

**EXPLANATORY MEMORANDUM TO
THE CIVIL PARTNERSHIP ACT 2004 (RELATIONSHIPS ARISING
THROUGH CIVIL PARTNERSHIP) ORDER 2005**

2005 No. 3137

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

2. Description

2.1 This Order amends Schedule 21 to the Civil Partnership Act 2004 (“the Act”), which specifies provisions in existing Acts of Parliament to which section 246 of the Act applies. The Order adds further provisions of various Acts to that Schedule. This Order also applies section 246 of the Act to provisions of existing subordinate legislation specified in the Schedule to the Order.

2.2 Section 246 of the Act is an interpretation provision which provides that references to ‘step’ relationships and ‘in-laws’, in any legislation to which the section applies, are to be read as including relationships arising through civil partnership.

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

None.

4. Legislative background

4.1 This Order is made in exercise of a power conferred by section 247(2) of the Act.

4.2 Section 247(1) applies section 246 to the provisions listed in Schedule 21 and to any provision made by a future Act⁽¹⁾ or future subordinate legislation⁽²⁾.

4.3 Section 247(2) enables a Minister of the Crown, by Order, to: (i) amend Schedule 21 by adding to it any provision of an existing Act; and (ii) provide for section 246 to apply to prescribed provisions of existing subordinate legislation.

5. Extent

¹ An “existing Act” is defined in the Act as meaning an Act passed on or before the last day of the Session in which the Act is passed. Section 246 applies automatically to any “future Act”, that is, an Act passed after the last day of the Session in which the Act was passed, except in so far as otherwise provided.

² “Existing subordinate legislation” is defined in the Act as meaning subordinate legislation made before the day on which section 247 of the Act comes into force. Section 246 applies automatically to any “future subordinate legislation”, that is, subordinate legislation made on or after the day on which section 247 comes into force, except in so far as otherwise provided.

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

6. European Convention on Human Rights

Meg Munn MP has made the following statement regarding Human Rights.

In my view the provisions of The Civil Partnership Act 2004 (Relationships Arising Through Civil Partnership) Order 2005 is compatible with the Convention rights.

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 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 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 policy intention behind this Order is to ensure recognition is given to family relationships arising out of civil partnership. The application of section

246 of the Act ensures that references to ‘step’ relations and ‘in-laws’ in legislation are interpreted to include relationships arising from a civil partnership. For example if Mary forms a civil partnership with Susan, then Susan’s child would be treated as Mary’s step-child. Similarly, Susan’s brother would be regarded as Mary’s brother-in-law.

- 7.7 The interpretation provision in section 246 will automatically apply to all Acts of Parliament passed after the passing of the Act and to all subordinate legislation made on or after 5th December 2005 (the date on which the substantive provisions of the Act will be come into force), except in so far as otherwise provided.

8. Impact

A Regulatory Impact Assessment has not been prepared for this Order, 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

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