

2002 No. 833

MENTAL HEALTH, ENGLAND AND WALES

The Court of Protection (Amendment) Rules 2002

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|------------------------|-----------------|
| Made - - - - - | 26th March 2002 |
| Laid before Parliament | 27th March 2002 |
| Coming into force - - | 17th April 2002 |

The Lord Chancellor, in, exercise of the powers conferred upon him by sections 106, 107 and 108 of the Mental Health Act 1983(a), 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 (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 means the rule so numbered in, and references to the Appendix means the Appendix to, the Court of Protection Rules 2001(b).

Amendments to Court of Protection Rules 2001

2. In the Arrangement of Rules—

(a) after the entry for rule 77 there shall be inserted—

“77A. Receivership appointment fee”; and

(b) the entry for rule 81 shall be omitted.

3. In rule 9, after paragraph (2), there shall be inserted—

“(3) Where the court decides that the application can properly be dealt with without a hearing and a hearing is cancelled, an officer shall so notify the applicant by letter.”.

4.— (1) In rule 24(1B), after “managing his property and affairs”, there shall be inserted “, or where an enduring power of attorney created by the patient has been registered, and the registration has not been cancelled”.

(2) After rule 24(1B) there shall be inserted—

“(1BB) Subject to paragraph (1C), paragraph (1A) shall not apply to a relevant application where the court is of the opinion that it is necessary to make an immediate order directing or authorising any person to do any act or carry out any transaction on behalf of a patient, and directs that notice to the patient may be dispensed with.”.

5. In rule 29(2), after “may put” there shall be inserted “them”.

(a) 1983 c. 20.

(b) S.I. 2001/824; amended by S.I. 2001/2977.

6.– (1) For rule 43(1) there shall be substituted—

“(1) Where a receiver is appointed for a patient, or where the court orders, directs or authorises any named person (“the named person”) to deal, with a patient’s property (or any of it) or affairs, including (but not limited to) by way of an order under rule 8, the court may, during the receivership or (as the case may be) the period for which the order, direction or authority remains in force, allow the receiver or (as the case may be) named person remuneration for his services at such amount or at such rate as it considers reasonable and proper, and any remuneration so allowed shall constitute a debt due to the receiver or (as the case may be) named person from the patient and his estate.”.

(2) In rule 43(2)—

- (a) after “by a receiver” there shall be inserted “or a named person”;
- (b) after “during the receivership” there shall be inserted “or, as the case may be, the period for which the order, direction or authorisation remains in force,”; and
- (c) after “the receiver’s discharge” there shall be inserted “, or (as the case may be) the date on which the order, direction or authorisation ceases to have effect”.

7. In rule 46(1)(b), for the words to and including “rule 8” there shall be substituted “an order or direction with respect to a patient’s property is made under rule 8”.

8. In rule 76(3), for “fee prescribed by rule 78” there shall be substituted “fees prescribed by rules 77A, 78, 79 and 82”.

9. In rule 77, after “appointment of a receiver” there shall be inserted “or other originating process”.

10. After rule 77 there shall be inserted—

“Receivership appointment fee

77A.– (1) Subject to paragraph (2), an appointment fee shall be payable, as set out in paragraph 1A of the Appendix, upon the appointment of a receiver for a patient.

(2) Where the proceedings are terminated less than four weeks from the appointment of a receiver, the fee payable under paragraph (1) shall be refunded if it has been paid or, if it has not been paid, it shall cease to be payable.”.

11.– (1) In rule 78(2)(c) before “made” there shall be inserted “to be”.

(2) In rule 78(4) before “amount of the fee” there shall be inserted “the”,

12.– (1) In rule 79(6)—

- (a) after “paragraph (b)” there shall be inserted “or (c)”;
- (b) for “offering” there shall be substituted “ordering”; and
- (c) after “authorising the sale” there shall be inserted “or purchase”.

(2) In rule 79(8) after “paragraphs (d) or (h)” there shall be inserted “of section 96(1)”.

13. Rule 81 shall be omitted.

14.– (1) In rule 86(1), for “modification” there shall be substituted “modifications”.

(2) In rule 86(2)—

- (a) in sub-paragraph (e), for “apply.” there, shall be substituted “apply;”
- (b) after sub-paragraph (e) there shall be inserted—
- “(f) rule 44.7(a) of the 1998 Rules (summary assessment) does not apply where the patient is the paying party;
- (g) rules 47.9(4), 47.10 and 47.11 of the 1998 Rules (default costs certificate) do not apply where the patient is the paying party.”.

(3) After rule 86(2) there shall be inserted—

“(3) Where the court orders costs to be assessed by way of detailed assessment, the detailed assessment proceedings shall take place in the High Court.”.

15.—(1) The Appendix shall be amended in accordance with the following paragraphs of this rule.

- (2) In paragraph 1—
- (a) in column 1 after “appointment of a receiver” there shall be inserted “or other originating process”; and
- (b) in column 2 for “£230.00” there shall be substituted “£65.00”.
- (3) After paragraph 1 there shall be inserted—
- “

| | |
|--|---------|
| Receivership appointment fee (rule 77A) | £500.00 |
| 1A. Receivership appointment fee | |

”

- (4) In column 2 of paragraph 3(1)(iv), (v) and (vi) and 3(2), for “£110.00”, wherever it occurs, there shall be substituted “£115.00”.
- (5) In column 2 of paragraph 3(3), for “£475.00” there shall be substituted “£490.00”.
- (6) In column 2 of paragraph 3(4), for “£175.00” there shall be substituted “£180.00”.
- (7) In paragraph 3(5)—
- (a) in column 1 after “section 96(1)(b)” there shall be inserted “or (c)” and after “authorising the sale” there shall be inserted “or purchase”.
- (b) in column 2, for “£145.00” there shall be substituted “£150.00”.
- (8) In column 2 of paragraph 4(1), for “£160.00” there shall be substituted “£165.00”.
- (9) Paragraphs 5 and 6 shall be omitted.
- (10) For paragraph 7 there shall be substituted—
- “

| | |
|---|---------|
| Winding up fee (rule 82) | |
| 7. On the death of a patient, where a receiver has been appointed | £360.00 |

Transitional provisions

16.—(1) Where, but for this paragraph, an appointment fee would be payable under rule 77A(1), no such fee shall be payable if the application for the appointment of a receiver was received by the court before 17th April 2002.

- (2) Where—
- (a) but for this paragraph, a transaction fee would be payable under rule 79(1);
- (b) by virtue of rule 79(4)(a) that fee would be payable upon the approval of the transaction; and
- (c) that fee would not be payable if these Rules had not been made
- no such fee shall be payable if the application for such approval was received by the court before 17th April 2002.

Dated 26th March 2002

Irvine of Lairg, C

We consent

Dated 26th March 2002

Anne McGuire
Graham Stringer

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Rules)

These rules make various amendments to the Court of Protection Rules 2001 (S.I. 2001/824) (“the 2001 Rules”).

(1) The amounts of various fees are amended, as follows—

| Fee | Old figure | New figure |
|---|------------|------------|
| Commencement fee (rule 77) | £230 | £65 |
| Transaction Fee (rule 79): applications for orders etc under— | | |
| Mental Health Act 1983, s 96(1)(k) (exercise of powers) | £110 | £115 |
| Trustee Act 1925, s 54 (trusts) | £110 | £115 |
| Trusts of Land and of Trustees Appointment Act 1996, s 20 (authorisation of person to act as trustee) | £110 | £115 |
| Trustee Act 1925, s 36(9) (appointment of trustees) | £110 | £115 |
| Mental Health Act 1983, s 96(1)(e) (execution of will) | £475 | £490 |
| Application for the appointment of a new receiver | £175 | £180 |
| Application for order or direction under s 96(1)(b) of the Act ordering or authorising the sale or purchase of land | £145 | £150 |
| Filing of request for detailed assessment of costs (rule 80) | £160 | £165 |
| Winding up fee (rule 82) | £125 | £360 |

(2) Rule 9 of the 2001 Rules is amended to require the court to notify the applicant if it decides to deal with the application without a hearing, and cancels a hearing (rule 3).

(3) The provisions in rule 24 of the 2001 Rules, whereby notice of certain applications is to be served on the patient, are disapplied where an enduring power of attorney has been registered, and where the court is of the opinion that it is necessary to make an immediate order (rule 4).

(4) Rule 43 of the 2001 Rules is amended to enable remuneration to be claimed by a person directed or authorised to deal with a patient’s property or affairs, who is not appointed as a receiver (rule 6).

(5) Rule 76 of the 2001 Rules is amended so that transaction fees payable under rule 79 and winding up fees payable under rule 82, and the new receivership appointment fee payable under rule 77A (see below), are disapplied where the receiver is an officer of the court (rule 8).

(6) Rule 77 of the 2001 Rules is extended so that the commencement fee is payable on an originating process other than first application for the appointment of a receiver (rule 9).

(7) A new rule 77A is inserted into the 2001 Rules providing for a new receivership appointment fee to be payable where a receiver, other than an officer of the court, is appointed (rule 10). This fee is set at £500. The administration fee formerly payable under rule 81 of the 2001 Rules where the receiver is an officer of the court is omitted (rule 13).

(8) The transaction fee payable under rule 79 of the 2001 Rules is extended to include an application for an order or direction authorising the purchase of land (rule 12(1)).

(9) The requirement that detailed assessment proceedings take place in the High Court, which was in the Court of Protection Rules 1994 but not in the 2001 Rules, is reinstated (rule 14(3)).

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

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