Crown \(Prevention of Discrimination\) Bill](#), 17 March 2009, covers in greater detail Evan Harris's *Royal Marriages and Succession to the Crown (Prevention of Discrimination) Bill 2008-09*.

3.3 Commonwealth Heads of Government Meeting, October 2011

Before the Commonwealth Heads of Government Meeting (CHOGM) in Perth, Australia, in October 2011, Prime Minister David Cameron wrote to the Heads of Government of the 15 states aside from the UK of which the Queen is monarch (known today as her "realms"), proposing various changes to the rules of succession. Although the letter was not made public, it was reported that it included three proposals for change: to repeal the restrictions on marrying a Roman Catholic, to remove the preference for males from the rule of primogeniture, and to amend the *Royal Marriages Act 1772* to remove the general requirement for descendants of George II to seek monarchical consent to marry.⁷

Following the CHOGM an agreement was reached among the realms, which covered the first two points:

Agreement in Principle among the Realms

The Prime Ministers of the sixteen Commonwealth nations of whom Her Majesty the Queen is Head of State have agreed during their meeting in Perth to work together towards a common approach to amending the rules on the succession to their respective Crowns. They will wish unanimously to advise The Queen of their views and seek her agreement.

All countries wish to see change in two areas. First, they wish to end the system of male preference primogeniture under which a younger son can displace an elder daughter in the line of succession. Second, they wish to remove the legal provision that anyone who marries a Roman Catholic shall be ineligible to succeed to the Crown. There are no other restrictions in the rules about the religion of the spouse of a person in the line of succession and the Prime Ministers felt that this unique barrier could no longer be justified.

The Prime Ministers have agreed in principle that they will each work within their respective administrations to bring forward the necessary measures to enable all the realms to give effect to these changes simultaneously.

⁶ Labour Party, *A Fair Future for All*, 2010, 9:6

⁷ *BBC website*, "[David Cameron proposes changes to royal succession](#)", 12 October 2011, accessed 28 October 2011

Perth, Australia**28 October 2011**

Antigua and Barbuda

Australia

The Bahamas

Barbados

Belize

Canada

Grenada

Jamaica

New Zealand

Papua New Guinea

St Christopher and Nevis

St Lucia

St Vincent and the Grenadines

Solomon Islands

Tuvalu

United Kingdom

Fri, 2011-10-28 18:04 ⁸**3.4 Coordination among the realms**

The Government of New Zealand undertook to carry out the work of coordination between the realms so that all the necessary changes could take place together. There are two separate issues here: the practical desire to maintain the same monarch, and an argument that there is a legal necessity to gain assent from one another to make changes.

Practical reason for coordination

The Queen is Head of State of 16 states, including the UK and the others listed above. She is Queen of each of these separately, a principle known as the “divisibility of the Crown.” This is, broadly speaking, in recognition of the independence of these states; divisibility did not need to apply when dealing with colonial possessions.

However, the way in which the Queen’s status is entrenched in these states is not uniform. As independent states, they have their own laws to determine their Head of State. Information on the constitutional status of the Crown in the realms, and the mechanisms for constitutional change, are given in the Appendix to this Paper.

⁸ [CHOGM 2011 website](#), accessed 19 December 2012

For those realms that follow directly the UK rules of succession, or simply recognise the UK monarch, any changes in UK legislation should deliver them the same monarch as determined by that legislation. For instance, it appears that in the Solomon Islands and Papua New Guinea changes in UK law on this subject are regarded as having automatic effect. However, in respect of some other realms there are arguments as to whether automaticity would apply. There is an overriding point that as independent states they may wish or need to provide specifically for the changes in their own laws and constitutions. Finally, any legislation in the realms which refers to the Crown, the Queen, the succession and so on will need to be checked to ensure consistency with the new UK arrangements.

Possible legal reason for coordination

It is sometimes suggested that the UK is obliged under the *Statute of Westminster 1931* to gain the assent of the other realms before making any changes to the rules of succession,⁹ although this argument is perhaps overstated. The issues are discussed in greater detail in Research Paper 09/24, *Royal Marriages and Succession to the Crown (Prevention of Discrimination) Bill*, 17 March 2009.¹⁰

The argument derives from the provision in the Preamble to the Statute of Westminster that,

any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom.

In general, preambular language does not have the binding force of the operative sections of an Act, although it may be used to assist in interpretation. The obligation may be regarded therefore as political rather than legal. However, the Statute of Westminster is an unusual instrument in many ways. Few other 20th century statutes have a preamble of this kind; Parliament used the Statute to limit and relinquish its own power and sovereignty; it governed what were effectively independent states, and which became undoubtedly so in the course of using its provisions; it allowed certain of them to take up its provisions at a time and to an extent of their own choosing; and it reflected prior agreements between them which were akin to a treaty. There is jurisprudence from Canada that asserts the need for agreement across the realms for any changes, comparing it to a treaty, suggesting that in at least one realm the commitment indicated in the Preamble is regarded as binding.¹¹

There is a precedent, since agreement was sought for the *Declaration of Abdication Act 1936*, which among other things gave effect to the abdication of Edward VIII, and barred any future claim to the throne by him or his prospective heirs. However, the fact that agreement was sought does not imply that a legal obligation was accepted, as it may have resulted from a sense of political obligation.

A further counter-argument to any sense that the commitment is legally binding, or indeed akin to a treaty, is that the Dominions mentioned in the Statute of Westminster were defined in its section 1 as Australia, Canada, the Irish Free State, Newfoundland, New Zealand and South Africa. Today's realms include states that were not mentioned in the Statute of Westminster, that did not fall within the category of "Dominions" as defined by that Act, and, in some cases, were not even administered as separate entities at the time (for instance, some formed part of the Windward Islands or Leeward Islands colonies).

⁹ See the language used in the quotations above from Labour Prime Ministers.

¹⁰ See also, eg, *Monarchy and the Constitution*, V Bogdanor, 1995, *King and Country: monarchy and the future King Charles III*, R Blackburn, 2006, and, in a short discussion, *Constitutional and Administrative Law*, P Jackson and P Leopold, 8th ed, 2001.

¹¹ 2003 CanLII 41404 (ON S.C.) reported at [2003] O.T.C 623 and (2003) 109 C.R.R. This is discussed further in RP 09/24, cited in the text above.

4 The changes as announced

Whatever the legal arguments as to the necessity of assent from the Dominions and/or the realms, the UK Government chose to coordinate its changes to the rules of succession with the other realms. This went beyond the matter of seeking assent, and also covered the capacity of the realms to give effect to the changes. It would seem that the purpose of this is to guarantee clarity over the succession, and unity of the person who will hold the various Crowns in future. It also reflects the independence of those states and the sense that if changes are to occur in their own rules of succession, they should enact the changes themselves. In some states legal opinion holds that, as Acts of the UK Parliament have no effect in their law, legislation of their own is a necessity.

On 4 December 2012 the Deputy Prime Minister's office confirmed that formal letters of consent had been received, indicating that each of the realms was in a position to take the necessary measures prior to the commencement of UK legislation.¹²

4.1 Deputy Prime Minister's statement

Mr Clegg announced the agreement in a press release:

The Deputy Prime Minister today announced that the Government has received final consent from all the Commonwealth realms to press ahead with a landmark bill to end the centuries-old discrimination against women in line to the British throne at the soonest possible opportunity.

This confirmation means that the Government will seek to introduce the Succession to the Crown Bill in the House of Commons at the earliest opportunity allowed by the parliamentary timetable.

The legislation will end the principle of male primogeniture, so that men will no longer take precedence over women in line to the throne, and end the bar on anyone in the line of succession marrying a Roman Catholic.

The new rules will apply to any baby born in the line of succession, taking effect after the Prime Minister made the announcement in Perth, Australia, at the Commonwealth Heads of Government meeting in October 2011. At that meeting, an agreement was reached with all of the realms that the change should take effect immediately, and would be confirmed in legislation at a later date. This comes at the end of a significant period of work by the Government, the realms and Buckingham Palace.

The legislation is now a step closer as the governments of the realms have confirmed that they will be able to take the necessary measures in their own countries before the UK legislation comes into effect – a crucial step following the Perth agreement in October 2011.

The Deputy Prime Minister said:

“This is a historic moment for our country and our Monarchy. People across the realms of the Commonwealth will be celebrating the news that the Duke and Duchess of Cambridge are expecting their first child.

We can also all celebrate that whether the baby is a boy or a girl, they will have an equal claim to the throne. It's a wonderful coincidence that the final confirmation from

¹² Notes to editors in [Royal succession rules will be changed](#), Deputy Prime Minister, Press Release, 4 December 2012

the other realms arrived on the very day that the Duke and Duchess of Cambridge made their announcement.

The Government will soon introduce the Succession to the Crown Bill which will make our old fashioned rules fit for the 21st Century. It will write down in law what we agreed back in 2011 – that if the Duke and Duchess Cambridge have a baby girl, she can one day be our Queen even if she later has younger brothers.”¹³

According to the notes to editors, “the other realms will take the necessary measures in their own country, and the British legislation will be commenced when that has happened.”

4.2 Retrospectivity

The Government stated on several occasions that the legislation in respect of gender would have effect from the point of the announcement in Perth. This meant that it would be retrospective, and would guarantee that any child born into the line of succession after 28 October 2011 would be positioned according to the new rules, not the existing ones. If the Duchess of Cambridge had a daughter, she would remain third in line to the throne or move higher, just as would a baby boy, regardless of any younger brothers she might have.

The Prime Minister confirmed this on 5 December 2012:

Mrs Eleanor Laing (Epping Forest) (Con): The whole House does indeed join the Prime Minister in congratulating the Duke and Duchess of Cambridge on their excellent good news. Will the Prime Minister please confirm to the House that the Commonwealth has at last agreed—after many of us have been asking for this for years—to change the rules on royal succession? Will the Prime Minister undertake to bring a Bill before the House very soon, so that if this baby is a girl she can follow in the footsteps of her much-loved great-grandmother and become our Queen?

The Prime Minister: I am very grateful to my hon. Friend for her question. I think I can answer positively on all the points she made. At the Perth Commonwealth conference, I chaired a meeting of the Prime Ministers of all the different realms and we agreed we should bring forward legislation to deal with this issue. All the realms have now agreed to do that. We will introduce legislation into this House very shortly. It will write down in law what we agreed back in 2011: that if the Duke and Duchess of Cambridge’s first child is a girl, she can one day be our Queen. That is the key point. But it is important to explain that the changes will apply to a child born after the date of the Perth announcement of last year even if the birth is before the legislation is passed. I hope it will not take long—certainly not nine months—to pass this legislation, but, just in case, there would not be a problem.¹⁴

5 Select Committee report

After the announcement in Perth the Political and Constitutional Reform Committee took evidence from two witnesses and published a short report on the proposed changes.¹⁵ It supported the changes, but pointed to other issues that might be raised as a result.

The Committee gave the following account of the restriction on marrying Roman Catholics:

The provision relating to marriage to a Catholic dates back more than three hundred years to the Glorious Revolution and Bill of Rights of 1688-89. It serves little if any

¹³ [Royal succession rules will be changed](#), Deputy Prime Minister, Press Release, 4 December 2012

¹⁴ HC Deb 5 December 2012, c864

¹⁵ [Rules of Royal Succession](#), Political and Constitutional Reform Committee, 11th report 2010-12, HC 1615 2010-12, 7 December 2011

contemporary purpose, and is seen as an injustice, especially as there are no other restrictions on the religion of the spouse of a person in the line of succession. This lack of other restrictions is almost certainly because the provision is so antiquated that the marriage of a monarch to anyone of another religion was inconceivable when it was drafted.¹⁶

It raised a potential issue in that,

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.¹⁷

The Committee noted that this requirement of canon law can be waived by the Pope, although it also noted that some other religions impose similar requirements.

The Committee also found that the removal of the bar on the monarch marrying a Roman Catholic could draw greater attention to the bar on the monarch actually being a Roman Catholic, which will remain in place. This could interact with the point above about a child being brought up in such a way that s/he could not succeed for religious reasons. The Committee concluded:

We welcome the proposal that would allow a member of the royal family to marry a Roman Catholic without losing their place in the line of succession. The existing provision is anomalous in discriminating solely against Roman Catholics and those who wish to marry them. The proposal does, however, raise questions about the future role of the Crown in the Church of England, which the House may wish to consider in due course.¹⁸

The Committee welcomed the change on male preference in primogeniture, but argued that this threw into relief the system used in the hereditary aristocracy, which either prevents women inheriting at all, or gives males preference. This was a matter of public interest, since the holders of hereditary peerages continue to be eligible for 92 seats in the House of Lords.¹⁹

On the *Royal Marriages Act 1772* the Committee argued that,

The Act is likely now to apply to thousands of people, many of whom have at most a tenuous connection to the extended royal family, let alone to the throne. The Royal Marriages Act is overdue for reform. We look forward to seeing the detail of the Government's proposals in this area.²⁰

The Report ended:

We welcome the changes agreed between the sixteen Commonwealth Realms. It would be wrong to present the changes as a major step towards modernisation. It is true, as Dr Morris told us, that it is hard "to infuse logic into a system that isn't logical". But people value having a hereditary head of state for the sake of history and tradition and because it is a system that has generally worked well, rather than because it is modern or fair. The changes being proposed are modest, but they will remove two

¹⁶ HC 1615 2010-12, para 8

¹⁷ HC 1615 2010-12, para 9

¹⁸ HC 1615 2010-12, para 14

¹⁹ HC 1615 2010-12, paras 15-17

²⁰ HC 1615 2010-12, para 18

elements of discrimination in determining the succession to the throne, while maintaining its traditional hereditary character.²¹

6 Role as Supreme Governor of Church of England

There is a related issue concerning the Church of England. The monarch is Supreme Governor of the Church of England. This had its origin in the split from Rome. Henry VIII's *Act of Supremacy 1534*, which had only one paragraph, included the following:

be it enacted, by authority of this present Parliament, that the king, our sovereign lord, his heirs and successors, kings of this realm, shall be taken, accepted, and reputed the only supreme head in earth of the Church of England, called Anglicans Ecclesia.

The nobility was required to swear an oath recognising the King's supremacy over the Church.

Henry's daughter, Mary I, repealed the Act in 1555, but Elizabeth I effectively restored it when her Parliament passed the *Act of Supremacy 1558*.²² In this, the wording of the oath changed from "supreme head" to "supreme governor":

I, A. B., do utterly testify and declare in my conscience, that the queen's highness is the only supreme governor of this realm, and of all other her highness's dominions and countries, as well in all spiritual or ecclesiastical things or causes, as temporal, and that no foreign prince, person, prelate, state or potentate, has, or ought to have, any jurisdiction, power, superiority, preeminence, or authority ecclesiastical or spiritual, within this realm; and therefore I do utterly renounce and forsake all foreign jurisdictions, powers, superiorities, and authorities, and do promise that from henceforth I shall bear faith and true allegiance to the queen's highness, her heirs and lawful successors, and to my power shall assist and defend all jurisdictions, preeminences, privileges, and authorities granted or belonging to the queen's highness, her heirs and successors, or united and annexed to the imperial crown of this realm. So help me God, and by the contents of this book.²³

In his Preface to the 39 Articles of the Church of England, added in 1628, Charles I announced himself in the following terms:

Being by God's Ordinance, according to Our just Title, Defender of the Faith, and Supreme Governor of the Church, within these Our Dominions, We hold it most agreeable to this Our Kingly Office, and Our own religious Zeal, to conserve and maintain the Church committed to Our Charge [...]

He went on to declare, in his third paragraph, "That We are Supreme Governor of the Church of England."

In addition, the monarch is required under section 3 of the *Coronation Oath Act 1688* to

maintaine the Laws of God the true profession of the Gospell and the Protestant reformed religion established by law [...] and [...] preserve unto the bishops and clergy of this realm and to the churches committed to their charge all such rights and privileges as by law do or shall appertain unto them or any of them.

²¹ HC 1615 2010-12, para 19

²² According to former usage, the Elizabethan Act is cited as per the date of the Parliament, although it was not passed until the next year, 1559.

²³ The Act was not divided into sections.

Section 3 of the *Act of Settlement 1700* takes the matter further. It requires active participation by the monarch in the Church of England: “whosoever shall hereafter come to the possession of this crown shall joyn in communion with the Church of England as by law established.”

The proposed changes to the rules of succession do not affect the role of the monarch as Supreme Governor of the Church of England, since there is no intention to change the rule that the monarch must not be a Catholic. There is a fine argument that the spouse of the monarch must also swear to maintain the established religion, deriving from a reading of the *Coronation Oath Act 1688*, but this is somewhat contentious, and in general that aspect of the 1688 Act is seen as limited to the situation of joint monarchs (William and Mary). The oath has not always been sworn by the spouse (Prince Philip did not take it, for instance), and it has on occasion been modified without statutory authority. This is discussed further in Standard Note 683, *The Act of Settlement and the Protestant Succession*, 24 January 2011. There is also further discussion of the role in respect of the established Church in Research Paper 09/24, *Royal Marriages and Succession to the Crown (Prevention of Discrimination) Bill*, 17 March 2009.

7 The Bill

The *Succession to the Crown Bill*, Bill 110 of 2012-13, had its first reading in the Commons on 13 December 2012. [Explanatory Notes](#) are also available.²⁴ At time of writing, a date for second reading has not been announced. As a constitutional measure, the committee stage will be taken on the floor of the House.

The Bill will be subject to Queen’s consent.²⁵ This means that, because the Bill concerns the interests and prerogative of the Crown, it cannot be passed unless the Queen’s consent has been signified in both Houses of Parliament. This can happen at any stage before the end of the Bill’s progress, although with a Bill which is fundamentally concerned with the Crown there is advantage in seeking consent early. Consent to this Bill has not been signified to date.

7.1 Explanation of clauses

The Bill has five clauses and a schedule of consequential amendments.

Clause 1 provides that the gender of a person born after 28 October 2011 does not give them or their descendants precedence over anyone else in the line of succession. This applies regardless of the date of birth of the other person.

Clause 2 provides that a person is not disqualified from succeeding to the Crown or from being the monarch as a result of marrying a Roman Catholic. This applies retrospectively, so that it covers marriages taking place before the provision comes into force so long as the person in the line of succession is alive at the time of entry into force. This will mean that some individuals will regain their place in the line of succession who had lost it as a result of marrying a Roman Catholic. According to the Explanatory Notes, “this does not affect anyone with a realistic prospect of succeeding to the Throne.”²⁶

Clause 3 concerns the consent of the monarch to certain Royal marriages. At present, under the *Royal Marriages Act 1772*, a descendant of George II may marry only with the consent of the sovereign. A marriage in contravention of this is void. There are two exceptions. The requirement for consent does not apply to the children of princesses who marry into foreign

²⁴ Bill 110 - EN

²⁵ See *Erskine May*, 24th ed, 2011, pp165-7 for further details.

²⁶ Bill 110 – EN, para 28

families. Also, people over 25 years of age may marry against the wishes of the monarch, having given 12 months notice to the Privy Council, unless both Houses of Parliament disapprove during the notice period.

Clause 3 (4) repeals the 1772 Act. Under clause 3 (5), a marriage voided under that Act is now treated as not being void, so long as all of certain conditions are met. These are that,

- Neither spouse was within the first six people in the line of succession when they married
- Consent was not sought under the 1772 Act, nor was notice given of an intention to marry under the exception for over-25s
- It was reasonable for the person concerned not to be aware that the Act applied to the marriage, and
- Nobody acted on the basis that the marriage was void before the new provision came into force

This applies for all purposes except those relating to the succession. According to the Explanatory Notes, this 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.”²⁷

Clause 3 (1) replaces the requirement for consent in the 1772 Act with a requirement for the first six people in the line of succession to obtain consent from the monarch if they wish to marry. Failure to obtain consent will be a disqualification, so the person and his/her descendants will not be able to succeed to the Crown. However, the marriage itself will no longer be void.

This provision affects specific members of the line of succession differently from others. However, the Bill is not being treated as hybrid. This is presumably because the effect is a matter of public policy (their succession to the Crown), not private rights (they can still marry). It is also a relaxation of the position at present. The discussion of human rights in Part 7.2 below indicates the Government’s view on the question of public interests and private rights in this matter.

Clause 4 concerns consequential amendments. It gives effect to the Schedule, which lists these amendments, and it also refers directly to some constitutional instruments. Clause 4 (2) provides that references in any enactment to the provisions of the Bill of Rights and the Act of Settlement relating to succession or possession of the Crown are to be read as including reference to the provisions of the Bill. This ensures that no confusion or conflict with the present Bill can arise as a result of cross-references to those earlier statutes.

Clause 4 (3) makes parts of the Acts of Union with Scotland and Ireland subject to the provisions of the Bill. These are the parts that touch on succession, being Article II of the *Union with Scotland Act 1706* and Article II of the *Union with England Act 1707*, which include the prohibition on marrying a Roman Catholic, as well as Article Second of the *Union with Ireland Act 1800* and Article Second of the *Act of Union (Ireland) 1800*, which refer to succession according to existing laws and to the terms of the Union between England and Scotland.

Clause 5 concerns commencement and the short title. Commencement is by order of the Lord President of the Council on a particular day and time, and different days and times may be appointed for different purposes.

²⁷ Bill 110 – EN, para 33

The commencement by order in this case reflects the Government's desire to pass the legislation, then wait for the other realms to complete their own processes of amendment, and then to commence the new legislation simultaneously with them. This explains the inclusion of the day and time provision for the commencement order, since it will be possible to take account of local time differences. The provision for different days and times to be used for different purposes may support this aim, and it is also in case of unforeseen circumstances. In practice, the Government does not wish to commence the provisions at different times; the Explanatory Notes state that "each element impacts on the laws of succession and should in the Government's view be brought into force simultaneously."²⁸

The **Schedule** makes consequential amendments.

Paragraph 1 amends the *Treason Act 1351*, because in some cases this refers to the monarch's eldest son and heir. In future, these need not be the same person. The amendment means that it will be an offence under that Act to compass the death of the monarch's eldest child and heir, and to violate the wife of the eldest son if he is the heir.

Paragraph 2 amends the Bill of Rights to remove the bar on marrying a Roman Catholic.

Paragraph 3 amends the Act of Settlement to the same effect.

By paragraph 5 these two provisions apply to marriages made before the coming into force of clause 2 so long as the person concerned is alive at the time of entry into force (see discussion of clause 2 above).

Paragraph 4 amends the *Regency Act 1937* to include in the list of persons disqualified from being Regent anyone disqualified from succeeding to the Crown as a result of not gaining permission to marry under the present Bill (ie, one of the first six in the line of succession).

7.2 Human rights

The Explanatory Notes to the Bill give the Government's position on the question of human rights, and whether any aspect of the Bill engages rights under the European Convention on Human Rights.

While the Government argues that clauses 1 and 2 (gender and marriage to Roman Catholics) do not engage any such rights, it also argues that

the Strasbourg courts would say that a state had a wide margin of appreciation when making changes to its constitutional arrangements and would accept that there was an objective and reasonable justification for clauses 1 and 2: the removal of discriminatory provisions is a legitimate aim and it is achieved proportionately.²⁹

Clause 3 (permission to marry) does engage Article 12 on the right to marry according to national laws. The Explanatory Notes give the following argument:

The Court has said that the phrase "according to the national laws" gives states a wide margin of appreciation, and they may choose what rules on capacity and formal requirements to marriage to lay down, provided that they do not "deprive a person or a category of persons completely of the right to marry" or apply arbitrary standards (*Van Oosterwick v Belgium* (1980) 2 EHRR 557). In the Government's view there is a public interest in having special provisions on consent to marriage for members of the Royal Family. Furthermore, because the sanction is no longer to be that a marriage entered

²⁸ Bill 110 – EN, para 19

²⁹ Bill 110 – EN, para 52

into without consent is to be void, as is the position under the Royal Marriages Act 1772, but relates only to the order of succession to the throne, there is in the Government's view no impairment of the very essence of the right to marry. The first six people in the line of succession are not prevented from marrying but only lose their place in that line should they do so without the Sovereign's consent.³⁰

The Government does not set out in full what the public interest is in requiring certain members of the Royal Family to seek consent for marriage. However, it goes on:

There is an objective justification for the provision, in that requiring the sovereign to consent to the marriage of those closest in line to the throne is a legitimate aim, and limiting the sanction for breach to removal from the line of succession rather than invalidating the marriage is proportionate. Other European monarchies also have requirements of consent to the marriage of members of the Royal Family.³¹

7.3 Fast-tracking

The Government intends to invite Parliament to expedite the Bill.

Lords Constitution Committee recommendations

In 2009 the House of Lords Constitution Committee reported on fast-tracked legislation, identifying potential difficulties raised by this approach, and recommending that better information be provided by Government to explain and justify the fast-tracking of individual bills. This matter is discussed in detail in Standard Note 5256, [Fast-track legislation](#), 12 November 2012.

In brief, the Committee identified five principles that should underpin consideration of fast-track legislation:

- The need to ensure that effective parliamentary scrutiny is maintained in all situations. Can effective scrutiny still be undertaken when the progress of bills is fast-tracked, even to the extent of taking multiple stages in one day?
- The need to maintain "good law"—i.e. to ensure that the technical quality of all legislation is maintained and improved. Is there any evidence that the fast-tracking of legislation has led to "bad law"?
- The importance of providing interested bodies and affected organisations with the opportunity to influence the legislative process. Is Parliament able to take account of the work of campaigners in its scrutiny work when a bill completes its parliamentary passage so quickly?
- The need to ensure that legislation is a proportionate, justified and appropriate response to the matter in hand and that fundamental constitutional rights and principles are not jeopardised.
- The need to maintain transparency. To what extent are the transparency of the policy-making process within government and the parliamentary legislative process compromised when bills are fast-tracked?³²

³⁰ Bill 110 – EN, para 53

³¹ Bill 110 – EN, para 54

³² Select Committee on the Constitution, [Fast-track Legislation: Constitutional Implications and Safeguards](#), HL 116 2008-09, 7 July 2009, para 16

The Committee recommended that the Government should explain its position by addressing the following:

- (a) Why is fast-tracking necessary?
- (b) What is the justification for fast-tracking each element of the bill?
- (c) What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?
- (d) To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?
- (e) Does the bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why do the Government judge that their inclusion is not appropriate?
- (f) Are mechanisms for effective post-legislative scrutiny and review in place? If not, why do the Government judge that their inclusion is not appropriate?
- (g) Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?
- (h) Have relevant parliamentary committees been given the opportunity to scrutinise the legislation?³³

Government's position on present Bill

The Government explains its position on the present Bill in the Explanatory Notes.

Why is fast-tracking necessary?

The Government argues that it undertook at the Perth CHOGM to be the first of the realms to introduce legislation, once agreement had been reached between all of them. Given the effort involved in the other states putting themselves in a position to give formal consent, "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."³⁴

In addition to this,

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.³⁵

A possible criticism might be made on the grounds that the legislation is not to commence immediately. The Government alludes to this:

It is of fundamental importance for the Government to take the first step and pass this legislation, although it will not be commenced until the other Commonwealth Realms have put in place the changes which are necessary for them to implement the Perth Agreement.³⁶

³³ HL 116 2008-09, para 186

³⁴ Bill 110 – EN, para 17

³⁵ Ibid

³⁶ Bill 110 – EN, para 18

It is also notable that clauses 1 to 3 of the Bill have elements of retrospectivity, so will apply regardless of when the legislation comes into effect (unless, hypothetically, issues of succession had to be determined before entry into force).

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

The Government again draws attention to the royal pregnancy, and to the need for all elements to be brought into force together:

Clause 1 of the Bill makes provision for succession to the Crown not to depend on gender and is of the highest priority in the current circumstances. However, it is desirable to fasttrack all elements of the Bill because each element impacts on the laws of succession and should in the Government's view be brought into force simultaneously.³⁷

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

The Government argues that it could not foresee the exact time when all the realms would be ready to move ahead; this has come relatively late in the session, and so the time available is limited. However, there has been much debate about the issues, which are well-known, and "the Government believes that a broad consensus has been reached on the content of the Bill."³⁸

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

As well as the discussions among the realms, the Government points to its efforts to engage with religious organisations, the devolved administrations, the British Overseas Territories and the Crown Dependencies.³⁹

Does the bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why does the Government judge that their inclusion is not appropriate?

It does not, the justification being that the Bill will form part of "the United Kingdom's enduring constitutional settlement."⁴⁰

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

The Government argues that this is not appropriate because post-legislative scrutiny is mainly intended to ensure effective implementation of legislation. Again, it points to the role of the Bill in the enduring constitutional arrangements.⁴¹

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

The Government asserts that existing legislation is not sufficient to deal with the issues,⁴² presumably on the basis that at least for the bar on marriage to Roman Catholics and the 1772 Act, it is existing legislation that has caused the issues.

³⁷ Bill 110 – EN, para 19

³⁸ Bill 110 – EN, para 20

³⁹ Bill 110 – EN, para 21

⁴⁰ Bill 110 – EN, para 22

⁴¹ Bill 110 – EN, para 23

⁴² Bill 110 – EN, para 24

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

The Government points to the report of the Political and Constitutional Reform Committee, as discussed above.⁴³ Strictly speaking, this was published before the legislation appeared, but after the CHOGM announcement covering the same substantive issues.

⁴³ Bill 110 – EN, para 25

Appendix – Constitutional arrangements for the Crown in realms aside from the UK

Australia

The *Commonwealth of Australia Constitution Act 1900* created the Australian state “under the Crown of the United Kingdom of Great Britain and Ireland.”⁴⁴ The Constitution Act includes a provision on the succession, in numbered paragraph 2 of the preamble: “the provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom.”

Australian legislation is necessary to give effect in Australia to any changes to the UK law governing succession. Acts of the UK Parliament no longer extend to Australia, as confirmed by the passage of the Australia Acts in Australia and the UK in 1986. Section 1 of the *Australia Act 1986* (Commonwealth of Australia) and section 1 of the *Australia Act 1986* (UK) provide:

No Act of the Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to the Commonwealth, to a State or to a Territory as part of the law of the Commonwealth, of the State or of the Territory.

Legislation passed by the UK Parliament to change the rules of royal succession would therefore have no effect in Australia unless given effect by Australian law.⁴⁵

The Constitution may be amended if approved by an absolute majority in both Houses of the federal Parliament (subject to an exception, see quotation below), and if subsequently approved by a majority of voters participating in a referendum and in a majority of states.

This is set out in section 128 of the Constitution Act:

This Constitution shall not be altered except in the following manner:--

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State and Territory to the electors qualified to vote for the election of members of the House of Representatives.

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it, or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State and Territory qualified to vote for the election of the House of Representatives.

⁴⁴ Preamble

⁴⁵ The non-applicability in Australia of any UK changes to the law of succession following the enactment of section 1 of the Australia Acts was recognised by Gleeson CJ, Gummow and Hayne JJ in *Sue v Hill* (1999) 199 CLR 462 at 502 [93].

When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representative, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

In this section, "Territory" means any territory referred to in section one hundred and twenty-two of this Constitution in respect of which there is in force a law allowing its representation in the House of Representatives.

Canada

According to a Canadian [judgement](#) in 2003,

By virtue of our constitutional structure whereby Canada is united under the Crown of Great Britain, the same rules of succession must apply for the selection of the King or Queen of Canada and the King or Queen of Great Britain. As stated by Prime Minister St. Laurent to the House of Commons during the debate on the bill altering the royal title:

"Her Majesty is now Queen of Canada but she is the Queen of Canada because she is Queen of the United Kingdom. ... It is not a separate office ... it is the sovereign who is recognized as the sovereign of the United Kingdom who is our Sovereign ..." *Hansard*. February 3, 1953, page 1566.

[...] These rules of succession, and the requirement that they be the same as those of Great Britain, are necessary to the proper functioning of our constitutional monarchy [...]⁴⁶

However, none of the rules set out in the statutes or the common law establishing male preference primogeniture, and disqualifying persons from succeeding to the Crown on marrying a Roman Catholic, or the requirement to obtain consent of the monarch for certain royal marriages are part of the law or Constitution of Canada. Only those statutes of the United Kingdom listed in the Schedule to the *Constitution Act 1982* have been incorporated into the Constitution of Canada.

Further, the proposed changes do not touch upon the Office of the Queen of Canada as this term is understood to comprise the substantive rights and powers of the Queen under Canadian law.

There is a specific sub-section of the Canadian [Constitution Act 1982](#) dealing with changes to the monarchy. Under section 41(a) an amendment relating to the office of the Queen may

⁴⁶ O'Donohue v Canada, 2003 CanLII 41404

be made if it has been authorised by resolutions of each House of the Canadian Parliament and of the legislative assembly of each province.

The Government of Canada takes the position that section 41 is not engaged by the proposed changes, and that the Parliament of Canada has the constitutional authority to legislate its consent as envisaged by the preamble to the *Statute of Westminster 1931*.

New Zealand

Under section 5 of New Zealand's [Constitution Act 1986](#) the succession is explicitly linked to the UK *Act of Settlement 1700*, but with reference to other laws on succession:

The death of the Sovereign shall have the effect of transferring all the functions, duties, powers, authorities, rights, privileges, and dignities belonging to the Crown to the Sovereign's successor, as determined in accordance with the enactment of the Parliament of England intituled The Act of Settlement (12 & 13 Will 3, c2) and any other law relating to the succession to the Throne, but shall otherwise have no effect in law for any purpose.

If New Zealand were to adopt a new rule of succession, it would presumably have to rely on the phrase "any other law relating to succession to the Throne," or else amend this provision. In principle, amendment would be a simple matter of a majority in the House of Representatives voting for an amendment bill.⁴⁷ It would be open to the Government of New Zealand to hold a referendum on this if it wished, though there is no requirement for it to do so.

The other countries of which the Queen is Head of State are as follows:

Jamaica

Section 68(1) of the [Constitution of Jamaica](#) provides that "the executive authority of Jamaica is vested in Her Majesty". There is no clear statement that she is Head of State, nor about the succession (nor is there any such statement in the *Jamaica Independence Act 1962*). Under section 49, section 68(1) may be changed by an Act of Parliament, so long as it is subject to elongated intervals in the (lower) House of Representatives of three months between introduction and the first debate, and between that debate and passage of the bill by that House; and so long as it is approved by a majority of those voting in a referendum.

The other Caribbean realms follow the same pattern, although there are differences of detail, discussed below.

Barbados

The [Constitution of Barbados](#) provides for the Queen's executive authority in section 63(1). It provides for amendment of that section by an Act passed by a two-thirds majority in each House, under section 49(2)(d). As with Jamaica, the text is specific in referring to "Her Majesty", rather than the British monarch.

Bahamas

The [Constitution of the Commonwealth of the Bahamas](#) similarly provides for the Queen's executive authority in article 71(1). Article 54(3)(d) provides for this to be altered by an Act

⁴⁷ The New Zealand parliament has only one chamber.

passed on a three-quarters majority in each House and by a majority of those voting in a referendum.

Grenada

The [Constitution of Grenada](#) provides for the Queen's executive authority in section 57(1). Under section 39(5), by reference to Schedule 1, this provision may be amended so long as there is an interval of 90 days between introduction of an amendment bill and second reading, so long as both Houses pass the legislation (subject to a lower House override similar to the Parliament Act), and so long as it has been approved by two-thirds of those voting in a referendum.

Saint Lucia

Section 59 of the [Constitution of Saint Lucia](#) vests executive authority in the Queen. Under section 41(2) this may be altered by an Act which gains a three-quarters majority of all Members in the lower House, subject to an interval of 90 days between its introduction and second reading in that House, and subject to approval by a majority voting in a referendum.

Saint Vincent and the Grenadines

Section 50 of the [Constitution of Saint Vincent and the Grenadines](#) vests executive authority in the Queen. Under Section 38 this may be altered by an Act receiving a two-thirds majority on its final reading, subject to a 90 day interval between introduction and second reading, and to approval in a referendum by two-thirds of the votes cast.

Belize

Executive authority is vested in the Queen by Section 36 of the [Belize Constitution](#). Under Section 69(4) this may be altered by an Act gaining a two-thirds majority on its final reading in the lower House.

Antigua and Barbuda

Executive authority is vested in the Queen by Section 68 of the [Constitution of Antigua and Barbuda](#). This may be altered under Section 47 by an Act gaining a two-thirds majority on its final reading in the lower House, subject to a 90 day interval between introduction and second reading in that House, and subject to approval by a two-thirds majority of votes cast in a referendum.

Saint Christopher (St Kitts) and Nevis

Executive authority is vested in the Queen by Section 51 of the [Constitution of Saint Christopher and Nevis](#). This may be altered under Section 38 by an Act gaining support of two-thirds of the elected Representatives in the National Assembly on its final reading, subject to a 90 day interval between introduction and second reading, and subject to approval in a referendum by a two-thirds majority of votes cast both on St Christopher and on Nevis.

In the Pacific realms the situation is different.

Papua New Guinea

The [Constitution of the Independent State of Papua New Guinea](#) gives a full account of the Crown:

82. QUEEN AND HEAD OF STATE.

(1) Her Majesty the Queen—

(a) having been requested by the people of Papua New Guinea, through their Constituent Assembly, to become the Queen and Head of State of Papua New Guinea; and

(b) having graciously consented so to become, is the Queen and Head of State of Papua New Guinea.

(2) Subject to and in accordance with this Constitution, the privileges, powers, functions, duties and responsibilities of the Head of State may be had, exercised and performed through a Governor-General appointed in accordance with Division 3 (*appointment, etc., of Governor-General*) and, except where the contrary intention appears, reference in any law to the Head of State shall be read accordingly.

83. QUEEN'S SUCCESSORS.

The provisions of this Constitution referring to the Queen extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom of Great Britain and Northern Ireland.

Amendments to this may be made in accordance with sections 14 and 17, although there is nothing on the face of the Constitution that prevents a change in UK practice having automatic effect in Papua New Guinea. A law amending sections 82 or 83 must be approved by absolute majority on two occasions after a debate, and those occasions must be at least two months apart and in different meetings (roughly, sessions) of the single-chamber Parliament.

Solomon Islands

The [Constitution of Solomon Islands](#) provides in Section 1(2) that “Her Majesty shall be the Head of State of Solomon Islands.” Under Section 61(3) Parliament may alter this provision by means of a bill which is supported on two separate readings by a two-thirds majority of Members.

Tuvalu

The [Constitution of Tuvalu](#) is explicit on the Crown. Section 48 states that,

(1) Her Majesty Queen Elizabeth II, by the grace of God Queen of the United Kingdom of Great Britain and Northern Ireland and of Her Other Realms and Possessions, Head of the Commonwealth, Defender of the Faith, having at the request of the people of Tuvalu graciously consented, is the Sovereign of Tuvalu and, in accordance with this Constitution, the Head of State.

Section 49 states that the provisions of the Constitution referring to the Sovereign extend to her heirs and successors according to law. Section 13 of Schedule 1 provides that either the heirs and successors will be determined according to an Act of the Tuvalu Parliament, or, if no relevant Act is in place, the Sovereign will be the same person as the Sovereign of the UK “in accordance with the law in force in England.”

Section 8 provides that when a constitutional change in the UK renders a provision of the Tuvalan Constitutional no longer appropriate, the Head of State may alter the Constitution by Order.