EXPLANATORY MEMORANDUM TO

THE CHILDREN (ALLOCATION OF PROCEEDINGS) (AMENDMENT No.2) ORDER 2005

2005/ 2797 (L.24)

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

2. Description

2.1 The instrument amends the Children (Allocation of Proceedings) Order 1991 (S.I. 1991/1677) to make provision for new proceedings introduced under the Adoption and Children Act 2002. It also makes amendments consequential on the implementation of the Civil Partnership Act 2004, and others consequential on changes to the Children Act 1989 introduced under section 115 (special guardianship) of the 2002 Act.

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

3.1 None

4. Legislative Background

4.1 The Children (Allocation of Proceedings) Order sets out which family proceedings may be issued in which class of court, and makes other, general provision for such matters as transfer of cases between courts.

4.2 The amending Order is necessary to provide for the new proceedings under the Adoption and Children Act 2002 and to remove current references to the Adoption Act 1976, which the 2002 Act replaces. The amendments also add provision for proceedings for special guardianship orders under the Children Act 1989, which were introduced by virtue of section 115 of the 2002 Act.

4.3 In addition, the Order provides for proceedings under the Civil Partnership Act 2004. In particular, there is provision for a new class of county court, known as a civil partnership proceedings county court, which will have a similar status to divorce county courts.

5. Extent

5.1 This instrument applies to England and Wales only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Adoption and Children Act 2002 received Royal Assent on 7 November 2002. It replaces the Adoption Act 1976 and will provide a single legislative framework for adoption across all levels of court.

7.2 The 2002 Act updates adoption law, including the law on inter-country adoption, and implements those proposals in the Government's December 2000 White Paper (*Adoption – a new approach*) that require primary legislation. Among other measures it aims to ensure: that birth parents understand the impact of consenting to adoption; there is early resolution of disputes; there is effective case management with decisions made without delay; that adoption cases are heard in courts with appropriately trained and experienced judges and magistrates; that adoption orders are only made when they are in the child's best interest, with the court having alternatives to suit a child's particular needs.

7.3 The final stages of the Act will be implemented on 30 December 2005.

7.4 The 2002 Act also introduced an amendment to the Children Act 1989, which provides for a new type of order – a Special Guardianship order. These orders are intended to meet the needs of children who cannot live with their birth parents but for whom, perhaps because of age or cultural background, adoption may not be appropriate. Special Guardianship orders are intended to provide a long-term, legally secure alternative to adoption.

7.5 The Civil Partnership 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 enables 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. The Civil Partnership Act will come into force on 5 December 2005.

7.6 The Children (Allocation of Proceedings)(Amendment No.2) Order 2005 amends the Children (Allocation of Proceedings) Order 1991 to make provision for the new proceedings introduced under the Adoption and Children Act 2002 and the Civil Partnership Act 2004. As the amendments are purely consequential, the amending Order has not been subject to independent consultation.

8. Impact

8.1 No Regulatory Impact Assessment has been prepared for this instrument as it has no impact on business, charities or voluntary bodies as it is about updating existing court procedures, not imposing new burdens.

9. Contact

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