EXPLANATORY MEMORANDUM TO

THE ADOPTION AND CHILDREN ACT 2002 (CONSEQUENTIAL AMENDMENTS) ORDER 2005

2005 No. 3504

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

This memorandum contains information for the Joint Committee on Statutory Instruments and the House of Lords Select Committee on the Merits of Statutory Instruments.

2. Description

2.1 The Adoption and Children Act 2002 (Consequential Amendments) Order 2005 (the 'Order') makes consequential amendments in relation to the right to access information under section 7 of the Data Protection Act 1998 (the '1998 Act'), provides for references to the Adoption and Children Act 2002 (the '2002 Act') to be inserted into Statutory Instruments and reflects changes to the acquisition of parental responsibility provided by the 2002 Act.

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

3.1 The Order comes into force on 30 December 2005 to ensure that consequential amendments are made to Statutory Instruments in relation to the 2002 Act. The Act comes fully into force on that date. The Department regrets the breach of the 21 day rule in respect of this Order.

3.2 The reason for non-compliance with the 21-day rule is that there were some particularly difficult issues to resolve with the Department for Constitutional Affairs over subject access exemptions and that these took longer than expected to resolve.

4. Legislative Background

4.1 The Order is made under section 142(1), (2) and (6) of the 2002 Act. Where the appropriate Minister[1] considers it necessary or expedient for the purposes of giving full effect to any provision of the Act, Section 142 provides that he may by order make

[1] Defined in Section 144(1) of the 2002 Act.

i. any supplementary, incidental or consequential provision;
ii. any transitory, transitional or saving provision.

5. Extent

5.1 The Order extends to England and Wales.

6. European Convention on Human Rights

6.1 No statement is required.

7. Policy background

7.1 Article 2 of the Order makes consequential amendments in relation to the rights of a person (the 'subject') to access information about themselves under section 7 of the 1998 Act. The Data Protection (Miscellaneous Subject Access Exemptions) Order 2000 provides exemptions to those rights where the disclosure of adoption information is restricted by legislation. Existing restrictions apply to records held by adoption agencies, court records, and information held by the Registrar General (the adoption registers).

7.2 Article 2(1) of the Order recreates these exemptions for corresponding restrictions under the 2002 Act. References to the existing legislation will be retained where it continues to have affect on or after 30th December 2005 for adoptions made before that date. Although subject-access rights will not apply, an adoption agency will need to consider each application to decide whether disclosure of information to an applicant would be a breach of confidence.

7.3 The Data Protection (Subject Access Modification) (Social Work) Order 2000 is also amended by article 2(2) of the Order. This ensures that where an independent review of a determination by an adoption agency is carried out on behalf of the Secretary of State, the subject-access right to any record of that review will be modified so that it applies in the same way as for social work records. This means that access could be withheld if its disclosure to the applicant is considered to be harmful. It will cover any records created by the Secretary of State for processing an independent review of a case. As the 2002 Act does not provide for the disclosure of this information by the Secretary of State, an outright exemption could not be made. So this part of the Order provides a partial exemption to the subject-access rights provided by section 7 of the 1998 Act.

7.4 Article 3 provides for references to the 2002 Act to be inserted into four Statutory Instruments (SIs) that relate to the Community Legal Service. Broadly these SIs cover legal aid funding in relation to certain court proceedings. Each contains a definition of family proceedings that refers to the Adoption Act 1976. Article 3 makes a consequential

amendment to each of the definitions of family proceedings so that reference to the 2002 Act is added to the definition.

7.5 Article 4 amends Rule 32(1)(a)(iii) of the Non-Contentious Probate Rules so that its refers to an adoption order made under the 2002 Act. The 2002 Act also provides new ways to obtain parental responsibility, for example for special guardians and step parents, and an adoption agency obtaining a placement order. Rule 32 is also amended to reflect these changes.

7.6 Articles 5 and 6 update two more SIs – the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (article 5) and the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002 (article 6) – by inserting references to the 2002 Act.

7.7 Article 7 amends the Adoption and Children Act 2002 (Commencement Order No. 10 Transitional and Savings Provisions) Order 2005 to add Part 4A to the Parts of the Voluntary Adoption Agencies and the Adoption Agencies (Miscellaneous Amendment) Regulations 2003 that are saved by that Order.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contacts

The contacts for the Order are:

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