

Draft Order laid before Parliament under section 259(8) of the Civil Partnership Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2005 No.

**FAMILY LAW, ENGLAND AND WALES
FAMILY LAW, NORTHERN IRELAND
HOUSING, ENGLAND AND WALES
CIVIL PARTNERSHIP**

The Civil Partnership (Family Proceedings and
Housing Consequential Amendments) Order 2005

Made - - - - 2005

Coming into force - - 5th December 2005

The Secretary of State makes the following Order in exercise of the powers conferred by section 259(1) and (3) of the Civil Partnership Act 2004⁽¹⁾. In accordance with section 259(8) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1. This Order may be cited as the Civil Partnership (Family Proceedings and Housing Consequential Amendments) Order 2005 and shall come into force on 5 December 2005.

2.—(1) Articles 3, 5 to 10 and 20 extend to England and Wales only.

(2) Articles 11 to 17 extend to Northern Ireland only.

(3) Article 1, this article and articles 4, 18 and 19 extend to England and Wales and Northern Ireland only.

(4) Nothing in the amendments to the Family Law Act 1986 made by this Order is to be read as affecting a dependent territory specified in column 1 of Schedule 1 to the Family Law Act 1986 (Dependent Territories) Order 1991⁽²⁾.

(1) 2004 c.33.
(2) S.I. 1991/1723

Amendments to the Matrimonial and Family Proceedings Act 1984(3)

3. In section 38 of the Matrimonial and Family Proceedings Act 1984 (transfer of family proceedings from High Court to county court), in subsection (2)(a), for “or divorce county court” substitute “, divorce county court or civil partnership proceedings county court”.

Amendments to the Family Law Act 1986(4)

4. Amend the Family Law Act 1986 as follows.

5. In section 2 (jurisdiction of courts in England and Wales: general), in subsection (1)(b)(i), after “matrimonial proceedings” insert “or civil partnership proceedings”.

6. In the section 2A title after “matrimonial proceedings” insert “or civil partnership proceedings”.

7.—(1) Amend section 2A (jurisdiction in or in connection with matrimonial proceedings or civil partnership proceedings) as follows.

(2) In subsection (1)—

- (a) omit “matrimonial”;
- (b) after “the marriage” insert “or civil partnership”;
- (c) in paragraph (a)(i) after “of marriage” insert “, or dissolution or annulment of a civil partnership”; and
- (d) in paragraph (b)(i) after “separation” insert “or legal separation of civil partners”.

(3) For subsection (2) substitute—

“(2) For the purposes of subsection (1)(b) above, the jurisdiction of the court is excluded if—

- (a) after the grant of a decree of judicial separation, on the relevant date, proceedings for divorce or nullity in respect of the marriage, or
 - (b) after the making of a separation order, on the relevant date, proceedings for dissolution or annulment in respect of the civil partnership,
- are continuing in Scotland or Northern Ireland.”.

8. In section 3 (habitual residence or presence of the child), in subsection (2)—

- (a) after “matrimonial proceedings” insert “or civil partnership proceedings”; and
- (b) after “marriage” insert “or civil partnership”.

9.—(1) Amend section 6 (duration and variation of custody orders) as follows.

(2) In subsection (3)—

- (a) after “matrimonial proceedings” insert “or civil partnership proceedings”; and
- (b) after “marriage” insert “or civil partnership”.

(3) For subsections (3A) and (3B) substitute—

“(3A) Subsection (3) shall not apply if—

- (a) the Part 1 order was made in or in connection with proceedings—

(3) [1984 c.42](#).

(4) [1986 c.55](#), as amended by the Children Act 1989 s. 108(5) Schedule 13, the Children (NI) Order 1995 [S.I. 1995/755](#) and [S.I. 2005/265](#).

- (i) for divorce or nullity in England and Wales in respect of the marriage of the parents of the child concerned; or
 - (ii) for dissolution or annulment in England and Wales in respect of the civil partnership of the parents of the child concerned; and
 - (b) those proceedings are continuing.
- (3B) Subsection (3) shall not apply if—
 - (a) the Part 1 order was made in or in connection with proceedings—
 - (i) for judicial separation in England and Wales; or
 - (ii) for a separation order in England and Wales; and
 - (b) those proceedings are continuing; and
 - (c) as the case may be, the decree of judicial separation has not yet been granted or the separation order has not yet been made.”
- 10.** In section 7 (interpretation of Chapter 2), after paragraph (a) insert—
 - “(aa) “civil partnership proceedings” means proceedings for the dissolution or annulment of a civil partnership or for legal separation of the civil partners;”.
- 11.** In the section 19 title after “divorce” insert “, dissolution of a civil partnership”.
- 12.** In section 19 (jurisdiction of courts in Northern Ireland in cases other than divorce, dissolution of a civil partnership, etc), in subsection (1)(b)(i), after “matrimonial proceedings” insert “or civil partnership proceedings”.
- 13.** In the section 19A title after “matrimonial proceedings” insert “or civil partnership proceedings”.
- 14.**—(1) Amend section 19A (jurisdiction in or in connection with matrimonial proceedings or civil partnership proceedings) as follows.
 - (2) In subsection (1)—
 - (a) omit “matrimonial”;
 - (b) after “the marriage” insert “or civil partnership”;
 - (c) in paragraph (a)(i) after “of marriage” insert “, or dissolution or annulment of a civil partnership”; and
 - (d) in paragraph (b)(i) after “separation” insert “or legal separation of civil partners”.
 - (3) For subsection (2) substitute—
 - “(2) For the purposes of subsection (1)(b) above, the jurisdiction of the court is excluded if—
 - (a) after the grant of a decree of judicial separation, on the relevant date, proceedings for divorce or nullity in respect of the marriage, or
 - (b) after the making of a separation order, on the relevant date, proceedings for dissolution or annulment in respect of the civil partnership,are continuing in England and Wales or Scotland.”.
- 15.** In section 20 (habitual residence or presence of the child), in subsection (2)—
 - (a) after “matrimonial proceedings” insert “or civil partnership proceedings”; and
 - (b) after “marriage” insert “or civil partnership”.
- 16.**—(1) Amend section 23 (duration and variation of custody orders) as follows.

- (2) In subsection (3)—
- (a) after “matrimonial proceedings” insert “or civil partnership proceedings”; and
 - (b) after “marriage” insert “or civil partnership”.
- (3) For subsections (3A) and (3B) substitute—
- “(3A) Subsection (3) shall not apply if—
- (a) the Part 1 order was made in or in connection with proceedings—
 - (i) for divorce or nullity in Northern Ireland in respect of the marriage of the parents of the child concerned; or
 - (ii) for dissolution or annulment in Northern Ireland in respect of the civil partnership of the parents of the child concerned; and
 - (b) those proceedings are continuing.
- (3B) Subsection (3) shall not apply if—
- (a) the Part 1 order was made in or in connection with proceedings—
 - (i) for judicial separation in Northern Ireland; or
 - (ii) for a separation order in Northern Ireland; and
 - (b) those proceedings are continuing; and
 - (c) as the case may be, the decree of judicial separation has not yet been granted or the separation order has not yet been made.”

17. In section 24 (interpretation of Chapter 4), after paragraph (a) insert—

“(aa) “civil partnership proceedings” means proceedings for the dissolution or annulment of a civil partnership or for legal separation of the civil partners;”.

18.—(1) In section 38 (automatic restriction on removal of wards of court), in subsection (2), after paragraph (a) insert—

“(aa) proceedings for dissolution or annulment or legal separation in respect of the civil partnership of his parents are continuing in a court in another part of the United Kingdom (that is to say, in a part of the United Kingdom outside the jurisdiction of the court of which he is a ward), or”.

(2) In subsection (3)(b) of that section, for “(2)(a) above” substitute “(2)(a) or (aa) above”.

19.—(1) Amend section 42 (general interpretation of Part I) as follows.

(2) After subsection (2) insert—

“(2A) For the purposes of this Part proceedings in England and Wales or in Northern Ireland for dissolution, annulment or legal separation in respect of the civil partnership of the parents of the child shall, unless they have been dismissed, be treated as continuing until the child concerned attains the age of eighteen (whether or not a dissolution, nullity or separation order has been made and whether or not, in the case of a dissolution or nullity order, that order has been made final).”

(3) In subsection (3) after “matrimonial proceedings” insert “or civil partnership proceedings”.

(4) After subsection (4) insert—

“(4A) Any reference in this Part to proceedings in respect of the civil partnership of the parents of a child shall, in relation to a child who, although not a child of the civil partners, is a child of the family of the civil partners, be construed as a reference to proceedings in respect of that civil partnership; and for this purpose “child of the family” has the meaning

given in paragraphs (a) to (c) of subsection (4) (but substituting references to the civil partners for references to the parties to the marriage).”

Amendment to the Housing Act 1996(5)

20. In section 131(a) of the Housing Act 1996 (persons qualified to succeed tenant) after “spouse” insert “or civil partner”.

Secretary of State
Department for Constitutional Affairs

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Matrimonial and Family Proceedings Act 1984 and the Family Law Act 1986 and the Housing Act 1996.

The amendments to the provisions in the Matrimonial and Family Proceedings Act 1984 and the Family Law Act 1986 (“the 1986 Act”) are to enable those provisions to apply equally to civil partnership proceedings in the same way that they apply to matrimonial proceedings.

The amendment to the Matrimonial and Family Proceedings Act 1984 is to ensure that transfer of family proceedings from a High Court can be made to a civil partnership proceedings county court.

Articles 5 to 7 for England and Wales and 11 to 14 for Northern Ireland allow the court to accept jurisdiction under the 1986 Act in a case where the question of making an order with respect to a child arises during the course of civil partnership proceedings.

Article 8 for England and Wales and article 15 for Northern Ireland prevents the court accepting jurisdiction under the 1986 Act based on the habitual residence of a child where civil partnership proceedings are taking place in another part of the United Kingdom.

Article 9 for England and Wales and article 16 for Northern Ireland restricts the courts power to vary a Part 1 (1986 Act) order where there are continuing civil partnership proceedings in another part of the United Kingdom.

Articles 10, 17 and 19 clarifies the interpretation of civil partnership proceedings for Part 1 of the 1986 Act for England and Wales and Northern Ireland.

Article 18 provides an exception to the rule of law, which prevents removal of a ward of court from the jurisdiction, where there are ongoing civil partnership proceedings in another part of the United Kingdom.

The amendment to the Housing Act 1996 is to enable a deceased tenant’s civil partner to succeed to an introductory tenancy in the same way as a deceased tenant’s spouse.

All these amendments are consequential amendments to the Civil Partnership Act 2004.