

EXPLANATORY MEMORANDUM TO
THE CIVIL PARTNERSHIP ACT 2004 (OVERSEAS RELATIONSHIPS AND
CONSEQUENTIAL, ETC. AMENDMENTS) ORDER 2005

2005 No. 3129

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**

This Order makes minor amendments to Schedule 20 to the Civil Partnership Act 2004 (“the Act”), which specifies certain overseas relationships that may be treated as civil partnerships for the purposes of the Act. This Order also makes amendments to a number of Acts and church legislation, which are consequential and supplementary to the Civil Partnership Act.

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

None.

4. **Legislative background**

4.1 This Order is to be made in exercise of powers conferred by sections 213 and 259 of the Act. Section 213 provides that the Secretary of State may by Order amend Schedule 20 to the Act. Schedule 20 specifies certain overseas relationships that may be treated as civil partnerships for the purposes of the Act. Where an order made under section 213 amends the description of a relationship in Schedule 20, then the order is to be subject to the affirmative resolution procedure. This Order is the first use of the power conferred by section 213 of the Act.

4.2 Section 259(1) of the Act provides that a Minister of the Crown may by Order make 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(3)(a) enables such an Order to amend any enactment contained in an Act passed on or before the last day of the Session in which the Civil Partnership Act was passed. Section 259(3)(c) enables such an Order to amend any Church legislation.

4.3 A summary of the amendments made by the Order are set out in paragraphs 7.6 to 7.8 of this memorandum.

5. **Extent**

The amendments made by this Order have the same extent as the provision subject to amendment, except that nothing in this Order extends to the Channel Islands or the Isle of Man.

6. European Convention on Human Rights

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

In my view the provisions of The Civil Partnership Act 2004 (Overseas Relationships and Consequential, etc. Amendments) Order 2005 are compatible with the Convention rights.

7. Policy background

7.1 The Act received Royal Assent on 18 November 2004. 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 18th November 2004.

- 7.6 This Order makes minor amendments to Schedule 20 to the Act and amendments to other Acts and Church legislation which are consequential and supplementary to the Civil Partnership Act.
- 7.7 Part 2 of the Order makes amendments to Schedule 20 to the Act. Schedule 20 specifies certain overseas relationships that may be treated as civil partnerships for the purposes of the Act. Schedule 20 is amended so that the description of the relationships in Belgium, Quebec and Finland includes the other official languages of those countries and territories. Part 2 also amends two typographical errors that currently appear in Schedule 20.
- 7.8 Part 3 of this Order makes amendments, which are consequential and supplementary to the Act, to other Acts and Church legislation. The amendments are contained in Schedules 1 – 4 to this Order, and ensure that civil partners receive equal treatment to spouses.
- Schedule 1 contains amendments relating to registration matters with respect to civil partnership.
 - Schedule 2 amends the Marriage Act 1949 to enable former civil partners, one of whom has changed sex as a result of the issue of a full gender recognition certificate under the Gender Recognition Act 2004, to marry under Part III of the 1949 Act without being delayed by the waiting period ordinarily provided for in section 31(4A) of the 1949 Act. Equivalent provision is made in Schedule 3 to the Act to enable former spouses, one of whom has changed sex, to form a civil partnership without being delayed by the waiting period provided for in section 14(1) of the Act.
 - Schedule 3 contains the amendments to Church legislation.
 - Schedule 4 contains further minor amendments to other Acts, for example the Transport Act 1982, Insolvency Act 1986 and the Human Tissue Act 2004, which are consequential to the Act.

8. Impact

A Regulatory Impact Assessment has not been prepared for this Order as it has no impact on business, charities or voluntary bodies; neither does it have significant financial impact on any public bodies. 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

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instrument.