

**EXPLANATORY MEMORANDUM TO
THE FAMILY PROCEEDINGS (AMENDMENT No. 3) RULES (NORTHERN
IRELAND) 2005**

2005 No. 558

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs (Northern Ireland Court Service) 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 This instrument amends the Family Proceedings Rules (Northern Ireland) 1996 (“the 1996 Rules”) in consequence of the Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005 (“the 2005 Regulations”). It extends the rules for recognition or non-recognition of a judgment in matrimonial matters under Council Regulation (EC) 2201/2003 (“Brussels IIa”) to recognition or non-recognition of a judgment in civil partnership matters under the 2005 Regulations.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

4. Legislative Background

Civil Partnership Act 2004

- 4.1 The Civil Partnership Act 2004 (“the 2004 Act”) received Royal Assent on 18th 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. To this end the 2004 Act creates a new legal status of civil partnership, under which certain rights and obligations will flow. Civil partners will be subject to many of the same legal rights and responsibilities as spouses.

- 4.2 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).

- 4.3 The 2004 Act also contains provisions enabling certain overseas same-sex relationships to be treated as civil partnerships.

- 4.4 The 2004 Act makes provision for civil partners similar to that which already exists for married couples in a wide range of areas. Schedules 15 and 17 make provision similar to that contained in the Matrimonial Causes (Northern Ireland) Order 1978 and the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 for married

couples and which allow for financial provision on dissolution after, respectively, a domestic and overseas dissolution.

- 4.5 The principal provisions of the 2004 Act came into force on 5th December 2005.

Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005

- 4.6 The 2005 Regulations are made pursuant to section 219 of the 2004 Act. They make corresponding provision for civil partnerships including overseas relationships entitled to be treated as civil partnerships, as far as is possible in domestic law, as to the jurisdiction and recognition elements of Brussels IIa for matrimonial matters as regards the law of England and Wales and Northern Ireland.
- 4.7 Brussels IIa deals with jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility. The parental responsibility part of Brussels IIa applies to anyone who holds parental responsibility and is not dependent on a matrimonial relationship. Therefore, that part of the Council Regulation applies equally to civil partnerships as it does to spouses. The power in section 219 of the 2004 Act to make corresponding provisions to Brussels IIa was therefore restricted to replicating provisions in respect of jurisdiction and recognition. The 2005 Regulations made, as far as possible and in line with the 2004 Act, corresponding provisions for civil partnerships to Articles 3, 21, 22, 24, 25, 26 and 27. The Regulations set out the jurisdiction for the 2004 Act in relation to habitual residence and domicile of civil partners and makes provisions for the recognition or non-recognition of a civil partnership judgment from other Member States without any special formalities.

Family Proceedings Rules (Northern Ireland) 1996

- 4.7 The 1996 Rules govern court procedure relating to family proceedings in the High Court and county courts in Northern Ireland. This includes the procedure for the recognition or non-recognition of judgments in matrimonial matters under Brussels IIa. Rules 8.33, 8.34, 8.41 and paragraph 1 of Appendix 2 of the 1996 Rules as amended by this instrument support the 2005 Regulations in providing the court procedure in Northern Ireland for the recognition or non-recognition of judgments by courts in the specified Member States in relation to the dissolution or annulment of civil partnerships or the legal separation of civil partners.
- 4.8 Corresponding amendments to rules 7.40, 7.41, 7.48 and Appendix 2 of the Family Proceedings Rules 1991 are contained in rules 96 – 98 and 119 of the Family Proceedings (Amendment)(No. 5) Rules 2005 (SI 2005/2922).

5. Extent

- 5.1 This instrument applies to Northern Ireland only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

The Civil Partnership Act 2004

- 7.1 The Government held a three-month public consultation on the proposal to create a same-sex relationship registration scheme in England and Wales (30th June 2003 to 30th September 2003). 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> The Government announced on 26th November 2003 that it intended to bring forward a Civil Partnership Bill. After a public consultation in Northern Ireland, which took place from 19th December 2003 to 5th March 2004, Northern Ireland Ministers agreed to include Northern Ireland provisions in the Westminster Civil Partnership Bill. The analysis of responses to this consultation can be found on the Office of Law Reform's website at: http://www.olrni.gov.uk/archive/new_news_archive.cfm.
- 7.2 The policy intention behind the amendments to the 1996 Rules implementing the 2004 Act is to ensure that the procedures which support family proceedings in the High Court and county courts apply equally to civil partners and to civil partnership proceedings as they do to married couples and to matrimonial proceedings. Consequently, the amendments to the 1996 Rules contained in this instrument extend the rules for recognition or non-recognition of a judgment in matrimonial matters under Brussels IIa to a judgment of a court in a specified Member State relating to the dissolution or annulment of a civil partnership or the legal separation of civil partners.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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