EXPLANATORY MEMORANDUM TO THE

EUROPEAN COMMUNITIES (JURISDICTION AND JUDGMENTS IN MATRIMONIAL AND PARENTAL RESPOSIBILITY MATTERS) REGULATIONS 2005

2005 No. 265

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 European Communities (Jurisdiction and Judgments in Matrimonial and Parental Responsibility Matters) Regulations 2005 amend certain provisions of domestic law to make it consistent with, and to clarify its relationship to, Council Regulation (EC) No 2201/2003 of 27 November 2003 (the new Council Regulation) on jurisdiction and the recognition and enforcement of Judgments in matrimonial matters and the matters of parental responsibility.

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

3.1 The Regulation has direct effect from 1 March 2005. Although prepared in time to meet the 21-day rule, a technical query to the Instrument caused it to be laid only 20 days before coming into force.

4. Legislative background

4.1 The new Council Regulation is directly effective in the United Kingdom and, consequently, the changes effected by these Regulations are limited to those necessary to amend inconsistent provisions of national law. The new Council Regulation reproduces and repeals Council Regulation (EC) No 1347/2000 of 29th May 2000 (the previous Council Regulation) extending it to include matters of parental responsibility where there are no matrimonial proceedings. Therefore, many of the alterations in these regulations are made to update the domestic legislation to make reference to the correct Council Regulation and the correct Article therein.

4.2 Where legislation is affected by the extension of the new Council Regulation the following changes have been made:

- A new subsection (6A) has been inserted into section 5 of the Domicile and Matrimonial Proceedings Act 1973 to take into account Article 19 in respect of staying of cases.
- New paragraphs were inserted into section 65 of the Magistrates' Courts Act 1980 and Schedule 1 to the Supreme Court Act 1981 so that proceedings under the new Council Regulation are considered as "family

proceedings" in the magistrates' courts and are assigned to the Family Division of the High Court.

- A new subsection (3) has been inserted into section 1 of the Child Abduction and Custody Act 1985 to make it clear that the provisions of the Council Regulation, where applicable will take precedence over the relevant Hague Convention provisions.
- Amendments to the Family Law Act 1986 extends application to cases where there are no subsisting matrimonial proceedings. The amendments, to section 2 and 19, also make it clear that when considering the jurisdiction that the jurisdiction of the new Council Regulation needs to be considered before domestic jurisdiction is looked at. The amendments to section 5 and 22 has been amended to take into account stays made in accordance with Article 15 (where there may be a transfer to a court better placed to hear the case).
- Article 49 of The Matrimonial Causes (Northern Ireland) Order 1978 has been amended to take into account Article 19 of the Council Regulation in respect of staying proceedings.

4.3 A Designation Order, to enable the Lord Chancellor to make these regulations, has been signed and was laid before Parliament on 10th January 2005. It will come into force on 1st February 2005.

5. Extent

5.1 The Regulations apply to England, Wales and Northern Ireland unless otherwise stated.

6. European Convention on Human Rights

6.1 The regulation has been made pursuant to a European Regulation which is believed to be Human Rights Convention compliant.

7. Policy background

7.1 The new Council Regulation is based on the EU Council Regulation (EC) 1347/2000 which established grounds of jurisdiction in relation to proceedings for divorce nullity and judicial separation and for parental responsibility orders made ancillary to those proceedings in relation to the joint biological children of the spouses. The new Council Regulation extends those provisions to all children of the family. In addition, the new Council Regulation makes provision for new proceedings concerning child abduction and custody and for enforcement. These represent no change to Government policy but extend the provisions available to achieve it.

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.

8.2 No significant impact on the public sector is anticipated.

9. Contact

Colin Pipe or Paul Ahearn in Family Justice Division, Department for Constitutional Affairs can answer any queries relating to the instrument. Tel 020 7210 8837 / 8321, email Colin.Pipe@dca.gsi.gov.uk or Paul.Ahearn@dca.gsi.gov.uk.