EXPLANATORY MEMORANDUM TO

THE DIVORCE, DISSOLUTION AND SEPARATION ACT 2020 (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2023

2023 No. 759

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument, the Divorce, Dissolution and Separation Act 2020 (Consequential Amendments) Regulations 2023, is to make necessary changes to existing secondary legislation consequential upon the Divorce, Dissolution and Separation Act 2020 ("the 2020 Act"). This is further to changes already made to primary and secondary legislation consequential upon the 2020 Act by way of the Divorce, Dissolution and Separation Act 2020 (Consequential Amendments) Regulations 2022 (S.I. 2022/237).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument is being made to make changes to secondary legislation consequential to the 2020 Act. The 2020 Act revised the legal process in England and Wales for married couples and civil partners to obtain a divorce, dissolution or separation. It amended certain provisions in the Matrimonial Causes Act 1973 and the Civil Partnerships Act 2004, which are the main statutes governing these proceedings. The 2020 Act was implemented on 6 April 2022.

7. Policy background

What is being done and why?

7.1 These Regulations make amendments to secondary legislation consequential on the 2020 Act.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 Paragraph 5 of Schedule 3, sub-paragraph 1(a) of the Registration of Marriage Regulations 2015 states that decree absolute of divorce or a decree of nullity of marriage granted by a court of civil jurisdiction in England and Wales may be one of the original documents that must be provided to the superintendent registrar as evidence of the ending of a previous marriage or civil partnership of a person giving notice of marriage under section 27(1) of the Marriage Act 1949.

Why is it being changed?

7.3 The 2020 Act updated the legal language used in respect of divorce, dissolution, separation and nullity applications; for example, by replacing terms such as "decree nisi", "decree absolute" and "petitioner" with "conditional order", "final order" and "applicant". The language changes in the 2020 Act therefore need to be reflected in Paragraph 5 of Schedule 3, sub-paragraph 1(a) of the Registration of Marriage Regulations 2015, such that the Regulations specify that "final order" or "nullity of marriage order" may be one of the original documents that must be provided to the superintendent registrar as evidence of the ending of a previous marriage or civil partnership of a person giving notice of marriage under section 27(1) of the Marriage Act 1949.

What will it now do?

7.4 Paragraph 5 of Schedule 3, sub-paragraph 1(a) of the Registration of Marriage Regulations 2015 will be amended so as to insert "or final order" after "decree absolute" and to insert "or nullity of marriage order" after "marriage". This will ensure that the Regulations specify that "final order" and "nullity of marriage order" may be one of the original documents that must be provided to the superintendent registrar as evidence of the ending of a previous marriage or civil partnership of a person giving notice of marriage under section 27(1) of the Marriage Act 1949.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 This legislation is consequential on the 2020 Act, as such, a consultation is not being undertaken on this instrument. The reform contained in the Act on which this is consequential was widely consulted on by the Government in a 12-week public consultation in September 2018. The Government responded to the consultation in April 2019. The Government's consultation paper, response and associated documents can be found at Reform of the legal requirements for divorce - Ministry of Justice - Citizen Space.

11. Guidance

11.1 Guidance is not required on this instrument. Comprehensive guidance was developed on implementation of the 2020 Act on processes and procedures which were put in place by the 2020 Act. Guidance was also developed for the public, legal professionals and caseworkers.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because no significant impact on the private, public or voluntary sectors is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 There is no direct approach to monitoring of this legislation planned.

14.2 The instrument does not include a statutory review clause as it is not subject to this.

15. Contact

15.1 Rosa Abulafia at the Ministry of Justice Telephone: 07870370670 or email: rosa.abulafia@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Luke Taylor, Deputy Director for Family Justice Systems Improvements, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Bellamy KC at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.