

EXPLANATORY MEMORANDUM TO
THE CIVIL PARTNERSHIP ACT 2004 (INTERNATIONAL IMMUNITIES
AND PRIVILEGES, COMPANIES AND ADOPTION) ORDER 2005

1. This explanatory memorandum has been prepared by the Foreign and Commonwealth Office, the Office for National Statistics and the Department of Trade and Industry 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 draft Order makes amendments to the International Organisations Act 1968 (“the 1968 Act”), the Companies Act 1985 (“the 1985 Act”) and to the Adoption and Children Act 2002 (“the 2002 Act”) which are consequent upon the coming into force of the Civil Partnership Act 2004 (“the 2004 Act”).

2.2 The 2004 Act aims to ensure parity between married couples and civil partners, except where there is objective justification for a difference in treatment.

International Organisations Act 1968

2.3 The 1968 Act allows the United Kingdom to confer privileges and immunities on international organisations and individuals connected with the organisation. Orders made under sections 1 and 2 of the 1968 Act (sections 1(6)(a) and 2(5)) can only confer the privileges and immunities expressly provided for in the international agreement, which is being implemented. Therefore where an international agreement does not provide for privileges and immunities to be conferred on the civil partner of the primary beneficiary of the privileges and immunities, we currently do not have the *vires* to do so.

2.4 The draft Order will amend section 1 of the 1968 Act to enable the United Kingdom to confer privileges and immunities on a civil partner.

Companies Act 1985

2.5 Section 153(4)(bb) of the 1985 Act provides that share ownership incentive schemes for spouses of employees and former employees of a company are not prohibited as a form of financial assistance for the purchase of shares under section 151 of the Act. The draft Order will amend section 153(4)(bb) so that share ownership incentive schemes for civil partners of employees and former employees of a company are treated in the same way.

2.6 Section 743 of the 1985 Act defines “employees’ share scheme” for the purposes of the Act as including share schemes for the benefit of the

spouses of employees and former employees of a company. The draft Order will amend section 743 so that share schemes for the benefit of the civil partners of employees and former employees fall within this definition in the same way.

Adoption and Children Act 2002

2.7 Section 79(7) of the 2002 Act (which extends to England and Wales only) enables an adopted person, whose birth record is kept by the Registrar General and who intends to marry in England or Wales, to be told on application whether or not it appears from the information contained in the registers of live-births or other records that he and the person he intends to marry may be within the prohibited degrees of relationship for the purposes of the Marriage Act.

2.8 Section 79(7) of the 2002 Act was amended by section 79(8) of the 2004 Act to ensure that adopted persons who apply for such information in relation to a proposed civil partnership are treated equally with those who do so in relation to a proposed marriage. However the section as amended only permits the Registrar General to inform the applicant whether or not it appears from the information contained in the registers of live-births or other records that he and the intended spouse or civil partner may be within the prohibited degrees of relationship for the purposes of the Marriage Act 1949(c.76).

2.9 This draft Order further amends section 79(7) of the 2002 Act to enable the Registrar General to inform the applicant whether he and his intended spouse or intended civil partner may be within the prohibited degrees of relationship for the purposes of the 2004 Act.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 It is proposed that the above Order should be made under section 259(1) and (3)(a) of the 2004 Act. Section 259(8)(a) of the 2004 Act provides that no Order under subsection (1) which contains any provision made by virtue of subsection (3) may be made unless a draft has been laid before Parliament and approved by each House of Parliament.

4.2 Article 1 of the draft Order provides that:

- a) the amendments to the 1968 Act and 1985 Act will come into force the day after the Order is made, and
- b) the amendments to the 2002 Act come into force on 30 December 2005 to coincide with when the 2002 Act is fully implemented.

5. Extent

5.1 Article 2 of this instrument applies to all of the United Kingdom. Sections 153(4)(bb) and 743 of the 1985 Act extend to Great Britain only, and article 3 of the draft Order is limited accordingly. Section 79 of the 2002 Act extends to England and Wales only, and article 4 has the corresponding territorial limitation.

6. European Convention of Human Rights

Lord Triesman has made the following statement regarding Human Rights:

In my view the provisions of the Civil Partnership Act 2004 (International Immunities and Privileges, Companies and Adoption) Order 2005 are compatible with the Convention rights.

7. Policy Background

7.1 The 2004 Act provides a new legal framework that will enable recognition of same-sex relationships through the new status of civil partner and the new legal relationship of civil partnership. Civil partners will have legally binding rights and responsibilities in relation to each other and will have acquired a new status which will affect how they are treated by third parties, including the State. The 2004 Act aims to ensure parity of treatment between married couples and civil partners, except where there is an objective justification for a difference in treatment.

7.2 The amendments made in this draft Order are required to ensure that parity of treatment is accorded to civil partners.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it will have minimal no impact on business and no impact on charities or voluntary bodies. All the costs arising from Civil Partnership were set out in the final RIA for the Civil Partnership Act, which is available at <http://www.dti.gov.uk/access/ria/pdf/ria-civilpartnerships2004.pdf>

9. Contact

Peter Baldwin at the Foreign and Commonwealth Office [Tel: 020 7008 0997 or e-mail: Peter.Baldwin@fco.gov.uk] can answer any queries regarding Article 2 of the instrument.

Yuen Cheung at the Department for Trade and Industry [Tel: 020 7215 5417 or email yuenfan.cheung@dti.gov.uk] can answer any queries regarding Article 3 of the instrument.

Margaret Harris at the Office for National Statistics (Tel: 0151 471 4447 or email: margaret.harris@ons.gsi.gov.uk) can answer any queries regarding Article 3 of the instrument.