

STATES OF JERSEY



DRAFT SUCCESSION TO THE CROWN (JERSEY) LAW 201-

Lodged au Greffe on 8th May 2013
by the Chief Minister

STATES GREFFE



Jersey

DRAFT SUCCESSION TO THE CROWN (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chief Minister has made the following statement –

In the view of the Chief Minister the provisions of the Draft Succession to the Crown (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Chief Minister

Dated: 3rd May 2013

REPORT

1. It was announced at the Commonwealth Heads of Government Meeting in Perth on 28th October 2011 that, with the agreement of the other Commonwealth Realms of which Her Majesty is also Head of State, the United Kingdom would change the rules of royal succession to end the system of male preference primogeniture and the bar on those who marry Roman Catholics from succeeding to the Throne.
2. At that meeting, the Prime Minister of the United Kingdom said –
“Firstly, we will end the male primogeniture rule, so that in future the order of succession should be determined simply by order of birth....”
[...]
“Second, we have agreed to scrap the rule which says that no-one who marries a Roman Catholic can become monarch.”
3. The third element, on consent to royal marriages, was not mentioned in the Perth agreement, but had been referred to by the U.K. Prime Minister in an invitation to the Heads of Government of the Commonwealth Realms to consider issues relating to succession. The Realms agreed to work together to bring forward the necessary measures and enable them to be effected simultaneously.
4. 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.
5. On 2nd December 2012 the United Kingdom Government received final agreement in writing from the Prime Ministers and Cabinet Secretaries of all the other Commonwealth Realms, regarding all 3 elements in the reform of the rules governing royal succession.
6. The resulting Succession to the Crown Bill received its 1st reading in the House of Commons on 13th December 2012 and its 2nd reading in the House of Commons on 22nd January 2013. 3rd reading in the House of Commons took place on 28th January and 1st reading in the House of Lords on 29th January 2013. 2nd reading in the House of Lords took place on 14th February and the Committee stage was completed on 28th February 2013. Third reading – the final chance for the Lords to change the Bill – took place on 22nd April and no amendments were made. The Bill received Royal Assent on 25th April 2013.
7. Although the resulting Act is not expressed to extend to the Channel Islands, Jersey is a dependency of the Crown and the constitutional position is that Her Majesty and Her successors are Sovereign of the Bailiwick of Jersey, such realm being anciently part of the Duchy of Normandy, in right of Her predecessor, William, Duke of Normandy and King of England. It is therefore appropriate, as has been agreed in consultation with the United Kingdom Ministry of Justice and Cabinet Office, that formal provision be made by Jersey statute in relation to succession to the Crown in right of the Bailiwick of Jersey.

8. Accordingly this draft Law would provide formally (see *Article 2(1)*) that 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 in right of the Bailiwick of Jersey to Her Majesty's successor, as determined in accordance with the law of the United Kingdom relating to succession to the Crown. It would follow from this provision that the terms of the Succession to the Crown Act of the United Kingdom determined the order of succession to the Crown in right of the Bailiwick of Jersey as it determined the order of succession to the Crown within the United Kingdom.
9. It would also be made clear (see *Article 2(2)*) that any reference to the Sovereign – however expressed – in any enactment, document or instrument would be taken as a reference to the Sovereign for the time being, and not merely to the Sovereign reigning at the time the enactment, document etc. came into being.
10. The draft Law would also make provision (see *Article 4*) so that, where the royal functions were being performed on behalf of the Sovereign by a Regent under the law of the United Kingdom, the royal functions of Her Majesty in right of the Bailiwick of Jersey would likewise be exercisable as a matter of Jersey law by that Regent.
11. A subsidiary provision made by the draft Law (see *Article 3*) relates to the form of oaths. The Law will make it clear that an oath of allegiance to Her Majesty shall be taken to be an oath of allegiance to Her Majesty's heirs and successors, if the oath does not already make that clear. The same will be true of solemn affirmations made to like effect. The States will be empowered (see *Article 3(4)*) to amend by Regulations the wording of any oath so as to be consistent with this provision.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT

Human Rights Note on the draft Succession to the Crown (Jersey) Law 201-

1. This Note has been prepared in respect of the draft Succession to the Crown (Jersey) Law 201- by the Law Officers' Department. It summarises the principal human rights issues arising from the contents of the draft Law and explains why, in the Law Officers' opinion, the draft Law is compatible with the European Convention on Human Rights ("ECHR").

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

2. The following extract from the statement made to the Parliament of the United Kingdom in relation to the Bill in that jurisdiction applies with equal force to the draft Law –

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

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

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

Even if the Strasbourg Courts accepted that Article 1 of Protocol 1 or Article 8 was engaged, perhaps because of the associated entitlement to property, the Government has no doubt that they would hold that any interference with a right was justified, since the removal of provisions which are discriminatory on the grounds of sex and religion would be in the public interest and proportionate to the aim pursued (Article 1 of Protocol 1) and necessary in a democratic society for the protection of the rights and freedoms of others (Article 8).

In both cases the Government considers that the Courts would recognise a wide margin of appreciation where a state was making a change to its constitutional system involving the succession to its monarchy. The Government takes the same view on the outcome of a claim under Article 14 (discrimination) linked with Article 8 or Article 1 of Protocol 1, if it was held that one of those articles was engaged. The claim would have to be on the basis that male-preference primogeniture and the bar on succeeding to the throne if a person marries a Roman Catholic are justified and should not be changed. In the Government's view the Strasbourg courts would say that a state had a wide margin of appreciation when making changes to its constitutional arrangements and would accept that there was an objective and reasonable justification for [the relevant provisions and that] the removal of discriminatory provisions is a legitimate aim and it is achieved proportionately.”.

3. The Law Officers' Department cannot usefully add to what was said to the United Kingdom Parliament in this respect.

Explanatory Note

This draft Law makes provision for succession to the Crown in right of the Bailiwick of Jersey.

Article 1 provides that references to “the Sovereign” and to “the Crown” in Articles 2 and 3 are to the Sovereign and to the Crown in right of the Bailiwick of Jersey. Article 1 also provides that references to the law of the United Kingdom and to any enactment include any law or enactment passed before or after the commencement of this Law.

Article 2 provides that succession to the Crown shall be determined in accordance with the law of the United Kingdom. Article 2 also provides that any reference to the Sovereign, however expressed, in any enactment, document or instrument shall be deemed to refer to the Sovereign for the time being.

Article 3 provides that any form of oath in any enactment shall be deemed to include a reference to the Sovereign’s heirs and successors. Article 3 also provides that any person who has taken such an oath or made a solemn affirmation instead shall be deemed to have done so with the inclusion of such a reference (even if the oath was taken or the solemn affirmation made before the date this Law comes into force). Article 3 also gives the States the power to amend the form of oath in any enactment to include such reference to the Sovereign’s heirs and successors as the States deem appropriate.

Article 4 makes provision for a Regent to perform the royal functions of the Sovereign in right of the Bailiwick of Jersey where the royal functions are being performed on behalf of the Sovereign under the law of the United Kingdom.

Article 5 sets out the title of the draft Law. There is no commencement date which means, in accordance with Article 1(6) of the Interpretation (Jersey) Law 1954, the Law will come into force on the day that it is registered by the Royal Court.



Jersey

DRAFT SUCCESSION TO THE CROWN (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT SUCCESSION TO THE CROWN (JERSEY) LAW 201-

A LAW to make provision for succession to the Crown in right of the Bailiwick of Jersey

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

WHEREAS Her Majesty is Sovereign of the Bailiwick of Jersey, such Realm being anciently part of the Duchy of Normandy, in right of Her illustrious and royal Predecessor, William, Duke of Normandy and King of England;

AND WHEREAS representatives of the other Realms of which Her Majesty is Sovereign agreed on 28th October 2011 to change the rules on succession to the throne and possession of it so as to make succession not depend on gender and to end the disqualification arising from marrying a Roman Catholic;

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

- (1) In Articles 2 and 3 references to “the Sovereign” and to “the Crown” are to the Sovereign and to the Crown in right of the Bailiwick of Jersey.
- (2) References in this Law to any law of the United Kingdom and to any enactment include any law or enactment passed before or after the commencement of this Law.

2 Succession to the Crown

- (1) 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 Act of Settlement 1700 (c.2) of the United Kingdom

and any other law of the United Kingdom relating to succession to the Crown.

- (2) Every reference to the Sovereign (however expressed) in any enactment (including this one) or in any document or instrument in force shall, unless the context otherwise requires, be deemed to refer to the Sovereign for the time being.

3 Oaths and solemn affirmations

- (1) Any form of oath in any enactment that refers to the Sovereign (however expressed) shall be deemed to include a reference to the Sovereign's heirs and successors.
- (2) Any person who takes an oath that is deemed to include a reference to the Sovereign's heirs and successors under paragraph (1), or who makes a solemn affirmation instead of such an oath, shall be deemed to have taken the oath or made the solemn affirmation with the inclusion of such a reference.
- (3) Paragraph (2) applies regardless of whether the oath was taken, or the solemn affirmation was made, before the commencement of this Law.
- (4) The States may, by Regulations, amend the form of oath in any enactment to include such reference to the Sovereign's heirs and successors as the States deem appropriate.

4 Regency

Where, under the law of the United Kingdom, the royal functions are being performed in the name and on behalf of the Sovereign by a Regent, the royal functions of the Sovereign in right of the Bailiwick of Jersey shall be performed in the name and on behalf of the Sovereign in right of the Bailiwick of Jersey by that Regent.

5 Citation

This Law may be cited as the Succession to the Crown (Jersey) Law 201-.

