



EXPLANATORY NOTES

Counsellors of State Act 2022

Chapter 47

£6.90

COUNSELLORS OF STATE ACT 2022

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Counsellors of State Act 2022 which received Royal Assent on 6 December 2022 (c. 47).

- These Explanatory Notes have been prepared by the Cabinet Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

- 1 The Counsellors of State Act 2022 adds His Royal Highness The Earl of Wessex and Her Royal Highness The Princess Royal to the persons to whom, as Counsellors of State, Royal functions may be delegated.

Policy background

- 2 The Sovereign performs a significant number of ceremonial and constitutional functions which form a key part of the machinery of government of the United Kingdom and the Devolved Administrations. The Sovereign also has a role in relation to the Channel Islands and the Isle of Man, as well as the British Overseas Territories.
- 3 It is essential to ensure that these functions can continue to be performed in a timely way if the Sovereign is unable to perform them personally, for example in the event of the Sovereign's illness or absence from the United Kingdom. In these circumstances, there is provision for Royal functions to be delegated to Counsellors of State. Counsellors of State consist of (and are currently restricted to) the spouse of the Sovereign and the four persons who are next in the line of succession to the Crown (excluding those who are disqualified, such as those not of full age).
- 4 Following the precedents of the Regency Acts 1937 to 1953, a Message from the Crown was read to both Houses of Parliament on 14 November 2022. The Message read to the House of Commons by the Speaker was as follows:

*"To ensure continued efficiency of public business when I am unavailable, such as while I am undertaking official duties overseas, I confirm that I would be most content, should Parliament see fit, for the number of people who may be called upon to act as Counsellors of State under the terms of the Regency Acts 1937 to 1953 to be increased to include my sister and brother, The Princess Royal and The Earl of Wessex and Forfar, both of whom have previously undertaken this role."*¹

- 5 Both Houses of Parliament agreed to the Message and responded respectively with an humble Address on 15 November 2022. The Address read by the Chancellor of the Duchy of Lancaster in the House of Commons was as follows:

*"Resolved, That an humble Address be presented to His Majesty to return thanks to His Majesty for His most gracious message regarding including HRH The Princess Royal and HRH The Earl of Wessex and Forfar among those who may be called upon to act as Counsellors of State under the terms of the Regency Acts 1937 to 1953, and to assure His Majesty that this House will provide such measures as may appear necessary or expedient for securing the purpose set out by His Majesty."*²

- 6 As referenced in the King's Message to Parliament and the humble Addresses in both Houses, the Act modifies the Regency Act 1937 ('the 1937 Act') to add two specified members of the Royal Family to the pool of Counsellors of State to whom Royal functions may be delegated: His Royal Highness The Earl of Wessex and Her Royal Highness The Princess Royal.

¹ Hansard, HC vol. 722 col. 408 (14 November 2022). The Message was also read in the House of Lords by the Lord Chamberlain: Hansard, HL vol. 825 col. 691 (14 November 2022).

² Hansard, HC vol. 722 col. 524 (15 November 2022). An humble Address was also read by the Lord Privy Seal and agreed in the House of Lords: Hansard, HL vol. 825 col. 769 (15 November 2022).

Legal background

- 7 The 1937 Act makes provision for when a Sovereign is unable to perform Royal functions by establishing when a Regency or Counsellors of State may be needed. Under the 1937 Act:
 - a. A Regency would occur where a Sovereign succeeds to the throne under the age of 18, or where a Sovereign is totally incapacitated (“by reason of infirmity of mind or body”) or “is for some definite cause not available”.
 - b. Counsellors of State can be delegated Royal functions in circumstances falling short of those giving rise to a Regency – namely if a Sovereign is ill (but not so ill as to warrant a Regency) or absent from the United Kingdom.
- 8 Section 6(1) of the 1937 Act confers a power on the Sovereign to delegate Royal functions to Counsellors of State “in order to prevent delay or difficulty in the dispatch of public business” in two circumstances. Those circumstances are: (1) “illness not amounting to such infirmity of mind or body as is mentioned in section two of this Act” (which deals with a Regency) and (2) “absence or intended absence from the United Kingdom”. The delegation is made by the Sovereign by Letters Patent for the period of the illness or absence. The Sovereign may revoke or vary the delegation by Letters Patent.
- 9 Section 6(1) expressly places a restriction on the functions that may be delegated: “no power to dissolve Parliament otherwise than on the express instructions of the Sovereign or to grant any rank, title or dignity of the peerage may be delegated.” Aside from this, the Sovereign can specify in the Letters Patent which functions are (and are not) delegated. For example, Letters Patent have previously stated that Counsellors of State cannot approve and sign Letters Patent that signify Royal Assent to Acts of Parliament which touch on the Act of Settlement or the Sovereign’s style and titles. In practice, when Counsellors of State were appointed during Her Majesty Queen Elizabeth’s absence from the United Kingdom, the Letters Patent included separate schedules detailing those functions which were delegated and those which were not. In the case of the State Opening of Parliament by Counsellors of State in May 2022, the Letters Patent simply delegated that particular function.
- 10 If no individuals have been added by name via separate primary legislation, the Counsellors of State consist of (and are restricted to) the spouse of the Sovereign and the four persons who (excluding those who are disqualified - see paragraph 11 below) are next in the line of succession to the Crown or, if there are less than four, all of those persons.
- 11 Any person disqualified from acting as Regent is also disqualified from acting as a Counsellor of State. The disqualifying factors are: (1) not being a British subject of full age³ and domiciled in some part of the United Kingdom⁴; (2) under section 2 of the Act of Settlement 1700, being incapable of inheriting, possessing and enjoying the Crown (as a result of Roman Catholicism), or (3) being disqualified under section 3(3) of the Succession to Crown Act 2013 from succeeding to the Crown as a result of marrying without the consent of His Majesty.

³ ‘Full age’ means the age of 21, except in the case of the heir apparent or heir presumptive to the Throne, in which case it means the age of 18, see: the Regency Act 1937, s.6(2A) and s.3(2) (as amended), the Regency Act 1953 s.2 and the Family Law Reform Act 1969, s.1(4) and Schedule 2).

⁴ ‘Domiciled in some part of the United Kingdom’ refers to a concept of domicile derived from common law. Everyone receives a domicile at birth; this is known as a ‘domicile of origin’. Every independent person can at any time change their domicile of origin and acquire a ‘domicile of choice’ by the fact of residing in a country other than that of their domicile of origin with the intention of continuing to reside there indefinitely. There is a strong presumption against a change from a domicile of origin to a domicile of choice.

- 12 The Regency Act 1943 amended section 6(2) of the 1937 Act to allow any person who would be required to be a Counsellor of State to be excepted from among the number of Counsellors of State during their absence from the United Kingdom. There is, however, no provision for a substitute Counsellor of State to be appointed.
- 13 The Regency Act 1953 provided that Queen Elizabeth, the Queen Mother, be a Counsellor of State as she was otherwise no longer a Counsellor of State following the death of King George VI in 1952.
- 14 When the Sovereign wishes to delegate Royal functions to Counsellors of State, the functions are required to be delegated to all Counsellors of State (unless any Counsellors of State are excepted for the period of any absence or intended absence from the United Kingdom during the whole or any part of the period of delegation). Section 6(3) provides that any delegated functions must be “exercised jointly by the Counsellors of State, or any such number of them as may be specified in the Letters Patent, and subject to such conditions, if any, as may be prescribed”. In practice, therefore, a delegation of functions via Letters Patent creates a pool of Counsellors of State and then usually specifies that Counsellors of State are required to act in pairs. In the case of the State Opening of Parliament by Counsellors of State in May 2022, the Letters Patent appointed three Counsellors of State (as the Duke of Sussex was excepted due to his absence from the United Kingdom) but then specified that the cause of summons (i.e. the Queen’s speech) be “declared by one Counsellor of State in the presence of another”.

Territorial extent and application

- 15 The Act extends and applies to the whole of the United Kingdom. The Act has no provision on extent but it extends to the Crown Dependencies and British Overseas Territories by necessary implication. This follows the precedent of other Acts affecting the Sovereign, such as the Accession Declaration Act 1910, the Regency Acts 1937 to 1953, and the Succession to the Crown Act 2013.

Commentary on provisions of Act

Section 1: Additional Counsellors of State

- 16 Subsection (1) provides that His Royal Highness The Earl of Wessex and Her Royal Highness The Princess Royal can be delegated Royal functions as Counsellors of State during his or her lifetime respectively.
- 17 Subsection (2) provides that His Royal Highness The Earl of Wessex and Her Royal Highness The Princess Royal are subject to the proviso and disqualifications from acting as a Counsellor of State as set out in subsection 6(2) and (2A) of the 1937 Act.

Section 2: Short title and commencement

- 18 Subsection (1) establishes the short title as the Counsellors of State Act 2022.
- 19 Subsection (2) provides that the Act came into force on the day after it receives Royal Assent.

Commencement

20 This Act came into force on the day after it received Royal Assent.

Related documents

21 The following documents are relevant to the Act and can be read at the stated locations:

- Act of Settlement (1700), <https://www.legislation.gov.uk/aep/Will3/12-13/2>.
- Regency Act 1937, <https://www.legislation.gov.uk/ukpga/Edw8and1Geo6/1/16>.
- Regency Act 1943, <https://www.legislation.gov.uk/ukpga/Geo6/6-7/42>.
- Regency Act 1953, <https://www.legislation.gov.uk/ukpga/Eliz2/2-3/1>.
- Succession to the Crown Act 2013, <https://www.legislation.gov.uk/ukpga/2013/20>.
- London Gazette, 27 May 2022, Issue Number 63710, Warrants Under the Royal Sign Manual, <https://www.thegazette.co.uk/notice/4082146>.

Annex - Hansard References

22 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
Message	14 November 2022	House of Commons Vol. 722 Col. 408
		House of Lords Vol. 825 Col. 691
Humble Address	15 November 2022	House of Commons Vol. 722 Col. 524
		House of Lords Vol. 825 Col. 769
<i>House of Lords</i>		
First Reading	15 November 2022	Vol. 825 Col. 780
Arrangement of Business	15 November 2022	Vol. 825 Col. 781
Second Reading	21 November 2022	Vol. 825 Col. 1182
Committee of the whole House	23 November 2022	Vol. 825 Col. 1380
Report	23 November 2022	Vol. 825 Col. 1435
Third Reading	23 November 2022	Vol. 825 Col. 1435
<i>House of Commons</i>		
First Reading	24 November 2022	Votes and Proceedings, No 78.
Second Reading	1 December 2022	Vol. 723 Col. 1034
Committee of the whole House, Report and Third Reading	1 December 2022	Vol. 723 Col. 1041
Royal Assent	6 December 2022	House of Commons Vol. 724 Col. 270
		House of Lords Vol. 826 Col. 158

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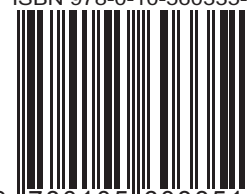
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