EXPLANATORY MEMORANDUM TO

THE CIVIL PARTNERSHIP (TREATMENT OF OVERSEAS RELATIONSHIPS) ORDER 2005

2005 No.3284

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

2. Description

2.1 The instrument amends the Civil Partnership (Treatment of Overseas Relationships) Order 2005 (S.I. 2005/3042) by revoking article 4 of that Order and making alternative provision. This is necessary as a result of a defect in the drafting of that article.

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

3.1 Article 4 of S.I. 2005/3042 should have ensured that a Will made by a person who had entered into an overseas relationship would not be revoked by section 18B of the Wills Act 1837 on recognition of the overseas relationship as a civil partnership on 5th December 2005. As a result of a drafting error the article in fact only ensured that a Will made prior to the registration of the overseas relationship was saved from revocation, meaning that any Will made after the registration of the overseas relationship but before 5th December 2005 would be revoked (subject to the exceptions in section 18B (2) to (6)). This instrument corrects a defect in S.I. 2005/3042 and arrangements have been made for copies of this instrument to be made available free of charge to purchasers of that instrument.

3.2 This instrument contravenes the 21-day rule mentioned in paragraph 5.4.13 of *Statutory Instrument Practice*, which requires that instruments subject to annulment should normally not be brought into force until 21 days after laying.

3.3 This is necessary since if the defective article in S.I. 2005/3042 is left unamended this could have significant and unintended consequences on the devolution of the property of a deceased person who had entered into an overseas relationship before 5th December 2005 and after entering into that relationship made a will. To avoid this injustice the new instrument needs to come into force before 5th December 2005. In order to achieve this it is necessary to contravene the 21-day rule.

4. Legislative Background

4.1 The Civil Partnership Act 2004 received Royal Assent on 18 November 2004. The purpose of the Civil Partnership Act is to enable same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. To this end the Act creates a new legal status of civil partnership – under which certain rights and obligations will flow. Civil partners will be subject to many of the same legal rights and responsibilities as spouses.

4.2 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).

4.3 The Civil Partnership Act 2004 also contains provisions enabling certain overseas same-sex relationships to be treated as civil partnerships. Section 215(3) provides that where an overseas relationship was formed before the date of the coming into force of that section the civil partnership is treated as having been formed on that coming into force date.

4.4 Schedule 4 to the Civil Partnership Act 2004 makes provision about Wills, administration of estates and family provision. Paragraph 2 of that Schedule inserts a new section 18B into the Wills Act 1837 which has the effect that, subject to certain exceptions, a will is revoked by the formation of a civil partnership between the testator and another person.

4.5 The Civil Partnership (Commencement No.2) Order (S.I. 2005/3175) provides that the principal provisions of the Civil Partnership Act 2004 (including section 215(3)) will come into force on the 5th December 2005.

5. Extent

The instrument extends to England and Wales only.

6. European Convention on Human Rights

No statement is required.

7. Policy Background

7.1 The Civil Partnership Act 2004 received Royal Assent on 18 November 2004. The purpose of the Civil Partnership Act 2004 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 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 3,167 responses to the public consultation. 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

7.3 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 Civil Partnership 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

7.4 The policy of this Order is to make transitional provision which ensures that a will made by a person who has entered into an overseas relationship before 5th December 2005 is not revoked on recognition of that overseas relationship as a civil partnership.

8. Impact

A full Regulatory Impact Assessment has not been produced for this statutory instrument as it has no impact on the costs of 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 Civil Partnership Act 2004 and can be viewed at http://www.dti.gov.uk/access/ria/index.htm#equality

9. Contact

Alasdair Wallace at the Department for Constitutional Affairs (e-mail alasdair.wallace@dca.gsi.gov.uk or telephone 020 7210 8374) can answer questions about this instrument.