

**EXPLANATORY MEMORANDUM TO THE
CIVIL PARTNERSHIP (AMENDMENTS TO REGISTRATION
PROVISIONS) ORDER 2005**

2005 No.

1. This explanatory memorandum has been prepared by the Office for National Statistics (ONS) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Description**
 - 2.1 The Order amends the Civil Partnership Act 2004 (the 2004 Act) for the purpose of assimilating any provisions connected with the formation or recording of civil partnerships in England and Wales to any provision made in relation to civil marriage in England and Wales.
3. **Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments**
 - 3.1 The authority for the Order is section 35 and 258(3) of the 2004 Act. Section 35 allows the making of amendments to the 2004 Act for the purpose of assimilating provisions connected with the formation or recording of civil partnerships in England and Wales to provisions relating to civil marriage in England and Wales; and any consequential amendments of other enactments and subordinate legislation that the Chancellor of the Exchequer considers appropriate, and any supplementary, incidental, consequential, transitional, transitory or savings that he considers expedient.
 - 3.2 In particular, paragraph 3 of the Order inserts a power into the 2004 Act (section 6A) which mirrors section 46A of the Marriage Act 1949. The new section 6A of the 2004 Act is to be used together with section 46A of the Marriage Act 1949 (the Marriage Act) to create a joint process for the approval of premises for the formation of civil partnerships and the solemnisation of marriages. The policy is that there should be a unified system for the approval of premises for civil partnerships and civil marriages. This would mean that there will be a joint application for approval of premises and one decision will be made which will entitle the applicant to use the premises for either the solemnisation of marriages or the formation of civil partnerships or both.
 - 3.3 From a vires perspective, the policy of making regulations which facilitates a joint process is achieved by powers from two sources namely the existing powers from section 46A of the Marriage Act and the new section 6A of the 2004 Act. The creation of the new section 6A of Act is an assimilation of civil partnership law to civil marriage law.

- 3.4 The new provisions relating to approval of premises include a process for determining the fee for the attendance of the civil partnership registrar which has been reproduced from the Marriage Act sections 46A and 51, without substantive amendment.
- 3.5 The provisions relating to the fee were inserted by the Marriage Act 1994. They set out in section 46A(1) of the Marriage Act a power to make regulations, with examples of its use in section 46A(2), and then provide, in section 51(1A)(b), an additional circumstance in which that power may be used. This is arguably not entirely satisfactory because a strict reading of section 46A(1) might suggest that the power in section 51(1A)(b) is outside the scope of section 46A(1). But a broad interpretation of section 46A(1) was clearly intended, so the same format has been adopted here to keep the Order clearly within the requirement of assimilation.
- 3.5 Article 1(2)(c) of the Order commences paragraphs 3,12, 13, and 17 of the Schedule to the Order early. The reason for the early commencement is that the provisions in question amend powers in the Act which are to be relied upon to make subordinate legislation to come into force before the 5 December which is the date on which the rest of the Order is to come into force.

4. Legislative background

- 4.1 The registration provisions in Part 2, Chapter 1 of the 2004 Act were drafted to follow the proposals for civil marriage registration as set out in ONS' 2003 consultation document "*Civil Registration: Delivering Vital Change*". It was not known at the time the Act was going through Parliament exactly what legal provisions for marriage would be in place when civil partnership was introduced. Therefore, the specific power to make this Order was included within the 2004 Act as a contingency in case the proposals for reform of civil marriage registration were not able to be taken forward or were not implemented exactly as was proposed in the consultation document. It was ONS' intention to make the legislative changes to civil marriage legislation by means of a Regulatory Reform Order under the order-making powers of the Regulatory Reform Act 2001 (the 2001 Act).
- 4.2 The first of two draft Orders, that dealt with changes to the law relating to the registration of births and deaths and to the organisation of the service, was presented to Parliament on 22 July 2004. A second draft Order, dealing with marriage law reform, was at that stage intended to be presented later in the 2004/05 Session. The House of Commons' Regulatory Reform Committee and the House of Lords' Delegated Powers and Regulatory Reform Committee, that scrutinised the first draft Order, decided that it should not proceed to its second stage of scrutiny as it was an inappropriate use of the powers in the 2001 Act.

4.3 The Government announced in a Ministerial Statement by Stephen Timms on 1 March 2005 that it no longer proposed to present a second draft Order dealing with marriage law reform. Consequently, it is now necessary to use the powers in section 35 of the 2004 Act to assimilate provisions in that Act with current civil marriage law.

4.4 The Order is subject to the affirmative resolution procedure.

5. Extent

5.1 The provisions contained in the Order have the same extent as the provisions in the 2004 Act which is subject to amendment of repeal.

6. European Convention on Human Rights

6.1 The Financial Secretary to the Treasury, John Healey, has made the following statement regarding Human Rights:

In my view the provisions of the Civil Partnerships (Amendments to Registration Provisions) Order 2005 are compatible with the Convention rights.

7. Policy background

7.1 The 2004 Act received Royal Assent on 18 November 2004. The purpose of the 2004 Act is to enable same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. The 2004 Act also contains provisions enabling certain overseas same-sex relationships to be treated as civil partnerships. Civil partners will be subject to many of the same legal rights and responsibilities as spouses.

7.2 In England and Wales two people may register as civil partners of each other provided:

- they are of the same sex;
- neither of them is already a civil partner or married;
- they are not within the prohibited degrees of relationship;
- they are both over the age of sixteen (and the consent of the appropriate persons has been obtained if either of the parties are under eighteen).

7.3 The Government held a three-month public consultation on the proposal to create a same-sex civil partnership registration scheme in England and Wales. This ran from 30 June 2003 to 30 September 2003 and generated substantial public and media interest. There were a total of 3,167 responses to the public consultation of which 83 per cent expressed support for the principle of civil partnership.

7.4 The Government's response to the consultation was published in November 2003 and can be found on the DTI's website at:

<http://www.womenandequalityunit.gov.uk/lgbt/partnership.htm>

- 7.5 The Government announced on 26 November 2003 that it intended to bring forward a Civil Partnership Bill. On 3 June 2004 the Scottish Parliament agreed to the inclusion of Scottish provisions in the Westminster Civil Partnership Bill, following a public consultation in Scotland. Northern Ireland Ministers also agreed to include Northern Ireland provisions in the Westminster Civil Partnership Bill after a public consultation in Northern Ireland. The responses to those respective consultations can also be found on the DTI's website.
- 7.6 The policy intention behind this Order is to ensure that the registration provisions of the 2004 Act assimilate with similar provisions for marriage where the Minister has deemed it appropriate. While civil partnership is a separate legal status distinct from marriage, many of the legal processes and administrative systems will be similar to that for civil marriage.
- 7.7 The Order seeks to assimilate registration provisions by:
- Introducing a time restriction (from eight o'clock in the morning and six o'clock in the evening) for when civil partnerships can be formed as for when marriages can take place.
 - Restricting the places where civil partnerships can be formed in most cases to register offices and approved premises, again the same as the position for civil marriage.
 - Introducing offences in respect of civil partnerships for which there are equivalent offences for marriage.
 - Making provision for the approval of premises for the formation of civil partnerships which is equal to the provision that already exists for the approval of premises for marriage. The approval of premises for civil partnership and civil marriage will be a joint process. Any such approval will automatically be for civil partnership and civil marriage.

8. Impact

- 8.1 A full Regulatory Impact Assessment (RIA) was published alongside the 2004 Act which included cost implications for the public sector of providing civil partnership registration services and the cost to individuals who choose to form a civil partnership. There are no additional cost implications for the public sector or individuals who choose to form a civil partnership as a consequence of this statutory instrument and therefore no impact on the RIA mentioned above and which can be viewed at:

<http://www.dti.gov.uk/access/ria/index.htm#equality>

9. Contact

9.1 Susan Henstock at ONS Tel: 0151 471 4749 or e-mail susan.henstock@ons.gsi.gov.uk can answer any queries regarding the instrument.