EXPLANATORY MEMORANDUM TO

THE ENDURING POWERS OF ATTORNEY (WELSH LANGUAGE PRESCRIBED FORM) REGULATIONS 2005

2005 No. 3125

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs. It 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 regulations replace the Enduring Powers of Attorney (Welsh Language Prescribed Form) Regulations 2000 (S.I. 2000/289) by substituting a new Welsh language version of the prescribed form of enduring power of attorney. The Enduring Powers of Attorney (Prescribed Form)(Amendment) Regulations 2005 amend the Enduring Powers of Attorney (Prescribed Form) (Amendment) Regulations 1990, by substituting a new prescribed form of enduring power of attorney. These regulations provide a Welsh language version of that new prescribed form. As of 1 April 2007, the new prescribed form or the Welsh language version of the new prescribed form must be used to make an enduring power of attorney. From 5 December 2005 to 1 April 2007, either the new prescribed form or the form that it replaces (or the Welsh Language version of either version of the form) may be used to make an enduring power of attorney.

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 as extended by section 26(3) of the Welsh Language Act 1993. Section 2(2) of the Enduring Powers of Attorney Act 1985 provides that the Lord Chancellor shall make regulations as to the form and execution of instruments creating enduring powers of attorney Section 26(3) of the Welsh Language Act 1993 provides that this power includes the power to prescribe separate forms of the document in English and Welsh.

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 Enduring Powers of Attorney (Prescribed Form)(Amendment) Regulations 2005 amend the Enduring Powers of Attorney (Prescribed Form) (Amendment) Regulations 1990, by substituting a new prescribed form of enduring power of attorney. These regulations provide a Welsh translation of that new prescribed form. The principle change in the new prescribed form concerns the marginal note to the attestation clause in part B, which previously stated: "It is not advisable for your husband or wife to be your witness." From 5 December 2005, the Civil Partnership Act 2004 introduces a new legal status of "civil partner" which means the marginal note is no longer appropriate in its current form. The marginal note is advisory, and was considered unnecessary, and so was removed leaving only the words: "Your attorney(s) cannot be your witness".

7.2 The Instrument also makes some non-substantive changes to the form designed to make the guidance clearer and to provide more space for completing the form.

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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