

**EXPLANATORY MEMORANDUM TO
THE ENDURING POWERS OF ATTORNEY (PRESCRIBED FORM)
(AMENDMENT) REGULATIONS 2005**

2005 No. 3116

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 regulations amend the Enduring Powers of Attorney (Prescribed Form) (Amendment) Regulations 1990, by substituting a new prescribed form of enduring power of attorney. 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. These powers provide that the Lord Chancellor shall make regulations as to the form and execution of instruments creating enduring powers of attorney.

- 4.2 The Civil Partnership Act 2004 received Royal Assent on 18 November 2004 and the current version of the prescribed 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 regulations apply to England and Wales only.

6. European Convention on Human Rights

6.1 There are no human rights implications.

7. Policy Background

7.1 This Statutory Instrument changes the prescribed form of enduring power of attorney. The principle change 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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