EXPLANATORY MEMORANDUM TO

THE ACCESS TO JUSTICE ACT 1999 (DESTINATION OF APPEALS) (FAMILY PROCEEDINGS) ORDER 2005

2005 No.

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 sets out the routes of appeal in proceedings relating to adoption from a decision made by a district judge of a county court or a district judge of the High Court (including deputies or temporary office holders) or a Costs Judge.

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

3.1 None

4. Legislative Background

4.1 This Order provides that, with effect from 30th December 2005, appeals against decisions made in proceedings relating to adoption, including the exercise of the inherent jurisdiction of the High Court with respect to minors, shall lie as follows—

(a) appeals from decisions made by a district judge of a county court will lie to a judge of that court (article 3); and

(b) appeals from decisions made by—

(i) a district judge of the High Court,

(ii) a district judge of the principal registry of the Family Division,

(iii) a costs judge, or

(c) any person appointed to act as a deputy for any person holding the offices referred to in sub-paragraphs (i) to (iii) or to act as a temporary additional officer in any such office

will lie to a judge of the High Court (article 2).

4.2 By virtue of article 4, any appeal in which the appeal notice was lodged before 30th December will lie to the court to which it would have lain before 30th December 2005 and this order will not apply to that appeal.

5. Extent

5.1 This instrument applies to England and Wales only.

6. European Convention on Human Rights

Baroness Ashton has made the following statement regarding Human Rights:

In my view the provisions of the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2005 are compatible with the Convention rights.

7. Policy background

7.1 The Adoption and Children Act 2002, which replaces the Adoption Act 1976, will be implemented on 30 December 2005.

7.2 It updates adoption law, including that on inter-country adoption, and provides a single consolidated legislative framework for adoption across all levels of court. New rules of court, (the Family Procedure (Adoption) Rules 2005) which will apply to all levels of court will deal with the practice and procedure to be followed in proceedings under the Act.

7.3 When the new Act and rules are implemented, the existing rules will be revoked and the routes of appeal made by the Rules of the Supreme Court 1965 and the County Court Rules 1981 will fall. This order will enable the existing routes of appeal to be retained and effectively preserve the status quo.

7.4 Under section 56(4) of the Access to Justice Act 1999, the Lord Chancellor is required to consult the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Vice Chancellor, all of whom have been so consulted and have not raised any objection to the Order.

8. Impact

8.1 This order provides necessary and technical changes arising from the implementation of the Adoption and Children Act 2002. A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies

9. Contact

Joanna Wilkinson of the Children's Proceedings Branch, 0207 210 8324 or joanna.wilkinson@hmcourts-service.gsi.gov.uk can answer any queries regarding the instrument.