EXPLANATORY MEMORANDUM TO

THE COURT OF PROTECTION (ENDURING POWERS OF ATTORNEY) (AMENDMENT RULES) 2005

2005 No.668

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs. It is laid before Parliament by command of her Majesty.

2. Description

These rules amend the Court of Protection (Enduring Powers of Attorney) Rules 2001. The instrument reduces the fee payable for registering an enduring power of attorney from £220 to £120 and reduces the fee payable on passing an account from £110 to £100. They also amend the structure of transaction fees payable in certain 'special cases' where the court approves or authorises a transaction on behalf of a client.

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

None

4. Legislative Background

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 the consent of the Treasury as required by section 106(5) of that Act.

5. Extent

This instrument applies to England and Wales only.

6. European Convention on Human Rights

Not applicable

7. Policy Background

Changes to existing fees

Under Treasury guidelines, the Court of Protection and the PGO, the agency that carries out the court's administrative functions, must meet their running costs through fees paid by clients, and such fees must reflect the cost of providing the service. The purpose of reviewing fees is to achieve optimum cost recovery through a fair and transparent fee structure, where clients pay for the services they receive, avoiding cross subsidy.

The PGO consulted 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.

The PGO held meetings with stakeholders and took account of their views before seeking Ministerial approval to the fee changes.

The instrument reduces the fee payable for registering an enduring power of attorney from £220 to £120 and reduces the fee payable on passing an account from £110 to £100. These reductions reflect the reduced cost of the work following the introduction of new streamlined working practices, in particular a computerised case management system plus modest increases in the volume of applications.

Transaction fee: The transaction fee payable where the court approves a gift or other form of settlement on behalf of a client is changed to a fixed fee from a percentage one. In addition it is amended to introduce a new fee to cover the cost of hearings to decide applications. The changes will ensure these fees, including the one for the hearing, reflect the cost of the service and avoid cross subsidy between clients.

8. Impact

The impact of these changes will be that fees payable in Court of Protection proceedings relating to enduring powers of attorney will change from 1 April 2005.

9. Contact

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