

**EXPLANATORY MEMORANDUM TO**  
**THE FAMILY PROCEEDINGS (AMENDMENT) (No. 5) RULES 2005**

**2005 No. 2922 (L.26)**

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. This instrument amends the Family Proceedings Rules 1991 consequential to the commencement of the Civil Partnership Act 2004. It also contains amendments to improve the procedure for the disclosure of pension assets in ancillary relief proceedings and new rules to support the introduction of special guardianship orders and parental responsibility orders for step-parents.

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

- 3.1. None

**4. Legislative background**

***Family Proceedings Rules 1991***

- 4.1. The Family Proceedings Rules 1991 govern the court procedure relating to family proceedings in county courts and the High Court. This includes the procedure for divorce, judicial separation, annulment and applications for ancillary relief, as well as other matrimonial proceedings. These Rules also set out the procedures in relation to proceedings under the Children Act 1989, wardship, child abduction and custody and enforcement of orders.

***The Civil Partnership Act 2004***

- 4.2. The Civil Partnership Act 2004 received Royal Assent on 18 November 2004. The purpose of the Civil Partnership Act 2004 is to enable same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. To this end the 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.
- 4.3. 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).
- 4.4. The Civil Partnership Act 2004 also contains provisions enabling certain overseas same-sex relationships to be treated as civil partnerships.
- 4.5. The Act makes provision for civil partners similar to that which already exists for married couples in a wide range of areas. Schedules 5 and 7 make provision similar to that contained in the Matrimonial Causes Act 1973 and the Domicile and Matrimonial Proceedings Act 1984 for married couples and which allow for financial provision on dissolution after, respectively, a domestic and an overseas dissolution.
- 4.6. The principal provisions of the Civil Partnership Act 2004 will come into force on the 5<sup>th</sup> December 2005 by an order to be made by the Secretary of State.

***Special Guardianship Orders and the acquisition of parental responsibility by step parents***

- 4.7. Section 112 of the Adoption and Children Act 2002 inserts a new section 4A into the Children Act 1989. Section 4A will enable a step-parent (whether through marriage or civil partnership) to obtain parental responsibility for a child. Section 3 of the Children Act 1989 defines parental responsibility as “all the rights, duties, powers, responsibilities and authority by law a parent of a child has in relation to the child and his property”.
- 4.8. Section 115 of the Adoption and Children Act 2002 inserts new sections 14A to G into the Children Act 1989 which introduce special guardianship orders. A special guardian must be aged eighteen or over and must not be a parent of the child in question. The effect of a special guardianship order is that a special guardian has parental responsibility for the child in respect of whom the order is made; and a special guardian is entitled to exercise parental responsibility for the child to the exclusion of any other person with parental responsibility for the child (apart from another special guardian).
- 4.9. These provisions will come into force on 30<sup>th</sup> December 2005 by an order to be made by the Lord Chancellor.

***Pension Amendments***

- 4.10. The Matrimonial Causes Act 1973 and Schedule 5 to the Civil Partnership Act 2004 require the court to take into account the respective pension entitlements of the parties to a marriage or civil partnership in deciding what order to make in proceedings for financial provision on divorce or dissolution. The court has the power to order the payment of part of one parties share of a pension to the other (pension attachment) or that one parties rights under a pension should be shared with the other (pension sharing). The Family Proceedings Rules 1991 set out rules regarding the consideration of pension assets in ancillary relief proceedings and the making of such orders.

## **5. Extent**

- 5.1. This order applies to England and Wales.

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

- 6.1. 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 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>
- 7.2. 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>
- 7.3. Following this consultation the Civil Partnership Act 2004 was introduced into Parliament and received Royal Assent on 18<sup>th</sup> November 2004. It will be brought into force on 5<sup>th</sup> December 2005 and it will be possible to form a civil partnership in this country from 21<sup>st</sup> December 2005.
- 7.4. The policy intention behind these rules 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.

### ***Pension sharing and attachment rule amendments***

- 7.5. The policy objective in making these amendments is to reduce the amount of disclosure required in respect of pension assets at the outset of an ancillary relief case. This is to reflect the fact that in the many cases, pension assets are not sufficient to warrant pension sharing (or attachment) orders being made.

- 7.6. The changes are, on the whole, technical in nature and seek to improve the procedure for the disclosure of pension assets, as well as the forms used by solicitors, those responsible for pension arrangements and the courts. These ideas have been fully explored in a multi-disciplinary environment comprising representatives from all interested stakeholder organisations.

***Special Guardianship Orders and the acquisition of parental responsibility by step parents***

- 7.7. The policy behind Section 112 of the Adoption and Children Act 2002 is to allow for the acquisition of parental responsibility by agreement between the parent(s) with parental responsibility and a step-parent (whether through marriage or civil partnership) of the child. It also provides for a step-parent to be able to apply to the court for an order for parental responsibility.
- 7.8. Step-parent parental responsibility is intended to provide an alternative to step-parent adoption, where a step-parent wishes to acquire parental responsibility with regard to the child for whom they care. It has the advantage of not removing parental responsibility from the other birth parent and does not legally separate the child from membership of the family of the other parent. The Adoption law review recommended such a change to reduce the number of inappropriate applications to adopt and a number of organisations and officials who submitted evidence to the Special Standing Committee were supportive of this change.
- 7.9. Section 115 of the Adoption and Children Act 2002 further amends the Children Act 1989 to introduce the concept of Special Guardianship. Special Guardianship is expected to be used in cases where adoption is not possible, for example in cases where older children do not wish to be legally separated from their birth family, children in long term foster care placements and children who have cultural and religious difficulties with adoption.

## **8. Impact**

- 8.1. A full Regulatory Impact Assessment has not been produced for this statutory instrument as it does not impose any new burdens on businesses or public authorities. However 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>. This assessment includes the impact on the Court Service.

## **9. Contact**

- 9.1. Vicky Rayne at Her Majesty's Court Service, Tel: 020 7210 1446 or e-mail [Victoria.Rayne@hmcourts-service.gsi.gov.uk](mailto:Victoria.Rayne@hmcourts-service.gsi.gov.uk) can answer any queries regarding the instrument.