

EXPLANATORY MEMORANDUM TO
THE PARENTAL ORDERS (PRESCRIBED PARTICULARS AND FORMS
OF ENTRY) REGULATIONS 2010

2010 No. 1205

1. This explanatory memorandum has been prepared by the General Register Office, part of the Identity and Passport Service and is laid before Parliament by command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the Instrument

2.1 These Regulations replace The Forms of Entry for Parental Orders Regulations 1994 (SI 1994/2981) and provide for new forms of entry in the Parental Order Register maintained by the Registrar General.

2.2 In addition these Regulations prescribe the particulars to be supplied in an application for a certified copy of an entry in the Parental Order Register where the subject of the parental order is under the age of 18 years.

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

3.1 None

4. Legislative Context

4.1 Section 55 of the Human Fertilisation and Embryology Act 2008 (the “2008 Act”) contains a regulation-making power under which any provision of enactments about adoption may have effect, with modifications as may be specified, in relation to parental orders made under section 54. Section 77 of the Adoption and Children Act 2002 (the “2002 Act”) requires the Registrar General to maintain the Adopted Children Register in which entries are created from adoption orders forwarded by the courts; and paragraph 1(1) of Schedule 1 to the 2002 Act grants the power to prescribe the form of entry in that register.

4.2 Section 78(3) of the 2002 Act provides that a person is not entitled to have a certified copy of an entry in the Adopted Children Register relating to a person who has not attained the age of eighteen years without providing the prescribed particulars.

4.3 Regulation 2 of, and Schedule 1 to, the Human Fertilisation and Embryology (Parental Orders) Regulations 2010 (SI 2010/985) provide that the provisions of the 2002 Act referred to above apply, with the modifications set out in those Regulations, to entries made in the Parental Order Register.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State at the Home Office, Meg Hillier, has made the following statement regarding Human Rights:

“In my view the provisions of the Parental Orders (Prescribed Particulars and Forms of Entry) Regulations 2010 are compatible with the Convention rights.”

7. Policy Background

7.1 Section 30 of the Human Fertilisation and Embryology Act 1990 made provision for a commissioning couple to apply to the court for a parental order allowing them to be treated as the lawful parents of a child born as a result of a surrogacy arrangement. One of the conditions of section 30 was that the applicants were husband and wife. Sections 54 and 55 of the 2008 Act replace section 30 of the Human Fertilisation and Embryology Act 1990, which is repealed by section 57(3) of the 2008 Act. Section 54 of the 2008 Act extends the categories of persons who can apply for a parental order so as to include civil partners and couples in an enduring family relationship, in addition to married couples.

7.2 As a result of the inclusion in the categories of applicants for a parental order of same sex couples it is necessary to prescribe forms of entry in the parental order register that will cater for both same sex and opposite sex couples, and Regulation 3, and Schedule 1 and 2, provide for this. One form of entry will be in English only (Schedule 1), and one bilingual (English/Welsh) (Schedule 2) in exercise of the power conferred by section 26(3) of the Welsh Language Act 1993, for use in registering orders made by courts in Wales.

7.3 The opportunity has been taken in The Human Fertilisation and Embryology (Parental Orders) Regulations 2010 to apply the requirement in section 78(3) of the 2002 Act to the Parental Order Register. This relates to the information required in an application for a certified copy of an entry in the register relating to a person under the age of eighteen years. An application for a certified copy of an entry in the Parental Order Register relating to a person under the age of eighteen years must contain the particulars prescribed in Regulation 2 to these Regulations. The information required is the same as for a similar application for a certified copy of an entry in the Adopted Children Register.

8. Consultation Outcome

8.1 Consultation on the changes to the format of the entry in the Parental Order Register was carried out with ten stakeholders with six replies being received. There was a general acceptance of the need for change.

9. Guidance

9.1 Guidance on the new format of the forms of entry will be issued to users.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating Small Business

11.1 There is no impact on small business.

12. Monitoring and Review

12.1 A review of the Regulations will be undertaken as part of a wider review of the Human Fertilisation and Embryology Act 2008, which will take place in November 2010.

13. Contact

13.1 Alistair MacGregor at the Identity and Passport Service (General Register Office) Tel. 0151 471 4758 or email: alistair.macgregor@ips.gsi.gov.uk can answer any questions regarding this instrument.