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STATUTORY INSTRUMENTS

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**2002 No. 832**

**POWERS OF ATTORNEY,  
ENGLAND AND WALES  
MENTAL HEALTH, ENGLAND AND WALES**

The Court of Protection (Enduring Powers  
of Attorney) (Amendment) Rules 2002

<i>Made</i>	- - - -	<i>26th March 2002</i>
<i>Laid before Parliament</i>		<i>27th March 2002</i>
<i>Coming into force</i>	- -	<i>17th April 2002</i>

The Lord Chancellor, in exercise of the powers conferred upon him by sections 106, 107 and 108 of the Mental Health Act 1983<sup>(1)</sup>, and with the consent of the Treasury so far as is required by section 106(5), makes the following Rules:

**Citation, commencement and interpretation**

1.—(1) These Rules may be cited as the Court of Protection (Enduring Powers of Attorney) (Amendment) Rules 2002 and shall come into force on 17th April 2002.

(2) In these Rules unless the context requires otherwise references to a rule by number alone mean the rule so numbered in, and references to a Schedule by number alone mean the Schedule so numbered to, the Court of Protection (Enduring Powers of Attorney) Rules 2001<sup>(2)</sup>.

**Amendments to Court of Protection (Enduring Powers of Attorney) Rules 2001**

2. In the Arrangement of Rules, after the entry for Part V, there shall be inserted—

“PART VA  
ACCOUNTS

25A. Passing of accounts”.

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(1) 1983 c. 20.  
(2) S.I. 2001/825.

3. In rule 7, for the words from “the date on which” to the end of the rule, there shall be substituted “the date on which, in relation to the donor and every relative entitled to receive notice and every co-attorney, either—
- (a) notice has been given; or
  - (b) leave has been given to dispense with notice.”.
- 4.—(1) After rule 23(1) there shall be inserted—
- “(1A) No application for review shall lie from any decision under rule 26A.”.
- (2) In rule 23(3), after “application for review may” there shall be inserted “within fourteen days of the date on which the order was made or decision given,”.
- 5.—(1) For rule 25(1) and (2) there shall be substituted—
- “**25.**—(1) Where the court cancels a power of attorney in accordance with section 8(4) of the Act it shall, subject to paragraph (2), send a notice to the attorney requiring him to deliver the original instrument to the court.
- (2) Where the court is satisfied that the power has been revoked by the death or bankruptcy of the attorney the reference to the attorney in paragraph (1) shall be read as a reference to the attorney’s personal representative or (as the case may be) trustee in bankruptcy, and where the court is satisfied that the power has been revoked by the winding up or dissolution of the attorney, being a body corporate, that reference shall be read as a reference to the attorney’s liquidator or (as the case may be) receiver.”.
- (2) After rule 25(4) there shall be inserted—
- “(4A) Where registration has been cancelled for the reason set out in section 8(4)(c) of the Act, the court shall mark on the power of attorney an endorsement that registration has been cancelled.”.
6. After rule 25 there shall be inserted—

## “PART VA ACCOUNTS

### Passing of accounts

- 25A.**—(1) Where the court directs, under section 8(2)(b)(ii) of the Act, that the attorney render accounts, that direction shall include directions as to—
- (a) whether the accounts are to be delivered annually or, if not, the intervals at which the accounts are to be delivered; and
  - (b) the time and manner in which accounts are to be delivered.
- (2) The attorney shall answer such requisitions on his accounts as the court shall raise and in such manner and in such time as the court shall direct.”.
7. After rule 26(3) there shall be inserted—
- “(4) In a special case, the standard fee payable in accordance with item 4 of Schedule 2 shall be increased in accordance with that item where there is a readily ascertainable pecuniary consideration in the nature of capital arising to or provided by the donor (otherwise than by a loan to, or repayment of a loan by, the donor), no account being taken of the possible capitalisation of the value of rents or interests or other income payments.

- (5) The fee payable in accordance with Item 4 of Schedule 2 shall be taken—
- (a) in a special case, upon the making of the direction approving the transaction;
  - (b) otherwise, upon the making of the application for the direction
- and the court shall issue a certificate stating the amount payable.
- (6) In this rule “special case” means a direction made by the court—
- (a) authorising the settlement of any property of the donor, or the gift of any property of the donor; or
  - (b) approving any arrangement in accordance with section 1 of the Variation of Trusts Act 1958(3).”.
8. After rule 26 there shall be inserted—

**“Remission and postponement**

**26A.**—(1) The court may remit or postpone the payment of the whole or any part of any fee where in its opinion hardship might otherwise be caused to the donor, or such other person liable to pay the fee, or his dependants, or the circumstances are otherwise exceptional.

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

9.—(1) Schedule 2 shall be amended in accordance with the following paragraphs.

- (2) In column 2 of item 1, for “£75.00” there shall be substituted “£220.00”.
- (3) In column 2 of item 2, for “£25.00” there shall be substituted “£20.00”.
- (4) After item 2 there shall be inserted—

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*Fee on passing of accounts*

3. On the passing of an attorney’s accounts £110.00 by the court.

*Fee for certain directions*

4. On making an application for, or, as the case may be, on the making of, a direction under section 8(2)(d) or (e) of the Act, or for a direction under section 5 of the Act which, if the power were registered, would be a direction under section 8(2)(d) or (e). £50.00, or, in a special case, ¼% of the pecuniary consideration as referred to in rule 26(4) if greater than £50.00 provided that no fee under this item shall be taken if the property is worth less than £50.00, and no fee shall exceed £500.00.

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**Transitional provisions**

10.—(1) Where, but for this paragraph, a fee would be payable under item 3 of Schedule 2 no such fee shall be payable if the accounts are passed pursuant to a direction of the court made before 17th April 2002.

(2) Where, but for this paragraph, a fee would be payable under item 4 of Schedule 2, and by virtue of rule 26(5)(a) that fee would be payable upon the approval of the transaction, no such fee shall be payable if the application for such approval was received by the court before 17th April 2002.

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

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Dated 26th March 2002

*Irvine of Lairg,*  
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We consent

Dated 26th March 2002

*Anne McGuire*  
*Graham Stringer*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These rules make various amendments to the Court of Protection (Enduring Powers of Attorney) Rules 2001 (S.I. 2001/825) (“the 2001 Rules”).

(1) Provision is included for remission and postponement of fees, by inserting rule 26A into the 2001 Rules (rule 8). It is further provided that there is no review of decisions on remission and postponement (rule 4(1)).

(2) A time limit of 14 days is introduced for an application for an attended hearing following a review (rule 4(2)).

(3) Provision is made for the court, when directing an attorney to render accounts, to direct the intervals at which the accounts are delivered, and the time and manner of delivery. Provision is also made for the attorney to answer any requisitions on the accounts. (rule 6).

(4) The following new fees are introduced—

Fee	Amount
Passing of accounts	£110
Approval of various transactions	£50 or ¼% of consideration in a special case

(5) Fees previously payable under the 2001 Rules are changed as follows (rule 9(2) and (3))—

Fee	Old figure	New figure
Registration of enduring power of attorney	£75	£220
Search of register	£25	£20

(6) These rules also make certain other minor amendments and corrections to the 2001 Rules.