

# **DUCHY OF CORNWALL BILL [HL]**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

- 1 These explanatory notes relate to the Duchy of Cornwall Bill [HL] as introduced in the House of Lords on 10th June 2014. They have been prepared by Lord Berkeley in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- 2 The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment none is given.

### **BACKGROUND**

- 3 The purposes of this Bill are to amend the provisions with regard to the inheritance of the Duchy of Cornwall, and to remove the presumption of Crown Immunity as it applies to the Duchy of Cornwall. It also removes a number of exemptions and immunities under various Acts of Parliament currently applicable to the Duchy of Cornwall.
- 4 In addition the Bill provides that certain rights and obligations applicable to the Duchy of Cornwall within Cornwall and the Isles of Scilly will henceforth vest in the Crown and thus place Cornwall and the Isles of Scilly in the same position as the rest of England and Wales.

### **COMMENTARY**

#### **Clause 1: Succession to the title Duke of Cornwall**

- 5 This clause makes provision for the eldest child of the sovereign being heir to the throne to hold the title of Duke of Cornwall and enjoy the estate of the Duchy of Cornwall regardless of gender. It follows the Succession of the Crown Act 2013 which provides for the eldest child of the sovereign to succeed to the throne regardless of gender. It is also consistent with the rules governing the Duchy of Lancaster which are that the sovereign is always Duke of Lancaster regardless of gender.

#### **Clause 2: Presumption of Crown Immunity**

- 6 This clause places the Duchy of Cornwall in the same position as other private estates to which Crown Immunity does not apply.

**Clause 3: Tax Status of the Duchy of Cornwall**

- 7 This clause would be make the Duchy of Cornwall subject to income tax and capital gains tax and therefore provides that the Duchy of Cornwall would be taxed as a “settlement” within the meanings of the various Acts to which reference is made.

**Clause 4: Exemptions and Immunities**

- 8 There are a number of Acts of Parliament which do not extend to the Duchy of Cornwall. For example, individuals who hold leases from the Duchy of Cornwall do not, unlike other persons who hold leases from private estates, have the right to “enfranchisement”. This clause provides that leaseholders of the Duchy of Cornwall will enjoy have the same rights as other leaseholders within England and Wales.
- 9 In other cases, for example, the Planning Act 2008, the Act does extend to the Duchy of Cornwall but if the Duchy of Cornwall is in breach of the legislation no offence is committed.

**Clause 5: Right to Royal Mines within Cornwall and the Isles of Scilly**

- 10 This clause stipulates that the Right to Royal Mines vests in the Crown placing Cornwall and the Isles of Scilly in the same position as the rest of England and Wales.

**Clause 6: Right to Treasure Trove within Cornwall and the Isles of Scilly**

- 11 The right to Treasure Trove within Cornwall and Isles of Scilly currently rests with the Duchy of Cornwall. The clause provides that henceforth this right will lie with the Crown and in doing so places Cornwall and the Isles of Scilly in the same situation as other parts of England and Wales.

**Clause 7: Right to bona vacantia within Cornwall and the Isles of Scilly**

- 12 This clause would bring Cornwall and the Isles of Scilly into line with the rest of England and Wales stipulating that the right to *bona vacantia* in Cornwall and the Isles of Scilly shall vest in the Crown.

**Clause 8: Right to escheat within Cornwall and the Isles of Scilly**

- 13 This clause would bring Cornwall and the Isles of Scilly into line with the rest of England and Wales, stipulating that the right to escheat in Cornwall and the Isles of Scilly shall vest in the Crown.

**Clause 9: The right of any attorney or solicitor appointed in the affairs of the Duchy of Cornwall**

- 14 Section 31 of the Stannary Act 1855 has the effect that a lawyer appointed in the affairs of the Duchy does not have to be called to the Bar, if a Barrister, or, for example, hold a

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as introduced in the House of Lords on 10th June 2014 [HL Bill 13]*

practicing certificate if a solicitor. This clause would remove that section and thus require a lawyer appointed in the affairs of the Duchy to be called to the Bar or hold a practicing certificate as applicable.

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