EXPLANATORY MEMORANDUM TO

THE COURT OF PROTECTION (ENDURING POWERS OF ATTORNEY) (AMENDMENT NO. 2) RULES 2005

2005 No. 3126

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 (Enduring Powers of Attorney) Rules 2001 by substituting a new prescribed form of application to register an enduring power of attorney (form EP2). Form EP2 is the form prescribed for an application to the Court of Protection to register an enduring power of attorney. The new version of the EP2 form adds the relationship of civil partner to the parts of the form that require an attorney to specify their relationship to the donor. Applications made in the EP2 form that is substituted by these Rules will be allowed until 1 April 2007.

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. 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.

4.2 The Civil Partnership Act 2004 received Royal Assent on 18 November 2004. The current version of the EP2 form was revised in light of that Act. The purpose of the Civil Partnership Act 2004 is to enable same-sex couples to obtain legal recognition 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.

4.3 The principal provisions of the Civil Partnership Act 2004 will come into force on 5 December 2005 by an order to be made by the Secretary of State.

5. Extent

5.1 These rules apply 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 Civil Partnership Act 2004 amended section 3 and Schedule 1 of the Enduring Powers of Attorney Act 1985 to provide for civil partner to be added to the class of relatives entitled to receive notice of an application to register an enduring power of attorney. Under the Enduring Powers of Attorney Act 1985, anyone who is given formal notice of the application, may object to registration of the enduring power of attorney. These objections act as an important safeguard against fraud and misuse of enduring powers of attorney.

7.2 These Rules substitute a new version of form EP2 which in the parts of the form that require an attorney to specify their relationship to the donor, refers to the new legal relationship of civil partner. The new EP2 form has the option of "civil partner" in parts 2, 3 and 4, in the section entitled “relationship to donor” where previously it listed only: spouse; child; other relation; no relation; solicitor and other professional. The Rules will come into force when the Civil Partnership Act 2004 comes into force on 5 December 2005. However applications made in the EP2 form that is substituted by these Rules will be allowed until 1 April 2007.

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.

9. Contact

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