
STATUTORY INSTRUMENTS

1994 No. 3046

MENTAL HEALTH

THE COURT OF PROTECTION RULES 1994

Made - - - - - *29th November 1994*
Laid before Parliament *1st December 1994*
22nd December
Coming into force - - - *1994*

The Lord Chancellor, in exercise of the powers conferred on him by sections 106, 107 and 108 of the Mental Health Act 1983(1) and section 54 of the Trustee Act 1925(2) and with the consent of the Treasury so far as is required by section 106(5) of the said Act of 1983, hereby makes the following Rules:—

PART I
PRELIMINARY

Citation and commencement

1. These Rules may be cited as the Court of Protection Rules 1994 and shall come into force on 22nd December 1994.

Interpretation

2.—(1) In these Rules, unless the context otherwise requires expressions used in the Supreme Court Act 1981(3) shall have the same meaning as they have for the purposes of that Act;

“the Act” means the Mental Health Act 1983;

“court” means the Court of Protection;

“direction” means a direction or authority given under the seal of the Public Trustee;

“entered” means entered in the books of the court or the Public Trust Office as appropriate;

“filed” means filed in the court office or the Public Trust Office as appropriate;

(1) 1983 c. 20; extended by sections 94(1)(aa), 111(2A) and 111(3A) of that Act; sections 94(1)(aa), 111(2A) and 111(3A) were inserted by the Public Trustee and Administration of Funds Act 1986 (c. 57), section 2.
(2) 1925 c. 19; section 54 was substituted by the Mental Health Act 1959 (c. 72), schedule 7.
(3) 1981 c. 54.

“function” means any power, discretion or function conferred by the Act;
“judge” means the Lord Chancellor or a nominated judge;
“Master” means the Master of the Court of Protection;
“officer” means an officer of the Court of Protection or of the Public Trust Office as appropriate;
“order” includes a certificate, direction or authority of the court under seal;
“patient” includes a person who is alleged to be or who the court has reason to believe may be incapable by reason of mental disorder of managing and administering his property and affairs;
“receiver” means a receiver appointed under section 99(1) of the Act;
“seal” means an official seal of the Court of Protection or the Public Trustee as appropriate and “sealed” shall be construed accordingly;
“stock” includes shares and also any fund, annuity or security transferable in the books kept by any body corporate or unincorporated company or society, or by an instrument of transfer either alone or accompanied by other formalities and includes any dividends paid in respect of them;
“Visitor” means one of the Lord Chancellor’s Visitors.

(2) Where, in these Rules, there is a reference to something which may be done by the court or the Public Trustee, the reference shall be construed as meaning the court or the Public Trustee as appropriate.

(3) In these Rules a form referred to by letter means the form so designated in the Schedule to these Rules or a form to the same effect with such variations as the circumstances may require or the court may approve and in respect of either the form designated in the Schedule or a variation of it, shall include a Welsh translation.

Exercise of court’s functions

3. Where any function is (in whatever words) expressed by these Rules to be exercisable by the court then, subject to the provisions of the Act, that function may be exercised—

- (a) by a judge;
- (b) by the Master;
- (c) to the extent to which he is authorised to exercise it under section 94 of the Act, by any nominated officer.

Computation of time

4.—(1) Where a period of time fixed by these Rules or by any order or direction of the court for doing any act expires on a day on which the appropriate office for doing that act is closed and for that reason the act cannot be done on that day, the act shall be in time if done on the next day on which that office is open.

(2) Where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.

(3) Where any period of time fixed as mentioned in paragraph (1) is less than six days, any day on which the appropriate office is closed shall not be included in the computation of that period.

Power to vary time

5. The court may extend or abridge the time limited by these Rules or any order or direction of the court for doing any act or taking any proceeding upon such terms as the court thinks fit and notwithstanding, in the case of an extension, that the time so limited has expired.

PART II

FUNCTIONS OF THE PUBLIC TRUSTEE

Functions of the Public Trustee

6.—(1) The Public Trustee may exercise all the functions conferred on the judge by Part VII of the Act except for the following functions which shall only be exercised by the court—

- (a) the resolution of any contested application including any interim matters relating to it;
- (b) the appointment and discharge of a receiver under section 99 of the Act;
- (c) the appointment of a new receiver;
- (d) the appointment of an interim receiver under rule 44;
- (e) subject to rule 9, the determination of jurisdiction of the court under section 94(2) of the Act;
- (f) the making of orders on applications under sections 96(1)(e), (i) and (k), 98, 100, 103 and 104 of the Act;
- (g) the making of orders on applications under sections 96(1)(d) or 96(2) of the Act except where, in respect of a gift, it is payable out of the surplus income or capital, is insignificant in the context of the patient's assets and is for a sum not more than £15,000;
- (h) the making of orders relating to loans or other financial transactions where there is an element of gift except where it is payable out of the surplus income or capital, is insignificant in the context of the patient's assets and is for a sum not more than £15,000;
 - (i) the making of directions under section 101 of the Act and in respect of property to which section 101 of the Act applies and for the severance of joint tenancies;
- (j) the making of directions relating to any assets of a patient that are the subject of specific bequests or devises in his Will;
- (k) the making of orders under sections 36(9) or 54 of the Trustee Act 1925(4);
- (l) the making of orders determining proceedings;
- (m) the making of orders relating to assets situated outside England and Wales and for the transfer of assets out of England and Wales;
- (n) the giving of such directions as may be appropriate in relation to a Will made or proposed to be made by a patient.

(2) Where, in the exercise of any of his functions, the Public Trustee considers that it may be appropriate to restrict the rights of creditors under section 95(2) of the Act, or that payment should be made to persons other than the patient where the patient is insolvent, he shall refer the matter to the court for determination.

(3) Notwithstanding paragraph (1) the Public Trustee may, if he thinks fit, refer any matter to the court for determination.

(4) Nothing in this rule shall prevent the court from exercising any of its functions in relation to any matter being dealt with by the Public Trustee under paragraph (1).

(5) The Public Trustee shall have the power, where he is appointed receiver, to do anything which by virtue of paragraph (1) above, he would be empowered to authorise a receiver to do.

(4) 1925 c. 19; section 36(9) was substituted by the Mental Health Act 1959 (c. 72), Schedule 7, Part 1 and amended by the Mental Health Act 1983 (c. 20), Schedule 4, paragraph 4(a).

PART III

EXERCISE OF JURISDICTION

Exercise of jurisdiction

7. Except where these Rules otherwise provide, any function may be exercised—
- (a) without fixing an appointment for a hearing;
 - (b) by the court or the Public Trustee as appropriate of its or his own motion or at the instance or on the application of any person interested;
 - (c) whether or not any proceedings have been commenced in the court with respect to the patient.

PART IV

APPLICATIONS

Forms of application

8.—(1) Subject to the following provisions of this rule, a first application to the court for the appointment of a receiver shall be in Form A and an application to the court respecting the exercise of any of its other jurisdiction in relation to a patient may be made by letter unless the court directs that a formal application shall be made, in which case it shall be made in Form B.

(2) An application to the Public Trustee relating to the exercise of any of his functions in relation to a patient shall be made by letter or in such other manner as he may direct, unless he directs that a formal application be made to the court in which case it shall be made in Form B.

(3) An application in Form A shall be treated as an application for the appointment as receiver of the person named in the application or some other suitable person.

(4) On grounds of urgency the court or the Public Trustee as appropriate may dispense with the need for an application in writing.

(5) An application relating to the committal of a person for contempt of court shall be made to a judge but all other applications to the court shall be returnable in the first instance before the Master.

Procedure for short order or direction without appointment of receiver

9.—(1) Without prejudice to the generality of rule 7, and where the conditions in paragraph (2) below are satisfied—

- (a) if an application for the appointment of a receiver for the patient has been made the court may instead make a short order under this rule; and
 - (b) if no such application has been made, the Public Trustee may—
 - (i) give a direction under this rule; or
 - (ii) require that such an application be made to the court.
- (2) The conditions to be satisfied are that—
- (a) the property of the patient does not exceed £5,000 in value; or
 - (b) it appears to the court or the Public Trustee that it is otherwise appropriate to proceed under this rule and that it is not necessary to appoint a receiver for the patient.

(3) A short order or direction under this rule is an order or direction directing an officer of the Public Trust Office or some other suitable person named in the order or direction to deal with the patient's property, or any part of it, or with his affairs, in any manner authorised by the Act and specified in the order or direction.

Date for hearing

10.—(1) Upon receiving an application under rule 8 the court shall fix a date for the hearing of the application unless it considers that the application can properly be dealt with without a hearing, and upon the same ground the court may cancel any hearing fixed under this paragraph.

(2) Where a hearing is fixed under paragraph (1) an officer shall endorse the date of it on the application form, shall seal and return the form and retain a copy.

Consolidation of proceedings

11. The court may allow one application to be made in respect of two or more patients or may consolidate applications relating to two or more patients, if in the opinion of the court the proceedings relating to them can be more conveniently dealt with together.

Power to direct application by the Public Trustee or Official Solicitor

12. Where in the opinion of the court an application ought to be made for the appointment or discharge of a receiver or for the exercise of any other function with respect to the property and affairs of a patient, and there appears to be no other suitable person able and willing to make the application, or the court for any other reason thinks fit, the court may direct that the application be made by the Public Trustee or, if he consents, by the Official Solicitor.

Power of the Public Trustee to make applications to the court or exercise functions of his own motion

13. Where it appears to the Public Trustee that an application should be made to the court for the exercise of any of its functions or that any of his own functions ought to be exercised, he may make an application or exercise such functions of his own motion.

Representation of patient by receiver

14.—(1) Except as mentioned in rule 20(c), (d) and (e), an application on behalf of a patient for whom a receiver has been appointed shall, unless the court otherwise directs, be made by the receiver in his own name.

(2) Subject to any directions given by the court, a patient for whom a receiver has been appointed may be represented by the receiver at any hearing relating to the patient or of which the patient has been given notice.

Representation of patient by Official Solicitor

15. Where in any proceedings the court considers that the interests of a patient are not adequately represented, the court may, with the consent of the Official Solicitor, direct that the Official Solicitor shall act as solicitor for the patient either generally in the proceedings or for any particular purpose connected with the proceedings, except that it shall not be necessary to appoint the Official Solicitor to be receiver or guardian ad litem for the patient.

Persons under disability

16.—(1) In this rule “person under disability” means a minor or a patient for whom no receiver has been appointed.

(2) A person under disability shall not make an application in proceedings relating to another person except by his next friend and shall not resist an application in any such proceedings except by his guardian ad litem.

(3) Where a person is to be appointed next friend or guardian ad litem of a person under disability in substitution for the person previously acting as next friend or guardian ad litem, the appointment shall be made by the court but, except for this, an order of the court appointing a next friend or guardian ad litem of a person under disability shall not be necessary.

(4) Before the name of any person is used in any proceedings as next friend or guardian ad litem of a person under disability there shall be filed—

- (a) a written consent of the first-mentioned person to act as next friend or guardian ad litem, as the case may be, of the person under disability in the proceedings, and
- (b) a certificate by the solicitor acting for the person under disability certifying—
 - (i) that he knows or believes that the person to whom the certificate relates is a minor or patient giving (in the case of a patient) the grounds of his knowledge or belief, and
 - (ii) except where the person named in the certificate as next friend or guardian ad litem is the Official Solicitor, that the person so named has no interest in the proceedings adverse to that of the person under disability.

Application under section 54 of the Trustee Act 1925

17. An application to the court with respect to the jurisdiction referred to in section 54(2) of the Trustee Act 1925 may be made only by—

- (a) the receiver for the patient, or
- (b) any person who has made an application for the appointment of a receiver which has not yet been determined, or
- (c) a continuing trustee, or
- (d) any other person who, according to the practice of the Chancery Division, would have been entitled to make the application if it had been made to the High Court.

Application under section 36(9) of the Trustee Act 1925

18. No person other than a co-trustee, or other person with power to appoint a new trustee, may make an application to the court under section 36(9) of the Trustee Act 1925 for leave to appoint a new trustee in place of a patient.

Application under section 96(1)(k) of the Act

19. The provisions of rule 17 shall apply with such modifications as may be necessary to an application under section 96(1)(k) of the Act for an order for the exercise of any power vested in a patient of appointing trustees or retiring from a trust.

Application for settlement or gift of patient’s property or for execution of will of patient

20. An application under section 96(1)(d) of the Act for an order for the settlement or gift of any property of a patient, or an application under section 96(1)(e) of the Act for an order of execution for a patient of a will, may be made only by—

- (a) the receiver for the patient, or
- (b) any person who has made an application for the appointment of a receiver which has not yet been determined, or
- (c) any person who, under any known will of the patient or under his intestacy, may become entitled to any property of the patient or any interest in it, or
- (d) any person for whom the patient might be expected to provide if he were not mentally disordered,
- (e) an attorney acting under a registered enduring power of attorney, or
- (f) any other person whom the court or, where it relates to a function to be exercised by him, the Public Trustee, may authorise to make it.

PART V

SERVICE

Notice of hearing

21.—(1) Except where these Rules provide otherwise or the court directs otherwise the applicant shall give notice of the hearing of an application in accordance with the following provisions of this rule.

(2) Where a receiver has been appointed for a patient he shall, unless he is the applicant, be given notice of the hearing of any application relating to the patient.

(3) Where the application is one to which rules 17 or 19 above relate, notice of the hearing of the application shall also be given to every person who, according to the practice of the Chancery Division, would have been required to be served with the summons if the application had been made to the High Court.

(4) Notice of the hearing of the application shall also be given to such other persons who appear to the court to be interested as the court may specify.

(5) Notice of a hearing shall be given—

- (a) in the case of a first application for the appointment of a receiver, or an application under rule 18, not less than ten clear days and
- (b) in the case of any other application, not less than two clear days

before the date fixed for the hearing.

(6) For the purposes of this rule notice of a hearing is given if a copy of the sealed application form is served on the person concerned or notice is given in such other manner as the court may direct.

Mode of service

22. Except where these Rules otherwise provide, any document required by these Rules to be served on any person shall be served by delivering it to him personally or, if in any particular case or class of case the court so directs, by sending it to him by first class post at his last known address.

Service on solicitor

23. Where a solicitor for the person to be served with any document endorses on the document or a copy of it a statement that he accepts service on behalf of that person, the document shall be deemed to have been duly served on that person and to have been served on the date on which the endorsement was made.

Substituted service

24. Where it appears to the court that it is impracticable for any reason to serve a document in accordance with rule 22, the court may make an order for substituted service of the document by taking such steps as the court may direct to bring it to the notice of the person to be served.

Service on person under disability

25.—(1) Unless the court otherwise directs, any document required by these Rules to be served on a person who is a minor or patient (in this rule referred to as a person under disability) shall be served—

- (a) in the case of a minor who is not also a patient, on his parent or guardian or, if he has no parent or guardian, on the person with parental responsibility within the meaning of the Children Act 1989(5);
- (b) in the case of a patient—
 - (i) on his receiver or, if he has no receiver,
 - (ii) on the person acting in pursuance of an order or direction made under rule 9, or, if there is no such person,
 - (iii) on an attorney acting under a registered power of attorney, or, if there is no such attorney,
 - (iv) on the person with whom he resides or in whose care he is;

and must be served in the manner required by these Rules.

(2) Notwithstanding anything in paragraph (1), the court may order that any document which has been served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability.

(3) Nothing in this rule shall apply to an order required by rule 44 to be served on a patient.

Notification of application for appointment of receiver, etc.

26.—(1) Subject to paragraph (2) below, where—

- (a) a first application is made for the appointment of a receiver for a patient or for an order authorising a person to do any act or carry out any transaction on behalf of a patient without appointing him receiver, or
- (b) the court proposes to make a short order or the Public Trustee proposes to give a direction with respect to a patient's property under rule 9.

the patient shall be notified in such manner as the court or the Public Trustee may direct.

(2) The court or, where rule 9(1)(b) applies, the Public Trustee, may at any time direct that no such notification shall be given if it or he is satisfied that—

- (a) the patient is incapable of understanding it, or
- (b) such notification would be injurious to the patient's health, or
- (c) for any other reason notification ought to be dispensed with.

(3) Where paragraph 2(c) applies, the court or the Public Trustee shall state the reason for dispensing with notification.

(4) Where the patient is a minor, notification under paragraph (1) of this rule shall be given, whether or not notification to the patient is dispensed with under paragraph (2) and unless the court

otherwise directs, to his parent or guardian or, if he has no parent or guardian, to the person with parental responsibility within the meaning of the Children Act 1989.

Notification to next of kin etc. of intention to make application for appointment of receiver

27.—(1) Where an applicant proposes to make an application for the appointment of a receiver or a new receiver, the applicant shall give notice of his intention to—

- (a) all relatives of the patient who have the same or a nearer degree of relationship to the patient than the applicant or proposed receiver; and
- (b) such other persons who appear to the court to be interested as the court may specify;

unless the court directs that such notification shall be dispensed with.

(2) For the purposes of this rule, notice of the intention to make an application is given if the person concerned is notified by letter of the identities of the patient, the applicant and the proposed receiver and what the application is for.

Certificate of service or notification

28.—(1) If the court so directs, a certificate of service showing where, when, how and by whom service was effected shall be filed as soon as practicable after service of a document has been effected in accordance with these Rules.

(2) The provisions of paragraph (1) of this rule shall apply to the giving of notification under rules 26 and 27 as they apply to the service of documents and references in that paragraph to service and the effecting of service shall accordingly be construed as including references to notification and the giving of notification respectively.

PART VI EVIDENCE

Affidavit evidence

29.—(1) Except where these Rules provide otherwise, evidence in proceedings governed by these Rules shall be given by affidavit.

(2) An affidavit for use in proceedings under these Rules may be sworn—

- (a) in England or Wales, before any person authorised to take affidavits under the Commissioners for Oaths Acts 1889 and 1891⁽⁶⁾, under the Solicitors Act 1974⁽⁷⁾, or under the Courts and Legal Services Act 1990⁽⁸⁾ or before any officer of the court of, or above, the rank of higher executive officer;
- (b) outside England and Wales, before any person before whom an affidavit may be sworn for use in the Supreme Court.

Unsworn evidence

30.—(1) Notwithstanding rule 29(1), the court may accept and act upon a statement of facts or such other evidence, whether oral or written, as the court considers sufficient, although not given on oath and whether or not it would be admissible in a court of law apart from this rule.

⁽⁶⁾ 1889 c. 10; 1891 c. 50.

⁽⁷⁾ 1974 c. 47.

⁽⁸⁾ 1990 c. 41.

(2) The court may give directions as to the manner in which a statement of facts or other written evidence under paragraph (1) above is to be given but subject to such directions any such statement or other evidence shall—

- (a) be drawn up in numbered paragraphs and dated; and
- (b) be signed by the person by whom it is made or given.

Written questions to Visitors

31.—(1) Where a Visitor’s report, or information contained in such a report, has been disclosed to any person in pursuance of section 103(8) of the Act, the court may, on the application of any person who appears to the court to be interested, give leave for written questions relevant to the issues before the court to be put to the Visitor by whom the report was made.

(2) The questions sought to be put to the Visitor shall be submitted to the court, which may put them to the Visitor with such amendments, if any, as it thinks fit and the Visitor shall give his replies in writing to the questions so put.

(3) The court may disclose the replies given by a Visitor under this rule to any person who appears to the court to be interested, or to his legal or medical adviser, on such conditions, if any, as it thinks fit.

(4) No Visitor shall be required to give written evidence for the purpose of any proceedings to which these Rules relate, other than in accordance with this rule.

Cross-examination of deponent

32. Any person who has made an affidavit or given a certificate or other written evidence for use in proceedings under these Rules may be ordered by the court to attend for cross-examination.

Administration of oaths

33. The court may direct that an oath be administered to any witness or interpreter in any proceedings before the court.

Filing of written evidence

34.—(1) Before an affidavit, certificate or other written evidence is used in any proceedings under these Rules it shall be filed but the court may make an order on the basis of such evidence before it is filed if the person tendering it undertakes to file it before the order is drawn up.

(2) There shall be endorsed on every affidavit, certificate or other written evidence the name and address of the solicitor, if any, for the person on whose behalf it is filed.

Use of evidence in subsequent proceedings

35.—(1) Except where the court otherwise directs, evidence which has been used in any proceedings relating to a patient may be used at any subsequent stage of those proceedings or in any other proceedings relating to the same patient or to another member of the patient’s family.

(2) Without prejudice to paragraph (1) above, the Master may, upon application being made for the purpose, authorise the use of any such evidence in any legal proceedings that the Master may specify.

Evidence to be filed on a first application for receiver, etc

36.—(1) On the issue of a first application for the appointment of a receiver for a patient or for a short order or direction under rule 9 authorising any person to do any act or carry out any transaction on behalf of a patient without appointing him receiver, the applicant shall, unless the court or the Public Trustee otherwise directs, file a medical certificate and evidence of family and property.

(2) In this rule—

“a medical certificate” means a certificate by a registered medical practitioner that the patient is incapable, by reason of mental disorder, of managing and administering his property and affairs; and

“evidence of family and property” means a certificate or, if the court so orders in a particular case, an affidavit, giving particulars of the patient’s relatives, property and affairs and of the circumstances giving rise to the application.

(3) Rule 30(2) above applies to unsworn evidence of family and property as it applies to unsworn evidence generally.

Evidence of patient’s recovery or death

37.—(1) Where at any stage of proceedings relating to a patient the court has reason to believe that the patient has recovered, it may require medical evidence of the recovery to be furnished by such person as it thinks appropriate.

(2) Where at any stage of proceedings relating to a patient, the Public Trustee has reason to believe that the patient has died, he may require evidence of the death to be furnished by such person as he thinks appropriate.

Proof of amount due to public authority

38. The amount due to any public authority for the past maintenance of a patient may, unless the Public Trustee otherwise directs, be proved by the filing of an account certified under the hand of the proper officer of the authority.

PART VII

HEARING OF PROCEEDINGS

Privacy of applications

39.—(1) Every application shall be heard in chambers unless, in the case of an application for hearing by the judge, the judge otherwise directs.

(2) The Public Trustee shall give such directions as he thinks fit concerning the privacy of applications made to him.

Persons attending hearing

40. Subject to rule 16, the court may determine what persons are to be entitled to attend at any stage of the proceedings relating to a patient.

Representation at hearing

41. Where two or more persons appearing at a hearing are represented by the same legal representative, the court may, if it thinks fit, require any of them to be separately represented.

Reference of proceedings to judge

42. Where a function of the court is not being exercised by a judge, the court, after giving such directions as it thinks fit, shall refer to the judge any proceedings or any question arising in any proceedings which ought, by virtue of any enactment or in its opinion, to be considered by the judge.

Reference of proceedings to Master

43. The judge may refer any proceedings before him or any question arising in them to the Master for inquiry and report.

PART VIII RECEIVERS

Interim provision

44.—(1) Where in the opinion of the court or the Public Trustee it is necessary to make immediate provision in relation to the property and affairs of a patient for any of the matters referred to in section 95(1) of the Act—

- (a) the court or, where appropriate, the Public Trustee, may by certificate or direction direct or authorise any named person to do any act or carry out any transaction specified in the certificate or direction; or
- (b) the court may by order appoint an interim receiver for the patient and, subject to any direction given by the court, such appointment shall continue until further order.

(2) An order appointing an interim receiver shall, unless the court otherwise directs, be served upon the patient within such time as the order may specify and the patient may, within such further time as the order may specify, apply under rule 56 for the review of the order by the court or, if the order was made by a judge, apply to have the order set aside.

Remuneration of receiver

45.—(1) Where a receiver is appointed for a patient, the court or the Public Trustee may, during the receivership, allow the receiver remuneration for his services at such amount or at such rate as it or he considers reasonable and proper and any remuneration so allowed shall constitute debt due to the receiver from the patient and his estate.

(2) No request by a receiver to have the sum payable for his remuneration fixed after the death or recovery of the patient shall be entertained unless the court or the Public Trustee has during the receivership directed that remuneration be allowed and the request is made within six years from the date of the receiver's discharge.

Appointment of receivers with survivorship

46. Where in the opinion of the court two or more persons ought to be appointed receivers for the same patient and one or more of them ought to continue to act after the death or discharge of any of the others, the court may when appointing them receivers direct that the receivership shall continue in favour of the surviving or continuing receiver or receivers.

PART IX

ENTRY AND ENFORCEMENT OF ORDERS

Sealing and filing of orders

47. Every order, certificate, direction or authority of the court or the Public Trustee which is drawn up shall, when entered, be sealed and filed.

Entry of orders after notification to patient

48.—(1) Where—

(a) an order is made on a first application appointing a receiver for a patient or directing or authorising any person to do any act or carry out any transaction on behalf of a patient without appointing him receiver; or

(b) an order or direction with respect to a patient's property is made under rule 9, the order or direction shall not be entered until the expiration of ten clear days after the patient has been notified in accordance with rule 26(1) unless such notification is dispensed with.

(2) Nothing in paragraph (1) above shall prevent the entry of an interim order, certificate or direction under rule 44 for the protection of a patient's property or for the application of a patient's property for his benefit.

Enforcement of orders

49. Every writ of execution or other process for the enforcement of an order of the court shall be issued out of the Central Office of the Supreme Court.

PART X

SUMMONSES AND ORDERS FOR ATTENDANCE OF WITNESSES AND OTHER PERSONS

Summoning of witnesses

50.—(1) In any proceedings under these Rules the court may allow or direct any person to take out a witness summons in Form C requiring the person named in it to attend before the court and give oral evidence or produce any document.

(2) An application by a person to be allowed to take out a witness summons shall be made by filing a statement giving—

(a) the name and address of the person making the application and of his solicitor, if any;

(b) the name, address and occupation of the proposed witness;

(c) particulars of any document which the proposed witness is to be required to produce; and

(d) the grounds on which the application is made.

(3) A witness summons shall be served on the witness personally a reasonable time before the day fixed for his attendance and he shall be entitled to the same conduct money and payment for expenses and loss of time as if he had been summoned to attend the trial of an action in the High Court.

Powers of court where undue delay, etc.

51.—(1) If the court is dissatisfied with the conduct of any proceedings or the carrying out of any order whether by reason of undue delay or otherwise, the court may require the person having the conduct of the proceedings, or any other person appearing to be responsible, to explain the delay or other cause of dissatisfaction, and may thereupon make such order for expediting the proceedings or otherwise as may be appropriate.

(2) For the purpose of paragraph (1), the court may direct any person to make any application and to conduct any proceedings and carry out any directions which the court may specify; and the court may, if it thinks fit and if he consents, appoint the Official Solicitor to act as solicitor for the patient in the proceedings in the place of any solicitor previously acting for him.

Order for examination of patient

52. In any proceedings relating to a patient, a judge or the Master may make an order for the patient's attendance at such time and place as he may direct for examination by the Master, a Visitor or any medical practitioner.

PART XI AMENDMENT

Amendment of application

53.—(1) The court or the Public Trustee may allow or direct an applicant, at any stage of the proceedings, to amend his application in such manner and on such terms as to costs or otherwise as may be just.

(2) The amendment may be effected by making in writing the necessary alterations to the application, but if the amendments are so numerous or of such a nature or length that written alterations would make it difficult or inconvenient to read, a fresh application amended as authorised or directed may be issued.

Clerical mistakes and slips

54. The court or the Public Trustee as appropriate may at any time correct any clerical mistakes in an order or direction or any error arising in an order or direction from any accidental slip or omission.

Endorsement of amendment

55. Where an application, order or direction has been amended under rule 53 or 54, a note shall be placed on it showing the date on which it was amended and the alterations shall be sealed.

PART XII REVIEWS AND APPEALS Review of decision not made on a hearing

56.—(1) Any person who is aggrieved by a decision of the court not made on a hearing, or a decision of the Public Trustee, may apply to the court within eight days of the date on which the decision was given to have the decision reviewed by the court.

(2) No review shall lie from any decision under rule 86 of these Rules.

(3) On the hearing of the application the court may either confirm or revoke the previous decision or make any other order or decision which it thinks fit.

(4) Any person aggrieved by any order or decision made on the hearing of the application for review may appeal to a nominated judge in accordance with rule 57.

Appeal from a decision made on a hearing

57.—(1) Any person aggrieved by a decision of the court made on a hearing may, within fourteen days from the date of entry of the order or, as the case may be, from the date of the decision, appeal to a nominated judge.

(2) The appellant shall within the fourteen days—

(a) serve a notice of appeal in Form D on—

(i) every person who appeared, or was represented before, the court when the order or decision was made or given, and

(ii) any other person whom the court may direct; and

(b) lodge a copy of the notice at the court office.

(3) The time and place at which the appeal is to be heard shall be fixed by the court and it shall cause notice of the time and place so fixed to be sent to the appellant who shall immediately send notice of it to every person who has been served with notice of the appeal.

(4) No evidence further to that given at the hearing shall be filed in support of or in opposition to the appeal without leave of the court.

PART XIII

SECURITY

Receiver to give security

58.—(1) Where an order is made appointing a person other than the Public Trustee or the Official Solicitor as receiver for a patient—

(a) the person appointed shall, unless the court otherwise directs, give such security for the due performance of his duties as the court may approve and shall give it before acting as receiver unless the court allows it to be given subsequently; and

(b) the order shall not be entered until the person appointed has given to the satisfaction of the court any security required to be given by him before acting.

(2) The court or the Public Trustee may from time to time vary or dispense with any security required.

Manner of giving security

59. Subject to any directions of the court or the Public Trustee, security may be given in any of the following ways or partly in one of those ways and partly in another—

(a) by a bond approved by the court and given by the person giving security and also by—

(i) an insurance company, group of underwriters or bank approved by the Public Trustee; or

(ii) with the approval of the Public Trustee, two personal sureties; or

(b) by lodging in court a sufficient sum of money or sufficient stock; or

(c) in such other manner as the Public Trustee may approve.

Lodgment of security

60. Any security given by lodgment of money or stock shall be dealt with in accordance with the terms of the direction filed when the lodgment was made.

Discharge of security where new security given

61. Where a receiver is authorised or directed to give new security, and—

- (a) the new security has been completed, and
- (b) he has paid or secured to the satisfaction of the Public Trustee any balance due from him,

the former security shall, unless the Public Trustee otherwise directs, be discharged.

Maintenance of security by bond

62. Every person who has given security by a bond shall, whenever his accounts are passed or the Public Trustee so directs, satisfy the Public Trustee—

- (a) that any premiums payable in respect of the bond have been duly paid, or
- (b) if the bond was given by personal sureties, that each surety is living and within the jurisdiction and has neither been adjudicated bankrupt nor compounded with his creditors,

and, if the Public Trustee is not so satisfied, he may require new security to be given or may give such other directions as he thinks fit.

PART XIV

ACCOUNTS

Passing of accounts

63.—(1) Every receiver shall, annually or at such other interval as the court or the Public Trustee shall specify, deliver his accounts to the Public Trustee within such time as the court or the Public Trustee shall direct.

(2) The receiver shall answer such requisitions on his accounts as the court or the Public Trustee shall raise and in such manner and in such time as the court or the Public Trustee shall direct.

(3) On the passing of any accounts the Public Trustee shall make all proper allowances out of the patient's estate, including an allowance in respect of the reasonable and proper costs of the receiver of passing the accounts.

(4) The court or the Public Trustee may direct that a receiver need not account under this rule or may dispense with the passing of any accounts at any time at which they would otherwise require to be passed.

Application of balance due from receiver

64. The balance found due from a receiver on the passing of his accounts or so much of it as the Public Trustee may direct, shall—

- (a) be paid by the receiver into court to the credit of the proceedings and invested in such manner as the Public Trustee may direct, or

- (b) be invested or otherwise dealt with by the receiver in such manner as the Public Trustee may direct.

Default by receiver

65. Where a receiver fails to comply with rule 63 or 64 or fails to pay into court or invest or otherwise deal with any money in accordance with any direction of the court or the Public Trustee, the court or the Public Trustee may disallow any remuneration which would otherwise be due to the receiver and, if he has made default in paying into court or investing or otherwise dealing with any money, may charge him with interest on it at such rate as the Public Trustee may reasonably fix, for the period of his default.

Payment of maintenance and costs

66. Unless otherwise directed, any money ordered to be paid by a receiver for maintenance shall be paid out of income and any costs ordered to be paid by a receiver may, when agreed, taxed or fixed, be paid out of any moneys coming into his hands, after providing for any maintenance and fees payable under these Rules.

Final accounts

67.—(1) On the discharge or death of a receiver or on the death or recovery of a patient for whom a receiver has been appointed, the Public Trustee shall pass the accounts of the receiver from the foot of his last account or, if no account of his has previously been passed, from the date of his appointment, unless in the opinion of the Public Trustee the passing of such accounts may properly be dispensed with.

(2) If a balance is found due from the receiver or his estate, he or his personal representatives, as the case may be, shall pay it into court or otherwise deal with it as the Public Trustee may direct.

(3) If a balance is found due to the receiver or his estate, it shall be paid to him or his personal representatives, as the case may be, by the patient or out of the patient's estate.

(4) On payment of any balance found due from the receiver, or if no balance is found due from him or the passing of his accounts has been dispensed with under paragraph (1) above, the security of the receiver shall be discharged.

Accounting by other persons

68. Rules 63 to 67 shall also apply, to the extent directed by the court or the Public Trustee, to any person who is—

- (a) directed to deal with the patient's property or affairs under rule 9;
- (b) directed or authorised to act under rule 44(1)(a); or
- (c) appointed an interim receiver under rule 44(1)(b),

as they apply to a receiver.

PART XV

INQUIRIES

Inquiries as to desirability of appointment of receiver, etc.

69.—(1) Where the court has reason to believe that a receiver should be appointed for a patient or that any other function of the court should be exercised with respect to the property and affairs of a patient, the court may direct—

- (a) a Medical or Legal Visitor, the Public Trustee or, if he consents, the Official Solicitor, or any other appropriate person to visit the patient and report to the court whether it is desirable in the interests of the patient that an application should be made for that purpose, and, in the case of a report by a Medical or Legal Visitor, whether there is any other matter which the court should consider before exercising its functions in relation to a patient's property and affairs; or
- (b) a Medical Visitor to visit the patient and report to the court on the capacity of the patient to manage and administer his property and affairs.

(2) On receiving any report pursuant to paragraph (1) above, the court may—

- (a) direct an application to be made pursuant to rule 12; or
- (b) if the report is by a Medical Visitor and the court is satisfied that the patient is incapable, by reason of mental disorder, of managing and administering his property and affairs, make an order appointing a receiver or exercising any other function of the court with respect to the patient's property and affairs.

(3) The Public Trustee or the court may direct a General Visitor or any other appropriate person to visit the patient and report whether it is desirable for any functions in relation to the patient's property and affairs to be exercised.

(4) On receiving any report pursuant to paragraph (3) above—

- (a) the court may direct that an application be made pursuant to rule 12; or
- (b) the Public Trustee may make an application pursuant to rule 13; or
- (c) the court or the Public Trustee may exercise any function conferred on them in relation to a patient's property and affairs.

Inspection of patient's property

70. For the purpose of any proceedings relating to the property of a patient—

- (a) the court may inspect the property or direct an officer of the court, the Official Solicitor (if he consents), the Public Trustee or any other appropriate person to inspect the property, make any necessary inquiries and report to the court; and
- (b) the Public Trustee may, if he thinks fit, of his own motion make such inspection and inquiries or direct some other appropriate person to do so and report to him.

Inquiries as to prior dealing with the patient's property

71. In any proceedings relating to a patient the court may make or cause to be made such inquiries as it thinks fit as to any dealing with the patient's property before the commencement of the proceedings and as to the mental capacity of the patient at the time of such dealing.

Inquiries as to testamentary documents executed by patient

72. The court may make or cause to be made inquiries whether any person has in his possession or under his control or has any knowledge of any testamentary document executed by a patient, and may direct that person to answer the inquiries on oath and to produce any such document which is in his possession or under his control and deal with it in such manner as the court may direct.

Power to direct other inquiries

73. The court or the Public Trustee may make or cause to be made any other inquiries which it or he may consider necessary or expedient for the proper discharge of their functions under the Act or these Rules.

PART XVI

CUSTODY AND DISPOSAL OF FUNDS AND OTHER PROPERTY

Statement of property retained or deposited

74. Where under a direction of the court or the Public Trustee any furniture or effects of a patient are allowed to remain in the possession of, or deposited with, any person, that person shall, unless the court or the Public Trustee otherwise directs, sign and file an inventory of the furniture or effects and an undertaking not to part with them during the patient's lifetime except on a direction under seal.

Stock in name of patient or receiver

75.—(1) Where any stock—

- (a) is standing in the name of a patient beneficially entitled to it; or
- (b) is standing in the name of a receiver in trust for a patient, or as part of his property, and the receiver dies intestate or himself becomes incapable by reason of mental disorder of acting as receiver, or is out of the jurisdiction of the court, or it is uncertain whether he is still alive, or he neglects or refuses to transfer the stock or to receive and pay over the dividends as the court directs,

the court may order some proper person to transfer the stock into the name of the receiver or, as the case may be, a new receiver for the patient or into court or otherwise deal with it as the court may direct and also to receive and pay over the dividends thereof as the court may direct.

(2) Where an order is made under paragraph (1) above or under section 100 of the Act directing stock to be transferred into court, the person required to effect the transfer shall be—

- (a) in the case of stock standing in the stock register kept by the Bank of England or any other bank or by the Crown Agents for Overseas Governments and Administrations, some proper officer of the bank or the Crown Agents;
- (b) in any other case, some proper officer of the company or other body whose stock is to be transferred,

and that person shall, if so ordered, receive any sum accrued due before the transfer by way of dividend, bonus or periodical payment in respect of the stock and pay it into court to the general account of the patient or to a separate account or otherwise deal with it as the court may direct.

Disposal of property on patient's recovery or death

76.—(1) On the recovery of a patient the court may order any money, securities or other property belonging to the patient, or forming part of his estate, or remaining under the control of, or held under the directions of the court, to be transferred to the person who appears to be entitled to it.

(2) On the death of a patient the Public Trustee may direct any money, securities or other property belonging to the patient, or forming part of his estate, or remaining under the control of, or held under the direction of the Public Trustee, to be transferred to the person who appears to be entitled to it.

(3) If no grant of representation has been taken out to the estate of a deceased patient and it appears to the Public Trustee that the assets of the estate, after deduction of debts and funeral expenses, do not exceed £5,000 in value, he may, if he thinks fit, provide for payment of the funeral expenses out of any funds in court standing to the credit of the deceased and order that any such funds, or the balance of them, or any other property of the patient remaining under the control, or held under the directions, of the Public Trustee, be paid, transferred, delivered or released either to the personal representative of the deceased when constituted or to the person who appears to be entitled to apply for a grant of representation to his estate.

(4) The Public Trustee may at any time, pending notification to him of the grant of representation to the estate of a patient, direct that any money or securities which belonged to the patient when he died and were not already in court shall be transferred into court.

PART XVII

COPIES OF DOCUMENTS

Copies of documents in court

77.—(1) Any person who has filed an affidavit or other document shall, unless the court or the Public Trustee otherwise direct, be entitled, on request, to be supplied with a copy of it.

(2) The person having the conduct of any proceedings shall, unless the court or the Public Trustee, otherwise direct, be entitled, on request, to be supplied by the court with a copy of any order, certificate, authority, direction or other document made, given or prepared by the court or the Public Trustee in the proceedings.

(3) Any other person may, on request, be supplied with a copy of any such document as is mentioned in paragraph (1) or (2), if the court is satisfied that he has good reason for requiring it and that it is not reasonably practicable for him to obtain it from the person entitled to bespeak a copy from the court or the Public Trustee.

(4) Any copy of a document supplied under paragraphs (1), (2) or (3) above shall, if so required, be marked as an office copy.

PART XVIII

FEES

Appendix of fees

78.—(1) The Appendix to these Rules, in this Part of these Rules described as “the Appendix”, shall apply so as to fix the fees payable pursuant to the following provisions of this part of these Rules.

(2) Subject to paragraph (3), the fee specified in the Appendix shall be taken in respect of proceedings governed by these Rules.

(3) The fee prescribed by rule 80 and contained in the corresponding provisions of the Appendix shall not be payable where the Public Trustee has been appointed and is acting as receiver for the patient.

(4) Subject to paragraph (5) below, the person by whom any fee (other than a fee payable under rule 82) is payable shall, unless the Public Trustee otherwise directs, make the payment out of the income of the patient or, if he is dead, out of his estate.

(5) Where the payment of a fee is to be made by the Accountant General then, unless the Public Trustee directs that payment is to be made out of the income arising from the fund, the Accountant General shall meet the fee from any cash sums held in court to the account of the patient.

Commencement fee

79. A commencement fee shall be payable on any first application for the appointment of a receiver or other originating process in respect of any patient.

Administration fee

80.—(1) An annual administration fee shall be payable in respect of the clear annual income at the disposal of the patient from the date of issue of the first application for the appointment of a receiver or other originating process until the termination of the proceedings.

(2) The Public Trustee shall annually, or at such other intervals as may be convenient, issue a certificate in respect of each patient in which there shall be stated—

- (a) the amount of the administration fee payable in respect of the patient at the date of the certificate;
- (b) the period in respect of which the administration fee is payable; and
- (c) the name of the person by whom the payment is to be made.

(3) The Public Trustee may, if he thinks fit, issue a certificate for the payment of an estimated administration fee.

(4) Upon the issue of a certificate under this rule the amount of the fee shall be charged upon the patient's estate, and the payment shall be made within such time (not exceeding one month from the date of the certificate) as the Public Trustee may allow.

(5) In any case in which it appears to the Public Trustee that the amount of the fee certified under this rule has been wrongly assessed, he may direct that the fee is to be adjusted upon the passing of the receiver's accounts or at such other time as appears to him to be convenient.

(6) Without prejudice to the generality of rule 86—

- (a) no administration fee may be taken where the proceedings are terminated before any order is made, and
- (b) the clear annual income at the patient's disposal for the purposes of this rule does not include income which accrued and became payable to him more than six months prior to the date of the first application for the appointment of a receiver or other originating process but which was received after that date.

Transaction fee

81.—(1) A transaction fee shall be payable in respect of any order or direction made in exercise of the specific powers conferred by—

- (a) paragraphs (d), (e), (h) or (k) of section 96(1) of the Act;

- (b) section 100 of the Act;
- (c) sections 36(9) and 54 of the Trustee Act 1925; and
- (d) section 1(3) of the Variation of Trusts Act 1958⁽⁹⁾.

(2) In a special case, the standard fee payable in accordance with the Appendix shall be increased in accordance with the Appendix where there is readily ascertainable pecuniary consideration in the nature of capital arising to or provided by the patient (otherwise than by way of loan to, or repayment of a loan by, the patient), no account being taken of the possible capitalisation of the value of rents or interests or other income payments.

(3) Where a transaction is to be approved under an order mentioned in paragraph (1) above, the fee shall be taken on the approval of the transaction and the Public Trustee shall issue a certificate stating the amount payable.

(4) Except where the Public Trustee otherwise directs, no fee shall be payable under this rule upon the sale or purchase of personal chattels or any investment for the time being authorised by law for the investment of trust property or in securities quoted on any stock exchange in the United Kingdom.

(5) In this rule, “special case” means an order made by the court—

- (a) under paragraphs (d) or (h) of section 96(1) of the Act; or
- (b) under section 1(3) of the Variation of Trusts Act 1958.

Fee on taxation

82.—(1) A fee shall be payable in respect of the taxation of a bill of costs.

(2) On the withdrawal of a bill of costs which has been lodged for taxation there shall be payable such a fee (not exceeding the amount which would have been payable under paragraph (1) above if the bill had been allowed in full) as appears to the taxing officer to be fair and reasonable.

Receivership fees

83.—(1) An appointment fee shall be payable, as set out at paragraph 5 of the Appendix, upon the appointment of the Public Trustee as receiver for a patient.

(2) In cases where the Public Trustee is receiver an annual fee shall be payable in respect of the clear annual income at the disposal of the patient.

(3) The said fee shall be payable—

- (a) upon the passing of an account by the Public Trustee or at such other time as he shall consider to be convenient; and
- (b) on the scale set out a paragraph 6 of the Appendix.

(4) The clear annual income at the patient’s disposal for the purpose of this rule does not include income which accrued and became payable to him more than six months prior to the date when the court’s jurisdiction was first exercised in relation to him.

(5) No annual fee shall be taken where the proceedings are terminated less than four weeks from the date of issue of the first application for the appointment of a receiver.

Winding up fee

84. A winding up fee shall be payable on the death of a patient in cases where the Public Trustee had been appointed receiver.

(9) 1958 c. 53.

Treatment of structured payments, annuities etc.

85.—(1) Where—

- (a) any structured payment of damages, or
- (b) any payment which is intended as part of a series of payments which arise from an annuity, insurance bond or similar arrangement,

is made for the benefit of a patient, one half, and only one half, of any such payment shall be treated as income of the patient for the purposes of calculating any fee payable under these Rules which requires ascertainment of the clear annual income at the patient's disposal.

(2) In paragraph (1), a structured payment of damages means a payment which—

- (a) arises from—
 - (i) the judgement or award of any court, arbitrator or other competent body in England and Wales or elsewhere, or
 - (ii) the settlement of any claim or potential claim under the law of England and Wales or any other place, whether before or after the commencement of any proceedings in respect of such a claim;
- (b) is made as part of a series of payments that are to be made from time to time until the death of the patient or some later date; and
- (c) is not the first payment to be made in the series.

(3) For the purposes of paragraphs (1)(b) and (2)(b), payments may form part of a series notwithstanding that they—

- (a) consist of differing amounts; or
- (b) are payable at differing intervals.

Remission, postponement and exemption

86.—(1) The Public Trustee may remit or postpone the payment of the whole or part of any fee where in his opinion hardship might otherwise be caused to the patient or his dependants or the circumstances are otherwise exceptional.

(2) The Public Trustee may remit the payment of the whole or part of any fee where the cost of calculation and collection would be disproportionate to the amount involved.

(3) No fee shall be payable pursuant to rules 80 and 83 on any income by way of non-taxable social security benefits or a war pension or war injuries (civilian) pension in respect of—

- (a) service in the armed forces of the Crown to which section 2 of the War Pensions Act 1920⁽¹⁰⁾ applies; or
- (b) service in the armed forces of the Crown after 2nd September 1939; or
- (c) service before 15th August 1945 to which the Pensions (Polish Forces) Scheme 1964⁽¹¹⁾ applies; or
- (d) detention, capture, war injury or war risk injury within the meaning of any scheme (other than that mentioned in paragraph (c) above) made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939⁽¹²⁾, or under that Act as amended and applied by the Pensions (Mercantile Marine) Act 1942⁽¹³⁾; or

⁽¹⁰⁾ 1920 c. 23.

⁽¹¹⁾ S.I. 1964/2007.

⁽¹²⁾ 1939 c. 83.

⁽¹³⁾ 1942 c. 26.

- (e) war service injury within the meaning of the Personal Injuries (Civilians) Scheme 1983(14) as amended in the case of a civil defence volunteer to whom that Scheme applied.

PART XIX

COSTS

Costs generally

87.—(1) All costs incurred in relation to proceedings under these Rules, and not provided for by way of remuneration under rule 45, shall be in the discretion of the court or the Public Trustee and they may order or direct them to be paid by the patient or charged on or paid out of his estate or paid by any other person attending or taking part in the proceedings.

(2) Every order made or direction given under paragraph (1) shall be enforceable in the same manner as an order as to costs made by the High Court.

(3) An order or direction that costs incurred during the lifetime of a patient be paid out of or charged on his estate may be made within six years after his death.

Applications under sections 36(9) and 54 of the Trustee Act 1925

88. The court may make any such order with respect to the costs of an application under section 36(9) or 54 of the Trustee Act 1925 as the High Court could make under section 60 of that Act in relation to any matter mentioned in that section.

Supreme Court costs rules to apply

89. Subject to the provisions of these Rules, Order 62 of the Rules of the Supreme Court 1965(15) shall apply, with such modifications as may be necessary, to costs incurred in relation to proceedings under these Rules as they apply to costs incurred in relation to proceedings in the Chancery Division and may be taxed where required accordingly.

Costs of unnecessary employment of solicitor, etc. not to be allowed

90.—(1) No receiver for a patient, other than the Public Trustee or the Official Solicitor, shall, unless authorised by the court, be entitled at the expense of the patient's estate to employ a solicitor or other professional person to do any work not usually requiring professional assistance.

(2) Where two or more persons having the same interest in relation to the matter to be determined attend any hearing by separate legal representatives, they shall not be allowed more than one set of costs of that hearing unless the court certifies that the circumstances justify separate representation.

Costs of Official Solicitor

91. Any costs incurred by the Official Solicitor in relation to proceedings under these Rules or in carrying out any directions given by the court or the Public Trustee, and not provided for by way of remuneration under rule 45, shall be paid by such person or out of such funds as the court may direct.

(14) S.I. 1983/686.

(15) S.I. 1965/1776.

Ascertainment of costs not relating to the proceedings

92. Where in proceedings relating to a patient a claim is made against his estate in respect of any costs alleged to have been incurred by him or on his behalf otherwise than in relation to the proceedings, the court or the Public Trustee may refer the claim to a Taxing Master of the Supreme Court so that the amount due to the claimant may be ascertained by him or under his direction.

PART XX

APPROVAL OF DEEDS

Approval of deeds

93. The seal of the court on any deed or other document shall be evidence that its terms have been approved by the court.

PART XXI

TRANSITIONAL PROVISIONS

Transitional provisions

94.—(1) Where any matter is pending before the court before the coming into force of these Rules, which, by virtue of these Rules relates to a function to be exercised by the Public Trustee, the court shall refer the matter to the Public Trustee to be dealt with by him in accordance with these Rules.

(2) Where any review or appeal is pending before the court before the coming into force of these Rules, it shall be dealt with in accordance with the provisions of these Rules.

PART XXII

REVOCATION

Revocation of previous Rules

95. The Court of Protection Rules 1984(16) and the Court of Protection (Amendment) Rules 1992(17) are hereby revoked.

Dated 28th November 1994

Mackay of Clashfern, C.

(16) S.I. 1984/2035.

(17) S.I. 1992/1899.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

We consent

Dated 29th November 1994

Tim Wood
Timothy Kirkhope
Two of the Lords Commissioner of Her
Majesty's Treasury

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

FORMS

FORM A:FIRST APPLICATION FOR THE APPOINTMENT OF A RECEIVERCOURT OF PROTECTION

19

Rule 5

IN THE MATTER OF
..... A PATIENT
I
of

Notes

Complete EITHER paragraph 1. OR paragraph 2. Delete the one which does not apply.

apply to the Court of Protection for:
1. my own appointment as receiver for the patient
 a. I am not related to the patient*
 b. I am the of the patient (state relationship)*
2. the appointment of
of as receiver for the patient
 a. He/She is the of the patient (state relationship)*

* Delete whichever does not apply.

DO NOT DELETE paragraph 3.

OR

3. the appointment of some other suitable person.

Where any other order is addition to that at paragraphs 1, 2 and 3 is sought, a general form of application should be used.

Applicant's signature

Date

OR Solicitors for the applicant:

of:

TO BE COMPLETED BY THE COURT, :

THE COURT WILL CONSIDER THIS APPLICATION ON THE DAY OF 19 AT O'CLOCK

FORM B:GENERAL FORM OF APPLICATIONCOURT OF PROTECTION

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

19 no

Rule 8

IN THE MATTER OF
A PATIENT

NOTES

I
of

Where the application is one to which rules 17, 19 or 20 applies give details of your authority to make the application e.g. Receiver, Trustee, etc.

apply to the Court of Protection for an order that:

Give details of the order you are asking the court to make

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.

and for any directions which are necessary as a result of my application.

Applicant's signature

Date

OR Solicitors for the applicant:

of

TO BE COMPLETED BY THE COURT, +

THE COURT WILL CONSIDER THIS APPLICATION ON THE DAY
OF 19 AT O'CLOCK

FORM C: WITNESS SUMMONS COURT OF PROTECTION

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 50

. 19 no

IN THE MATTER OF

. A PATIENT

To

of

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You are ordered to attend before

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at

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on the day of 19

at o'clock, to:

a. give evidence in this matter

b. bring with you and produce at the hearing the documents listed below:

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.

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Date

THIS SUMMONS WAS ISSUED AT THE REQUEST OF

.

. SOLICITORS FOR

THE

of

.

FORM D:NOTICE OF APPEALCOURT OF PROTECTION

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

19 no

Rule 57

IN THE MATTER OF
..... A PATIENT

NOTES

I
of

wish to appeal to a Judge against the order/decision* of the Court
made in this matter on the day of
19 that:

If you are appealing against only part
of the order/decision write down
which part.

.....
.....
.....
.....
.....

*Delete whichever does not apply.

I intend to ask that the order/decision* may be:

- a. discharged*
- b. varied in the following way:*

Give details of new order/decision
you are asking to be made.

.....
.....
.....
.....

**YOU WILL BE SENT NOTICE OF THE TIME, DATE AND PLACE
OF THE HEARING OF THIS APPEAL.**

Signed Appellant

Date

..... Solicitors for the

Appellant of:

.....
.....

APPENDIX

COURT OF PROTECTION FEES

Rule 78

Column 1 Item	Column 2 Fee
<i>Commencement fee</i> (rule 79)	
1. On the first application for the appointment of a receiver or other originating process.	£100
<i>Annual Administration fee</i> (rule 80)	
2. On a certificate issued by the court.	In accordance with Table 1
<i>Transaction fee</i> (rule 81)	
3. —	£50.00 or, in a “special case”, 1/4% of the pecuniary consideration as defined in rule 81 if greater than £50.00.
(1) On any order (or as the case may be, on any approval given by the court under an order) made by the court in the exercise of powers conferred by:—	
(i) section 96(1):	
(d) (settlement or gift of property)	
(h) (carrying out of contract) or	
(k) (exercise of powers as guardian or trustee) of the Act;	
(ii) section 100 of the Act (vesting of stock in curator appointed outside England and Wales);	
(iii) section 36(9) of the Trustee Act 1925 (appointment of trustees)	£100.00
(iv) section 54 of the Trustee Act 1925 (concurrent jurisdiction with High Court over trusts);	
(v) section 1(3) of the Variation of Trusts Act 1958 (variation of trusts for the benefit of patient); provided that no fee under this item shall be taken if the property is worth less than £50.00 and no such fee shall exceed £500.00.	
(2) On the making by the court of any order or authority under section 96(1)(e) of the Act (execution of will).	
<i>Taxation</i> (rule 82)	£0.05
4. On the taxation of a bill of costs, for every £1 or fraction of £1 allowed.	

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Column 1 Item	Column 2 Fee
<i>Receivership fees (rule 83)</i>	
5. On the appointment of officer of the court as receiver, except where it appears that the patient's clear annual income is less than £1,000.	£250.00
6. On passing an account.	In accordance with Table 2
<i>Winding up fee (rule 84)</i>	
7. On the death of a patient where the Public Trustee had been appointed receiver.	£250 on the date of cessation of receivership and £100 on each anniversary of such date until the matter is completed.

TABLE 1 (Fee No. 2)

Clear Annual Income

Income Band	Exceeding	Not Exceeding	Fee
(i)	£1,000	£50	
(ii)	£1,000	£2,000	£70
(iii)	£2,000	£3,000	£130
(iv)	£3,000	£5,000	£200
(v)	£5,000	£7,000	£350
(vi)	£7,000	£10,000	£550
(vii)	£10,000	£15,000	£800
(viii)	£15,000		£800 plus 5% of income exceeding £15,000

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TABLE 2 (Fee No. 6)

Clear Annual Income

Income Band	Exceeding	Not Exceeding	Fee
(i)	£1,000	£100	
(ii)	£1,000	£2,000	£250
(iii)	£2,000	£3,000	£525
(iv)	£3,000	£5,000	£800
(v)	£5,000	£7,000	£1,300
(vi)	£7,000	£10,000	£1,800
(vii)	£10,000	£15,000	£2,800
(viii)	£15,000		£2,800 plus 5% of income exceeding £15,000

NOTE

In relation to fees 2 and 6, and their corresponding Tables, where income exceeds the lower limit of a band by less than the difference between the fees for that band and the next lower band, the fee charged shall be the fee for the lower band plus the amount by which the income exceeds the upper limit of that band. For example, in calculating fee 2 on a clear annual income of £2,050 (which exceeds the lower limit (£2,000) on Band (iii) by less than the difference (£60) between the fee (£130) on Band (iii) and the fee (£70) on Band (ii), the fee payable is—

£70 (the fee on Band (ii)

+£50 (the amount by which the income exceeds £2,000)

£120

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EXPLANATORY NOTE

(This note is not part of the Order)

These Rules replace the Court of Protection Rules 1984. They regulate the procedure in respect of applications under the Mental Health Act 1983 and provide for the division of functions between the Court of Protection and the Public Trustee.

They also reduce the administration fee for private receiverships, with a compensatory increase in fees for Public Trustee receiverships, and eliminate the transaction fee previously payable on the sale and purchase of property. The fee changes are designed to reduce the cross-subsidisation between the two types of receivership with no overall increase in fee income.

A new winding-up fee has been introduced where the Public Trustee had been appointed receiver. Before the making of these Rules, the fees for the following items were—

- (a) Commencement fee—£50 to £100.
- (b) Appointment of an officer of the court as receiver—£150.
- (c) Passing of an account in—accordance with the following table—

Clear Annual Income

Income Band	Exceeding	Not Exceeding	Fee
(i)		£1,000	None
(ii)	£1,000	£2,000	£200
(iii)	£2,000	£3,000	£400
(iv)	£3,000	£5,000	£600
(v)	£5,000	£7,000	£1,000
(vi)	£7,000	£10,000	£1,475
(vii)	£10,000	£15,000	£2,100
(viii)	£15,000		£2,100 plus 5% of income exceeding £15,000
