EXPLANATORY MEMORANDUM TO

THE FAMILY LAW ACT 1996 (PART IV) (ALLOCATION OF PROCEEDINGS) (AMENDMENT) ORDER 2005

2005 No. 2924

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1. This Order is consequential to the introduction of the Civil Partnership Act 2004. It creates a new class of court known as a "designated county court" which includes both divorce county courts and civil partnership proceedings county courts. It also enables the Principal Registry of the Family Division of the High Court to be treated as if it were either a divorce county court or a civil partnership proceedings county court.

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

3.1. None

4. Legislative background

Family Law Act 1996

4.1. Part IV of the Family Law Act 1996 makes provision about family homes and domestic violence. Its sets out rights to occupy matrimonial homes, provides for applications for occupation orders between spouses and co-habitants and for non-molestation orders between people who are connected to each other through their family or personal relationships (as defined in the Act – see section 62).

4.2. This order is made pursuant to section 57 of the Family Law Act 1996 which gives the Lord Chancellor power to make provision about the jurisdiction of the courts to hear proceedings under the Act. It amends the Family Law Act 1996 (Part IV)(Allocation of Proceedings) Order 1997.

The Civil Partnership Act 2004

4.3. 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. 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.

4.4. 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).

4.5. The Act amends the Family Law Act 1996 to make provision for civil partners and former civil partners similar to that already made for married couples and those who have previously been married to each other.

4.6. The Civil Partnership Act 2004 also contains provisions enabling certain overseas same-sex relationships to be treated as civil partnerships.

5. Extent

5.1. This order applies to England and Wales.

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 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 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).

7.3 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

7.4 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

7.5 The purpose of this Order is to amend the provisions about the jurisdiction of courts to hear applications under Part IV of the Family Law Act 1996 to reflect the changes made by the Civil Partnership Act 2004.

8. Impact

8.1. A full Regulatory Impact Assessment has not been produced for this statutory instrument as it does not impose any new burdens on businesses or public authorities. However 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. This assessment includes the impact on the Court Service.

9. Contact

9.1. Vicky Rayne at Her Majesty's Court Service, Tel: 020 7210 1446 or e-mail Victoria.Rayne@hmcourts-service.gsi.gov.uk can answer any queries regarding the instrument.