
STATUTORY INSTRUMENTS

2005 No. 667

MENTAL HEALTH, ENGLAND AND WALES

The Court of Protection (Amendment) Rules 2005

Made - - - - *11th March 2005*
Laid before Parliament *10th March 2005*
Coming into force - - *1st April 2005*

The Lord Chancellor, in exercise of the powers conferred upon him by sections 106 and 108 of the Mental Health Act 1983(1), and with the consent of the Treasury as required by section 106(5) of that Act, makes the following rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Court of Protection (Amendment) Rules 2005 and shall come into force on 1st April 2005.

(2) In these Rules a reference to a rule by number alone means the rule so numbered in the Court of Protection Rules 2001(2) and a reference to the Appendix means the Appendix to those Rules.

Amendments to the Court of Protection Rules 2001

2. In the Arrangement of Rules—

- (a) omit the entry for rule 58, and
- (b) after the entry relating to rule 78A, insert—

“**78B** Estate account fee”.

3. In rule 24—

- (a) in paragraph (1C) at the end insert “except where the court is of the opinion, on the application, that it is necessary to appoint an interim receiver for the patient under rule 42(1)(b)”.

4. Omit rule 58.

5. For rule 78(1), substitute—

“(1) Subject to paragraph (1A), an administration fee shall be payable—

(1) 1983 c. 20.

(2) S.I.2001/824; amended by S.I. 2001/2977, S.I. 2002/833, S.I. 2003/1733 and S.I. 2004/1291.

- (a) on the first and every subsequent anniversary of the date of the appointment of a receiver, until the termination of the proceedings;
- (b) on the court making an order or direction authorising an officer of the court or some other suitable person named in the order or direction to deal with a patient's property or affairs under rule 8 and on every subsequent anniversary of that date, until the termination of the proceedings; and
- (c) at such other times either during the proceedings or at their termination as the court may direct, and

where the period for which the administration fee is payable is for less than one year, the fee payable shall be the proportion of the full fee as such period bears to one year.

(1A) Where the proceedings are terminated less than six months from the date of the order or direction referred to in paragraph 1(b) authorising an officer of the court or some other suitable person named in the order or direction to deal with a patient's property or affairs under rule 8, the fee payable under that paragraph shall be refunded if it has been paid or, if it has not been paid, it shall cease to be payable."

6. After rule 78A, insert—

“Estate account fee

78B An estate account fee as specified in paragraph 2B of the Appendix shall be payable upon the approval of an estate account by the court, when the patient has—

- (a) an absolute interest; or
- (b) a life interest

in a residuary estate under the terms of a will, partial intestacy or intestacy.”

7. In rule 79—

- (a) in paragraph (3) after “repayment of a loan by, the patient)” insert “in excess of £10,000.00”;
- (b) after paragraph (3) insert—

“(3A) In a special case, the value of any 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, shall be set out in the application for the direction.

(3B) Where it appears to the court that any fee under paragraph 3(1)(i) or (ii) of the Appendix has been incorrectly assessed upon the making of the application, the court may direct that the fee is to be adjusted as it appears to it to be convenient.”

- (c) for paragraph (4) substitute—

“(4) Where on any application for approval of a transaction mentioned in paragraph (1), or authorisation as mentioned in paragraph (2)—

- (a) the fee, or in a special case the standard fee, shall be taken upon the making of the application for the order, direction or authorisation; and
- (b) subject to paragraph (4A), in a special case, the additional fee shall be taken upon the court fixing a date for a hearing under rule 9.

(4A) In a special case, where a hearing is cancelled, the additional fee payable in accordance with the Appendix shall be refunded if it has been paid or, if it has not

been paid, it shall cease to be payable (but the court may take a fee in accordance with paragraph (4)(b) if it subsequently fixes another date for the hearing).”

(d) after paragraph (6) insert—

“(6A) Where the proceedings are terminated before an order or direction under paragraph (6) is entered, the fee payable under that paragraph—

- (a) if paid, shall be refunded; or
- (b) if not paid, shall cease to be payable.

(6B) A transaction fee as specified in paragraph 3(6) of the Appendix shall be payable upon the making of an application for an order or direction to be made in exercise of the powers conferred by paragraph (a) or (b) of section 96(1) of the Act, authorising a person to manage and let a patient’s property”

8.—(1) For rule 82 substitute—

“82. In cases where a receiver has been appointed, a winding up fee shall be payable—

- (a) on the death of a patient; and
- (b) on every subsequent anniversary of that date,

until the court passes the final account of the receiver or directs that the final account may be dispensed with.”

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

- (2) In column 2 of paragraph 1 for “£230.00”, substitute “£240.00”.
- (3) In column 2 of paragraph 1A for “£300.00”, substitute “£315.00”.
- (4) For paragraph 2, substitute—

“Administration fee (rule 78)

2(1) Annually from the appointment of a receiver until the proceedings are concluded.	£240.00
(2) Annually from the making of a short order or direction under rule 8 until the proceedings are concluded.	£190.00”

(5) In column 2 of paragraph 2A for “£95.00”, substitute “£100.00”.

(6) After paragraph 2A, insert—

“Estate account fee (rule 78B)

2B On the approval of an estate account.	£100.00”
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(7) In column 1 of paragraph 3(1) omit “(or, as the case may be, on any approval given by the court under an order)”.

(8) For column 2 of paragraph 3(1)(i) and (ii), substitute—

- “(a) A standard fee of—
 - (i) £100.00 or
 - (ii) in a case to which rule 79(3) applies, £360.00; and
- (b) an additional fee as referred to in rule 79(4)(b) of £500.00.”

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- (9) In column 1 of paragraph 3(1) omit “and no such fee shall exceed £1,000.00”.
- (10) In column 2 of paragraphs 3(1)(iv), (v), (vi) and 3(2), for “£125.00”, wherever it occurs, substitute “£130.00”.
- (11) In column 2 of paragraph 3(3) for “£520.00”, substitute “£540.00”.
- (12) In column 2 of paragraph 3(4) for “£190.00”, substitute “£200.00”.
- (13) In column 2 of paragraph 3(5) for “£160.00”, substitute “£170.00”.
- (14) After paragraph 3(5), insert—

“(6) On an application for an order or direction £170.00”
under section 96(1)(a) or (b) authorising
management and letting of property.

- (15) In column 2 of paragraph 4B for “£500.00”, substitute “£520.00”.
- (16) In column 2 of paragraph 4C for “£3,500.00”, substitute “£4,500.00”.
- (17) For paragraph 7, substitute—

“Winding up fee (rule 82)

- 7(1) On the death of a patient:
- | | |
|---|---------|
| (i) where an officer of the court has been appointed receiver | £885.00 |
| (ii) otherwise. | £290.00 |
- (2) On each anniversary of the death of the patient until the court passes the final account of the receiver or directs that the final account may be dispensed with. £150.00”
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Transitional provision

10. Where in a special case the application for the order, direction or authorisation was received by the court before 1st April 2005 the 2001 Rules shall have effect as if rules 7(a), (b) and (c) and 9(7), (8) and (9) of these Rules had not been made.

Signed by authority of the Lord Chancellor

Catherine M Ashton
Parliamentary Under Secretary of State,
Department for Constitutional Affairs

Date 7th March 2005

We consent

Dated 11th March 2005

Nick Ainger
Gillian Merron
Two of the Lord's 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 Rules 2001 ([SI 2001/824](#)).

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

Fees	Old Fee	New Fee
Commencement fee (rule 77)	£230	£240
Receivership appointment fee (rule 77A)	£300	£315
Account fee (rule 78A)	£95	£100
Transaction fee (rule 79):		
Applications for orders etc under—		
—Mental Health Act 1983, s96(1)(k) (exercise of powers)	£125	£130
—Trustee Act 1925, s54(trusts)	£125	£130
—Trusts of Land and Appointment of Trustees Act 1996, s20 (authorisation of person to act as trustee)	£125	£130
—Trustee Act 1925, s36(9) (appointment of trustees)	£125	£130
—Mental Health Act 1983, section 96(1)(e) (execution of will)	£520	£540
—Mental Health Act 1983, section 96(1)(b) (ordering or authorising the sale or purchase of any land)	£160	£170
Application for the appointment of a new receiver	£190	£200
Where an officer of the court appointed receiver (rule 80(A):		
—on completion of an Inland Revenue tax return	£500	£520
—administration fee, where an officer of the court appointed as receiver	£3,500	£4,500

Fees	Old Fee	New Fee
Winding up fee (rule 82):		
—on the death of a patient in cases where a receiver has been appointed	£275	£290
—where an officer of the court has been appointed as receiver	£850	£885

(2) Rule 24(1C) is amended to enable the court to dispense with service of a relevant application where the court considers it necessary to appoint an interim receiver under rule 42(1)(b) (rule 3).

(3) Rule 58 is omitted because it is now outdated following the introduction of the Court of Protection Rules 2001 (rule 4).

(4) Rule 78(1) is amended to introduce a new administration fee, payable on the making of a short order, direction or authorisation under rule 8. The fee is set at £190.00 and is payable annually on the anniversary of the appointment and may be apportioned where the proceedings are terminated part way through a year (rule 5).

(5) A new rule 78B is inserted providing for an estate account fee. This introduces fees payable when the court approves an estate account if the patient has a life or an absolute interest in a residuary estate under the terms of a will, partial intestacy or intestacy. This fee is set at £100.00 (rule 6).

(6) A new paragraph (3A) is inserted into Rule 79 to provide that in any case where there is a readily ascertainable pecuniary consideration (including those where the value of the readily ascertainable pecuniary consideration is below £10,000.00) then that value shall be set out in the application (rule 7(b)).

(7) A new paragraph (3B) is inserted into Rule 79 to enable the court to direct that a fee paid under paragraph 3(1)(i) or (ii) of the Appendix which has been incorrectly assessed on making the application shall be adjusted (rule 7(b)).

(8) Rule 79 is amended to provide that a fee, or in a “special case” a standard fee, is payable upon the making of the application for the order, direction or authorisation. Rule 79 is also amended to introduce an additional fee for a “special case” payable upon the court fixing a date for a hearing under rule 9 (rule 7(c)) (see amendments to Appendix below). This additional fee shall be refunded or shall cease to be payable if the hearing is cancelled.

(9) A new transaction fee is inserted into rule 79 by rule 7(d). This introduces fees payable upon the making of an application to authorise a person to manage and let a patient’s property. This fee is set at £170.00.

(10) Rule 79 is amended so that transaction fees payable on an application for an order or direction ordering or authorising the sale or purchase of any land are refundable if already paid or are no longer payable if the proceedings are terminated before the order for sale or purchase is entered. (rule 7(d)).

(11) Rule 82 is amended introducing a new winding up fee payable on the anniversary of the patient’s death until the court passes the final account of the receiver or directs that the final account may be dispensed with (rule 8). This fee is set at £150.00.

- (12) The Appendix is amended in various respects including—
- a new administration fee is inserted payable upon the making of short orders or directions under rule 10. This fee is set at £190.00; and
 - for special cases flat fees are introduced and are payable for transactions where the pecuniary consideration is up to and including £10,000.00. This fee is set at £100.00. The fee payable for special cases for transactions where the pecuniary consideration is greater than £10,000.00 is

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£360.00. The new fee (the additional fee) introduced in relation to special cases and payable upon the court fixing a date for a hearing (referred to above) is set at £500.00.

(13) Rule 10 provides a transitional provision for fees payable in a special case under rule 79(4) and provides that where an application for an order, direction or authorisation is received before 1st April 2005 in relation to a special case the previous fee structure shall be applied. This is because in the higher value transactions the fees payable could be up to £1,500.00 as opposed to a maximum under the new structure of £860.00.