EXPLANATORY MEMORANDUM TO

THE COURT OF PROTECTION (AMENDMENT) RULES 2006

2006 No. 653

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 These rules amend the Court of Protection Rules 2001 by making various changes to the fees charged by the Court of Protection. The instrument increases existing fees in line with cost inflation in the court and the Public Guardianship Office (PGO), currently 2.5%, plus an additional 1%, to move closer to optimum cost recovery, in line with HM Treasury Guidance. It splits the fee payable on making an application for the sale or purchase of property, into separate sale and purchase fees and, to reflect the increased cost of this work, increases the amounts payable by 17.5% and 47%, respectively. The instrument changes the point at which the annual administration fee becomes payable from annually, on the anniversary of the appointment of a receiver, to 31 March each year. This brings the payment date into line with the end of the financial year. It also brings forward the point at which the subsequent winding up fee stops being payable from the passing of or dispensing with the receiver's final account to the receipt of grant of representation or the receipt or dispensing with the receiver's account, whichever is the later. The new fees will come into force on 1 April 2006.

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

3.1 None

4. Legislative Background

4.1 These rules are made by the Lord Chancellor, in exercise of the powers conferred upon him by sections 106 and 108 of the Mental Health Act 1983 and with then consent of the Treasury as required by section 106(5) of that Act. These sections form part of Part VII of the Mental Health Act 1983, which concerns the management of the property and affairs of patients, and provide that the Lord Chancellor may make rules of procedure.

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 This Statutory Instrument is the latest in a series of annual fee changes from April 2002 that are designed to move the Court of Protection and its administrative arm, the PGO closer to optimum cost recovery. The court's fee structure was criticised by the National Audit Office in 1999 because the fees were based on the income of the client, rather than the service received, and certain categories of clients subsidised services received by others. The Department undertook to the Public Accounts Committee that they would bring the cross-subsidy to an end.

7.2 Since the creation of the PGO as an executive agency in April 2001, it has been developing a strategy that aligns fees with the services received by clients, and with the PGO business processes underlying those services. The Court's fees are set in accordance with the guidance on fees and charges given by the Treasury. That guidance says that the full cost of using services should be recovered from those who can afford to pay, but that users of services who cannot afford to pay should receive subsidy, in this case through fee remissions. The Court has a comprehensive fee remissions policy, which ensures that anyone with total assets of less than £12,500 will usually not pay fees. Additionally, it will waive any fee if the receiver can demonstrate that the client would suffer financial hardship by paying.

7.3 As in previous years, the PGO consulted on proposed new fees with its key stakeholders, through its stakeholder group, the Consultative Forum. The membership of the Consultative Forum includes representatives from the not-for-profit sector, such as the Alzheimer's Society and MIND; the Law Society; and local authorities who provide a receivership service. Stakeholders understand the need for the PGO to meet costs and have given their support to increases of 1% above PGO cost inflation and to the larger increases to the sale and purchase of property fees.

7.4 Under the previous structure, the fee payable on applying for an order to sell or purchase a property was identical. The new structure splits this into two fees: £200 for an order for sale, and £250 for an order for purchase. Orders for purchase are more complex and, for example, typically require court officials to examine surveyor's reports; authorise a release of capital to fund the purchase; and, particularly in personal injury cases, to approve various adaptations and modifications to the property.

7.5 The above inflation increase to the sale of property fee has arisen mainly because of the court's policy of providing wider or extended powers to certain professional receivers. Most professional receivers do not now require a separate court order to sell property on behalf of patients. So, the court only receives applications from a few professionals and mainly lay receivers, who do not have extended powers. Fewer applications have significantly increased the PGO's overhead for dealing with applications, hence the significant increase in the fee. Payment of the fee is unlikely to cause significant hardship to any client, and in most cases it will be paid out of the purchase money. However, if payment would cause hardship, the court will usually waive payment.

7.6 The purpose of changing the due date for the administration fee is so that the

fee will become due at the end of the financial year. Before this change, the fee was payable annually in arrears on the anniversary of the appointment of the receiver. This meant that the fees were collected at different points during the year and that the PGO's annual accounts represented accrued income, rather than actual debts, at the end of the year. As well as simplifying accounting arrangements, this change will simplify the collection of fees with the effort to collect them concentrated in a short period. No client will be expected to pay more, for if the period since the payment of the last fee is less than a year, the PGO will charge only the proportion of the fee owing between the last payment date and 31 March. The new due date will be effective as of 31 March 2007.

7.7 The instrument also amends the rule governing payment of the subsequent winding up fee so it now stops being payable on receipt of the final account or receipt of grant of representation, whichever is the later. Previously, the fee stopped being payable on the passing of the account, which is a PGO activity. This change puts the onus on the receiver and personal representatives to take steps to ensure that no more fees are payable from the deceased client's estate.

7.8 The court has issued guidance on fee remissions to ensure that any client who will suffer hardship from payment of fees will not usually have to pay, or will pay a reduced fee. Additionally any client whose assets are below £12,500 will usually have their fees waived.

7.9 A copy of the remission guidelines is attached for the committee's attention.

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.

9. Contact

7.10 James Batey at the Public Guardianship Office Tel: 02076647038 or e-mail: james.batey@guardianship.gsi.gov.uk can answer any queries regarding the instrument.