

**EXPLANATORY MEMORANDUM TO THE
CIVIL PARTNERSHIP ACT 2004 (AMENDMENTS TO SUBORDINATE
LEGISLATION) ORDER 2005**

2005 No. 2114

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

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

2. **Description**

This Order makes consequential amendments to various pieces of subordinate legislation, which arise from the policy of treating civil partners in the same way as spouses for the purposes of the legislation being amended.

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

- 3.1 The Committee should note that the Order consequentially amends the subordinate legislation specified in paragraph 3.4 (which pre-date the Interpretation Act 1978) so that references to a “widow” in the legislation are changed to references to a “surviving spouse or surviving civil partner”.

- 3.2 The provisions specified in paragraph 3.4 currently apply to widowers as well as to widows and thus equivalent provision is made for surviving civil partners. The amendments to refer to a “surviving spouse” do not therefore change the effect of the provisions in law. Similar amendments were made by the Civil Partnership Act 2004 (“the Act”) to primary legislation containing references to the feminine gender so as to explicitly refer to the masculine gender as well as to civil partners. See for example paragraphs 2 and 20 of Schedule 27 to the Act which amends the Partnership Act 1890 and the Pharmacy Act 1954 respectively.

- 3.3 To avoid casting doubt on the application of these provisions to widowers, where consequential amendments are made to refer to a “surviving civil partner”, we consider that it is within the vires of section 259 of the Act to also make amendments to refer to a “surviving spouse”.

- 3.4 The subordinate legislation referred to in paragraph 3.1 is:

- The Smallholdings (Selection of Tenants) Regulations 1970 (paragraph 1 of Schedule 1).
- The River Authorities (Compensation) Regulations 1965; the Land Drainage (Compensation) Regulations 1977 (Schedule 5).
- The Probation (Compensation) Regulations 1965 (Schedule 14).

4. Legislative background

- 4.1 This Order is made in exercise of the power conferred by section 259(1) and (4)(b) of the Act.
- 4.2 Section 259(1) of the Act enables a Minister of the Crown to make, by way of an Order, such further provision as he considers appropriate for: (i) the general purpose, or any particular purpose, of the Act; (ii) in consequence of any provision made by or under the Act, or (iii) for giving full effect to the Act or any provision of it. Section 259(4)(b) enables such an Order to amend or revoke any subordinate legislation.
- 4.3 The amendments in this Order cater for the changes needed to various pieces of subordinate legislation in consequence of the Act.

5. Extent

The amendments made by this Order have the same extent as the provision subject to amendment.

6. European Convention on Human Rights

No statement is required

7. Policy background

- 7.1 The purpose of the Act is to enable same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. The Act 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 Under the Act, 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 a total of 3,167 responses to the public consultation of which 83 per cent expressed support for the principle of civil partnership.

- 7.4 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>
- 7.5 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 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>. The Act received Royal Assent on 18 November 2004.
- 7.6 The Order makes consequential amendments to a number of Statutory Instruments. Where possible, these have been grouped together by subject matter in Schedules for ease of reference. The amendments primarily add references to civil partners and surviving civil partners where there are references to spouses and widows/widowers¹, and add references to civil partnership where there are references to marriage, in the legislation specified in the Order.
- 7.7 Schedule 17 to the Order includes amendments to the Employment Equality (Sexual Orientation) Regulations 2003 (SI 2003/1661), which outlaw discrimination on grounds of sexual orientation in employment and vocational training. The purpose of the amendments is to make it clear that, if a spouse receives different treatment to a civil partner, the employer or training provider etc cannot argue (in reliance on cases such as *Queen on application of Amicus and others –v- Secretary of State for Trade and Industry* [2004] EWHC 860 Admin) that there is no discrimination because married people are not comparable to those in other forms of relationships. The amendments preserve the existing exception for benefits dependant on marital status in respect of service which pre dates the coming into force of the Civil Partnership Act. As a discrimination instrument, the Sexual Orientation Regulations follow the usual rule in only applying to situations which arise after the change in law takes effect – the relevant time for a comparison being when the benefits *accrue* rather than when they are paid.
- 7.8 The Department for Work and Pensions is amending the rules covering occupational and personal pension schemes that are contracted out of the State Second Pension (S2P) to require them to make provision for survivor benefits for a bereaved civil partner of a pension scheme member on the same basis as for a widower, that is based on their contracted out pension rights accrued since April 1988. The Government is also amending public service pension scheme rules in the same way. If a private occupational scheme is not contracted out or provides benefits over and above the contracted out rights, the scheme rules (rather than legislation) set out the conditions for the payment of survivor benefits under the scheme. These are matters for the

¹ See also paragraph 3.

schemes themselves to decide, subject to the requirements of the Sexual Orientation Regulations. The Government does not consider it appropriate to intervene and require all schemes to bear the cost of paying extra benefits for a past period, prior to the discrimination law coming into force.

- 7.9 The Explanatory Note to the Order provides a detailed explanation of the other subordinate legislation being amended and the effect of the amendments.
- 7.10 The Order also prescribes two new forms for the Insolvency Rules 1986 (S.I. 1986/1925) which include appropriate references to civil partners. Although the number of changes made to the existing forms is small, proper legislative practice requires that the forms as a whole are re-prescribed.

8. Impact

A Regulatory Impact Assessment has not been prepared for this statutory instrument, as it has no impact on business, charities, voluntary bodies or any public bodies distinct from that of the Act itself. A full Regulatory Impact Assessment for civil partnership was published alongside the Act and can be viewed at <http://www.dti.gov.uk/access/ria/index.htm#equality>

9. Contact

Colin Dingwall at the Department of Trade and Industry Tel: 0207 215 6624 or e-mail colin.dingwall@dti.gsi.gov.uk can answer any queries regarding the instrument.