

**EXPLANATORY MEMORANDUM TO
THE MAGISTRATES' COURTS (MISCELLANEOUS AMENDMENTS)
RULES 2005**

2005 No. 2930

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 a number of sets of rules governing procedure in the magistrates' courts, in consequence of the commencement of the Civil Partnership Act 2004. It also makes amendment to create 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**

- 4.1. These rules make amendments to 5 sets of rules: -
 - Maintenance Orders Act 1950 (Summary Jurisdiction) Rules 1950;
 - Magistrates' Courts (Guardianship of Minors) Rules 1974;
 - Magistrates' Courts Rules 1981;
 - Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991, and
 - Family Proceedings Courts (Children Act 1989) Rules 1991.
- 4.2. Part I of the Maintenance Orders Act 1950 (Summary Jurisdiction) Rules 1950 provides for the transfer of maintenance proceedings in magistrates' courts to a court in Scotland or Northern Ireland if that is where the defendant lives, the Magistrates' Courts (Guardianship of Minors) Rules 1974 govern the procedure for applications for consent to marriage and the Magistrates' Courts Rules 1981 make provision about the procedure in magistrates' courts, including in relation to maintenance applications.
- 4.3. The Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991 make provision about the procedure in matrimonial proceedings in magistrates'

courts. This includes applications for occupation and non-molestation orders under the Family Law Act 1996, applications for declarations of parentage under section 55A of the Family Law Act 1986 and applications in relation to the failure to provide reasonable maintenance under the Domestic Proceedings and Magistrates' Courts Act 1978.

The Civil Partnership Act 2004

- 4.4. The Civil Partnership Act 2004 received Royal Assent on 18 November 2004. The purpose of the Civil Partnership Act 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.
- 4.5. 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).
- 4.6. The Civil Partnership Act 2004 also contains provisions enabling certain overseas same-sex relationships to be treated as civil partnerships.
- 4.7. The Act makes equivalent provision in relation to civil partners to that which already exists for married couples in a wide range of areas., Schedule 6 makes provision similar to that made by the Domestic Proceedings and Magistrates' Courts Act 1978 in relation to married couples, allowing for the making of financial relief applications in magistrates' courts.
- 4.8. The principal provisions of the Civil Partnership Act 2004 will come into force on the 5th 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

- 4.9. 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 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”.
- 4.10. Section 115 of the Adoption and Children Act 2002 inserts new sections 14A-G into the Children Act 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).

- 4.11. These provisions will come into force on 30th December 2005 by an order to be made by the Lord Chancellor.

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 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. The Civil Partnership Act 2004 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. The policy intention behind these rules is to ensure that the procedures which support proceedings in the magistrates' court (principally family proceedings) apply equally to civil partners and to civil partnership proceedings as they do to married couples and to matrimonial proceedings.

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

- 7.6. 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.
- 7.7. 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.
- 7.8. 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 has no impact on the costs of business, charities or voluntary bodies; neither does it have significant financial impact on any public bodies. 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. Vicky Rayne at Her Majesty's Court Service, Tel: 020 7210 1446 or e-mail Victoria.Rayne@hmcourts-service.gsi.gov.uk can answer any queries regarding the instrument.