EXPLANATORY MEMORANDUM TO THE

JUSTICES' CLERKS (AMENDMENT) RULES 2005

2005 No. 2796 (L.23)

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 amends the Justices' Clerks Rules 2005 (S.I. 2005/545 (L.10)) to make provision for a justices' clerk or an assistant to a justices' clerk to carry out certain functions of the court in proceedings under the Adoption and Children Act 2002 (c.38).

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

3.1 None.

4. Legislative Background

4.1 Section 28 of the Courts Act 2003 (c.39) permits rules to be made which make provision enabling things authorised to be done by, to or before a single justice of the peace to be done instead by, to or before a justices' clerk. They may also make provision enabling things authorised to be done, by to or before a justices' clerk to be done instead by, to or before an assistant to a justices' clerk.

4.2 The Justices' Clerks Rules 2005 already enable a justices' clerk and assistant clerk to carry out certain functions of the court in relation to criminal proceedings and family proceedings under the Children Act 1989.

5. Extent

5.1 This instrument applies to England and Wales only.

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 amendments made by these Rules are linked to the implementation of the Adoption and Children Act 2002. New rules of court made under the 2002 Act, the Family Procedure (Adoption) Rules 2005, set out the practice and procedure to be followed in proceedings under the Act.

7.2 The Rules require the court to perform various functions. However, many of those functions are procedural functions such as setting hearings, giving directions, requesting reports or appointing officers such as a children's guardian.

7.3 Such procedural matters are often performed, in a magistrates' court, by a single justice or a justices' clerk/assistant clerk, and this has certainly been the practice in family proceedings since the Children Act 1989 was implemented in 1991.

7.4 The amendments made to the Justices' Clerks Rules 2005 will enable this practice to continue in relation to proceedings under the 2002 Act.

7.5 The Civil Partnership Act 2004 will be implemented on 5 December 2005. An amendment to paragraph 43 of the Schedule to the Justices' Clerks Rules 2005 has been made so as to enable a witness summons to be issued in proceedings under Schedule 6 to the Civil Partnership Act 2004.

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 as it is about updating existing court procedures, not imposing new burdens.

9. Contact

Joanne Howell of Legal Group on 0207 210 8937 or joanne.howell@dca.gsi.gov.uk can answer any queries regarding the instrument.