

Jersey & Guernsey Law Review – February 2014

MISCELLANY

Succession to the Crown

1 On 28 October 2011, it was announced at the Commonwealth Heads of Government Meeting (CHOGM) in Perth, Australia 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 marrying Roman Catholics from succeeding to the Throne. Curiously, the Crown Dependencies were not consulted by the UK government before this announcement was made, notwithstanding the fact that the Channel Islands are the oldest possessions of the Crown.

2 It was agreed at CHOGM that the UK would be the first to draft legislation but that it would not be brought into force until the appropriate domestic arrangements were in force in the other Commonwealth Realms. The Succession to the Crown Bill received its first reading in the House of Commons on 13 December 2012 and, despite some grumbling in the House of Lords at the speed with which this constitutional Bill had been advanced, it received Royal Assent on 25 April 2013.¹

3 It is important to understand that the laws governing succession to the Throne are UK laws and wholly within the legislative competence of the UK parliament. The laws are founded upon, *inter alia*, the English Bill of Rights 1688 and the Act of Settlement of 1700. Jersey and Guernsey acknowledge that whoever sits upon the Throne of the United Kingdom is *ipso jure* the Sovereign of Jersey and Guernsey. That is a fundamental principle of our constitutional law, although not embodied in any statute of the Channel Islands until very recently. It is the same with other Commonwealth Realms of which the Queen is Head of State, although in many cases, New Zealand for example,

¹ The speed was mandated by the fact that the Duchess of Cambridge, wife of the second in line to the Throne, was due to give birth to her first child in July 2013. Prince George was in fact born on 22 July 2013 at St Mary's Hospital, London. The Succession to the Crown Act 2013 has not yet been brought into force.

domestic legislation is required to give legal effect to any changes to the rules of succession.² It has been argued in Canada that the Canadian Succession to the Throne Act 1937 (following the abdication of Edward VIII) created a Canadian law of succession, so that a different person might succeed to the Throne of Canada than succeeds to the Throne of the United Kingdom. It seems, however, that this is a minority view.³

4 On 8 May 2013, the Chief Minister of Jersey lodged a Bill now entitled the Succession to the Crown (Jersey) Law 2013 (“the Law”). The Bill was debated and approved, received Royal Sanction, and was registered in the Royal Court of Jersey on 18 October 2013.⁴

5 The long title of the Law provides that it is—“A Law to make provision for succession to the Crown in right of the Bailiwick of Jersey”. The first preamble provides—

“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.”

Article 1 of the Law provides that “the Sovereign” and “the Crown” are to be construed as references to the Sovereign and the Crown in right of the Bailiwick of Jersey. Article 2 provides 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 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.”

Articles 3 and 4 make provision for oaths and solemn affirmations and Regency respectively.

6 The Law is of constitutional interest for at least three reasons. First, the States Assembly has never before legislated in relation to succession to the Throne. The Law recognizes that the Queen is Sovereign “in right of the Bailiwick of Jersey”. There is now no doubt

² See Royal Succession Act 2013 (New Zealand).

³ See Taffoli and Benoit, “More is needed to change the rules of succession for Canada”, *Canadian Parliamentary Review*, Summer 2013, p 10. See also the contrary view in Nicholson, “Changing the line of succession to the Crown”, *Canadian Parliamentary Review*, Summer 2013, p 8.

⁴ On 11 December 2013, the States of Guernsey directed the preparation of legislation to similar effect. The Isle of Man will apparently not follow suit.

about that, and the Law acknowledges the individual relationship between the Sovereign and Her Bailiwick. It follows that the independent position of Her personal representative, the Lieutenant Governor, has been similarly recognized. The Lieutenant Governor is not beholden to the government of the United Kingdom, nor is he beholden to the government of Jersey. His function is to exercise in Jersey the Queen's constitutional right "to be consulted, to encourage and to warn"⁵ and, broadly speaking, to protect the interests of her Majesty's subjects in Jersey. The Queen is not Sovereign in right of Her position as Queen of the United Kingdom, but in right or as a result of Her special constitutional relationship with Jersey.

7 Secondly, the Crown has acknowledged that that special constitutional relationship and the Queen's sovereignty have an historical genesis, namely the Norman Conquest in 1066 and the assumption of regal authority by William, Duke of Normandy following the death of Harold at the Battle of Hastings. None of this changes the constitutional relationship between Jersey and the UK, but it does place on a statutory footing, again for the first time, the historical connection between the Crown and the Bailiwick.

8 Thirdly, the Law makes it clear that the rules governing succession to the Throne are set by the laws of the United Kingdom. That is consistent with Jersey's position as a Crown dependency. It does not affect the unwritten constitution of Jersey. It is true that, had the Law not been passed by the States Assembly, the same outcome would have been achieved by the Succession to the Crown Act 2013 of the United Kingdom. The UK Act is not expressed to apply to the Channel Islands, but it would have applied to Jersey by necessary implication had the Law not come into force. As it is, the Law renders it unnecessary for the Act to apply to Jersey.

9 That is not to say that the Law is otiose. On the contrary, it was entirely appropriate for the States Assembly to express its assent to the changes in the rules of accession to the Throne, just as other Commonwealth countries have done, and are in the course of doing. Jersey is a dependency of the Crown. For centuries the Bailiwick has re-affirmed its loyalty to the Crown on the death or abdication of a Queen or King by formally proclaiming the successor as Sovereign. This has been done independently of any proclamation in England. It will be recalled that Charles II was proclaimed King in the Royal Square of St Helier on 17 February 1649, some eleven years before He was proclaimed King in London. The Law now acknowledges for the first time, notwithstanding that the rules of succession are set by

⁵ www.royal.gov.uk.

UK law, that the Queen has a separate status in Jersey, and that She is Sovereign “in right of the Bailiwick of Jersey”.