

**EXPLANATORY MEMORANDUM TO**  
**THE CIVIL PARTNERSHIP (JUDICIAL PENSIONS AND CHURCH**  
**PENSIONS, ETC.) ORDER 2005**

**2005 No. 3325**

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.
  
2. **Description**
  - 2.1. Parts 1 to 7, and most of Part 9, of the Order relate to judicial pensions. They amend the legislation governing the judicial pension schemes in the UK to extend entitlement to dependants' pensions, where a judicial office holder dies while in service or after retirement, to a surviving civil partner of a judge and the children of such a civil partnership. The Order provides for surviving civil partners' benefits in fundamentally the same way that surviving spouses and their children are currently provided for by the judicial pension schemes.
  - 2.2. Part 8, and article 98, of the Order contain amendments to Church legislation. It is of course the convention that Government does not legislate for the Church of England without their consent. These provisions in the Order are being included at the request of the Church of England. They have been approved by the House of Bishops and the Archbishops' Council.
  
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1. The Order is made in exercise of the powers conferred by sections 255 and 259 of the Civil Partnership Act 2004 ("the Act"). Section 255(1) provides that a Minister of the Crown may by order make such amendments, repeals or revocations in any enactment, Northern Ireland legislation, subordinate legislation or Church legislation relating to pensions, allowances or gratuities as he considers appropriate for the purpose of, or in connection with, making provision with respect to pensions, allowances or gratuities for the surviving civil partners or dependants of deceased civil partners. Section 255(3) provides that, in the case of judicial pensions, allowances or gratuities, the power is exercisable by the Lord Chancellor, and in relation to any judicial office whose jurisdiction is exercised exclusively in relation to Scotland, the Secretary of State.
  - 3.2. The amendments to Church legislation are also mostly being made under section 255 of the Act. However articles 81 and 83 (amendments to the Clergy Pensions Measure 1961 and Clergy Pensions (Amendment) Measure 1972)

include amendments concerning the provision of residences. These are unlikely to fall within the category of “pensions, allowances or gratuities” covered by the section 255 power. These provisions of the Order are therefore being made using the powers in section 259 of the Act (see in particular sections 259(1) and (3)(c)). In addition paragraph 3 of Schedule 7 contains amendments to Rule 12 of the Rules of the Church of England Funded Pensions Scheme in relation to pension sharing etc. These amendments are consequential upon the amendments made by Schedule 27 of the Act to the Welfare Reform and Pensions Act 1999, and are again being made using the powers in section 259 of the Act.

- 3.3. In accordance with section 255(6) the Department for Constitutional Affairs circulated this Order in draft form to HM Treasury, the Lord Chief Justice and representatives of judicial office holders, and sought their views on its content. These are the persons with whom the Lord Chancellor considered consultation to be appropriate. The consultation was conducted between 6 and 27 May 2005 and no substantive changes to the draft Order were sought. Representatives of judicial office holders in Northern Ireland were consulted in relation to the amendments applicable to Northern Ireland. As indicated above, these provisions in the draft Order concerning Church legislation have been the subject of consultation within the Church, including with the Archbishops’ Council.
- 3.4. This Order cannot have effect until it is approved by resolution of each House of Parliament.

#### **4. Legislative background**

- 4.1. The Act provides that two people of the same sex may form a civil partnership and establishes the rights and responsibilities that flow from entering a civil partnership.
- 4.2. During the course of debate on the Civil Partnership Bill, the Parliamentary Under Secretary of State for Scotland gave assurances to Parliament (Hansard, 12 October 2004, Column 250) that, for survivor pensions in public service pension schemes, registered same-sex couples would be treated in the same way as married couples. Parliament was assured that the change would be achieved by means of regulations, to be introduced following Royal Assent of the 2004 Act. The changes to the judicial pension schemes are being made in fulfilment of this policy commitment.
- 4.3. The Order also amends Church legislation in relation to pensions (in particular the Church of England Pensions Scheme established under the Church of England Pensions Regulations 1988 and the the Church of England Funded Pensions Scheme established by Trust Deed under the Pensions Measure 1997), and certain other matters (such as the provision of residences to retired clergy), to ensure that civil partners are treated in the same way as spouses. This is to ensure that such provision complies with legal requirements in relation to civil partners’ pensions, in particular those relating to contracting

out, and (for future service under the Funded Pensions Scheme) the Employment Equality (Sexual Orientation) Regulations 2003 (S.I. No. 1661).

## **5. Extent**

- 5.1. This Order extends as specified in Article 2.

## **6. European Convention on Human Rights**

- 6.1. Lord Falconer has made the following statement regarding human rights:

In my view the provisions of the Civil Partnership (Judicial Pensions and Church Pensions, etc.) Order 2005 are compatible with the Convention rights.

## **7. Policy background**

- 7.1. The Act received Royal Assent on 18 November 2004. The purpose of the Act is to enable same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. The 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. 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 3,167 responses to the public consultation. 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>
- 7.4. 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 be found on the DTI's website at <http://www.womenandequalityunit.gov.uk/lgbt/partnership.htm>

- 7.5. In relation to judicial pensions, the policy intention behind this Order is to fulfil the policy commitment given during the passage of the Act, and ensure that civil partners are treated in the same way as spouses. The Order seeks to fulfil this policy objective by including civil partners and their children in the provisions that give rise to dependants' pensions of judicial office holders. The judicial scheme is amended so that any service in contracted out employment under the scheme from 6 April 1988 will give rise to contracted out civil partners benefits. The judicial scheme provides benefits in excess of contracted out rights; members with service before 5 December 2005 are given the choice whether to count all previous service for the purposes of calculating civil partners benefits at this higher level, at member cost. Any service in relation to service after 5 December 2005 will give rise to civil partners' benefits, at member cost, at this higher level and members who form a civil partnership will pay the appropriate contribution in respect of any such service. This replicates the way in which widowers benefits were introduced into the scheme.
- 7.6. As indicated above, the amendments to Church legislation ensure that provision for civil partners meets applicable legal requirements, including contracting out requirements and the Employment Equality (Sexual Orientation) Regulations 2003 (S.I. No. 1661).

## **8. Impact**

- 8.1. A full regulatory impact assessment has not been produced for this instrument, as it has no impact on the costs of businesses, charities or voluntary bodies, other than certain charities and voluntary bodies within the Church of England. In relation to judicial pensions, contributions will be levied from judicial office holders who form a civil partnership. The contributions are set at an actuarially determined level which seeks to meet the average cost of providing contingent surviving dependants' pension benefits. The Order is expected to have a negligible financial impact on the public bodies responsible for the pensionable remuneration of judicial office holders.
- 8.2. A full Regulatory Impact Assessment for civil partnership was published alongside the Civil Partnership Act 2004 and can be viewed at <http://www.dti.gov.uk/access/ria/index.htm#equality>

## **9. Contact**

- 9.1. Paul Kirk at the Department for Constitutional Affairs can answer any queries relating to the Order. Tel 020 7210 8504, email [paul.kirk@dca.gsi.gov.uk](mailto:paul.kirk@dca.gsi.gov.uk).