

**EXPLANATORY MEMORANDUM TO
THE CIVIL PARTNERSHIP (TREATMENT OF OVERSEAS RELATIONSHIPS)
ORDER**

2005 No. 3042

1. This explanatory memorandum has been prepared by 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 makes provision as to the treatment of overseas relationships (ORs) treated as civil partnerships which were registered under the law of the country where they were formed before 5th December 2005. Specifically it:

a) modifies, in relation to the provisions specified in the Order, the general rule that ORs which were dissolved or annulled before that date are not to be treated as civil partnerships;

b) it modifies certain provisions which refer to the length of time for which a civil partnership has subsisted so as to refer, where the civil partnership being considered is an OR registered before 5th December 2005, to the length of time since the OR was registered in order to give full effect to those provisions;

c) it saves wills made before the OR was entered into from being revoked on the recognition of the overseas relationship as a civil partnership; and

d) it makes transitional provision to deal with the recognition of ORs as civil partnerships in cases where one of the parties to the overseas relationship is also a party to another overseas relationship or is married.

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

3.1 None

4. Legislative Background

4.1 The Civil Partnership Act 2004 (“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. 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.

4.2 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. Chapter 2 of Part 5 of the Act contains provision which set out—
- a) when a foreign union is to be recognised as an “overseas relationship”(sections 212 to 214); and
 - b) when an overseas relationship is to be treated as a civil partnership (sections 215 to 218).
- 4.4 Section 215 of the 2004 Act determines the time when a civil partnership which arises from the recognition of an overseas relationship is deemed to have commenced. Where the OR was registered after the date when these provisions are commenced the civil partnership is treated as having commenced on the date on which the OR was registered. However where the OR was registered before commencement the OR is treated as a civil partnership only from the date of commencement.
- 4.5 Section 215(4) and (5) also makes provision about ORs which have been dissolved or annulled before the coming into force of this Chapter. In general they will not be recognised as civil partnerships but there is a power to specify particular provisions as exceptions to this rule.
- 4.5 The principal provisions of the 2004 Act, including the provisions of Chapter 2 of Part 5 of the Act, will come into force on the 5th December 2005 by an order to be made by the Secretary of State.

5. Extent

- 5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

Baroness Ashton has made the following statement regarding Human Rights:

In my view the provisions of the Civil Partnership (Treatment of Overseas Relationships) Order 2005 are compatible with the Convention rights.

7. Policy background

- 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 18th November 2004. It will be brought into force on 5th December 2005 and it will be possible to form a civil partnership in this country from 21st December 2005.
- 7.4 The provisions of Chapter 2 of Part 5 of the 2004 Act are intended to allow those same sex couples who have registered, or will register, certain unions overseas to be recognised in this country as civil partners. In general the policy is that an OR registered before the coming into force of Chapter 2 of Part 5 is to be treated as a civil partnership formed on the date on which the provisions come into force. However this can, in some circumstances have consequences (such as the possibility of recognising two ORs as civil partnerships) which require special provision. In other cases supplemental provision is required to give full effect to provisions which refer to the length of time for which a civil partnership has subsisted. The policy behind this Order is to avoid these difficulties and ensure that ORs in this category can be properly dealt with within the framework of the legislation. The Order also gives effect to the policy that in certain circumstances it would be right to recognise ORs which have been dissolved before the provisions come into force as former civil partnerships by exercising the specific power set out in section 215(5) for this purpose.

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

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.