EXPLANATORY MEMORANDUM TO

THE ENDURING POWERS OF ATTORNEY (PRESCRIBED FORM) (AMENDMENT) AMENDMENT REGULATIONS 2007

2007 No.548

THE ENDURING POWERS OF ATTORNEY (WELSH LANGUAGE PRESCRIBED FORM) (AMENDMENT) REGULATIONS 2007

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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 These regulations amend the Enduring Powers of Attorney (Prescribed Form) (Amendment) Regulations 2005 and the Enduring Powers of Attorney (Welsh Language Prescribed Form) Regulations 2005, by extending the time period during which old versions of the prescribed form, replaced by the 2005 Regulations, may continue to be used until 1 October 2007.

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

3.1 None.

4. Legislative Background

4.1 These regulations are made by the Lord Chancellor, in exercise of the powers conferred upon him by section 2(2) of the Enduring Powers of Attorney Act 1985. These powers provide that the Lord Chancellor shall make regulations as to the form and execution of instruments creating enduring powers of attorney.

5. Extent

5.1 These regulations 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 2005 Regulations substituted a new prescribed form for an enduring power of attorney and provided a new Welsh language version of the prescribed form. The regulations contained transitional provisions permitting the continued use, until 1 April 2007, of the forms replaced by the 2005 Regulations. These Statutory Instruments amend the date in those Regulations, so old versions of the forms can continue to be used until 1 October 2007.

7.2 Although legal stationers and many practitioners are using the current prescribed form, the old version is still in wide use. Our policy intention in December 2005 was to allow old versions of the form to be used until the main provisions of the Mental Capacity Act 2005 came into force. The Mental Capacity Act replaces enduring powers of attorney with lasting powers of attorney, although the former can continue to be registered, as long as they are executed before the new provisions come into effect. In December last, the Government announced that the part of the Mental Capacity Act relating to lasting powers of attorney would come into force in October 2007.

7.3 If we do not extend the time period, the Court of Protection may refuse to register enduring powers of attorney executed on the old form after 1 April 2007, because they will not be in the form prescribed by the current Regulations. After October, the Public Guardian will become the registering authority for enduring powers of attorney, and he too will have to check whether the instrument has been executed using the correct form. If the instrument cannot be registered, it will defeat the intention of the donor, and someone will need to apply to the Court of Protection in order to make certain decisions on the donor's behalf. Enduring powers of attorney will continue to be registered for years, as many people choose to make them at a relatively young age, as an insurance against losing capacity.

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.

9. Contact

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.