

2005 No. 668

MENTAL HEALTH, ENGLAND AND WALES

**The Court of Protection (Enduring Powers of Attorney)
(Amendment) Rules 2005**

<i>Made</i> - - - -	<i>11th March 2005</i>
<i>Laid before Parliament</i>	<i>10th March 2005</i>
<i>Coming into force</i> - -	<i>1st April 2005</i>

The Lord Chancellor, in exercise of the powers conferred upon him by sections 106 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) of that Act, 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 2005 and shall come into force on 1st April 2005.

(2) In these Rules 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(b).

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

2. In rule 26

(a) in paragraph (4) after “repayment of a loan by, the donor)” insert “in excess of £10,000.00”;

(b) after paragraph (4) insert—

“(4A) 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.

(4B) Where it appears to the court that any fee under item 4 of Schedule 2 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 (5) substitute—

(a) 1983 c.20.

(b) S.I. 2001/825; amended by S.I. 2002/832 and S.I. 2002/1944.

“(5) (a) The fee payable in accordance with Item 4 of Schedule 2, or in a special case the standard fee, shall be taken upon the making of the application for the direction approving the transaction; and

(b) subject to paragraph (5A), in a special case, the additional fee shall be taken upon the court fixing a date for a hearing under rule 10.

(5A) In a special case, where a hearing is cancelled, the additional fee referred to in paragraph (5)(b) 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 (5)(b) if it subsequently fixes another date for the hearing).”

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

(2) In column 2 of item 1, for “£220.00” there shall be substituted “£120.00”.

(3) In column 2 of item 3, for “£110.00” there shall be substituted “£100.00”.

(4) In column 1 of item 4, omit “; or, as the case may be, on the making of,”.

(5) For column 2 of item 4, substitute—

“£100.00, or, in a special case—

(a) a standard fee of—

(i) £100.00 or

(ii) in a case to which rule 26(4) applies, £360.00; and

(b) an additional fee of £500.00.

provided that no fee under this item shall be taken if the property is worth less than £100.00.”

Transitional provision

4. Where in a special case an 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 2 and 3(4) and (5) of these Rules had not been made.

Signed by authority of the Lord Chancellor

7th March 2005

We consent

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

Nick Ainger
Gillian Merron

11th March 2005

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 (Enduring Powers of Attorney) Rules 2001 (“the 2001 Rules”).

(1) A new paragraph (4A) is inserted into Rule 26 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 2(b)).

(2) A new paragraph (4B) is inserted into Rule 26 to enable the court to direct that a fee paid under item 4 of Schedule 2 which has been incorrectly assessed on making the application shall be adjusted (rule 2(b)).

(3) Rule 26 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 direction to approve the transaction. Rule 26 is also amended to introduce a new transaction fee for a “special case” payable upon the court fixing a date for a hearing under rule 10 (rule 2 (c)).

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

Fee	Old figure	New figure
Registration fee	£220.00	£120.00
Passing of accounts fee	£110.00	£100.00.

(5) 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 £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 (rule 3(5)).

(6) Rule 4 provides a transitional provision for fees payable in a special case under rule 26(5), and provides that where an application for an order, direction or authorisation is received before 1st April 2005 the previous fee structure shall apply. 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.

£3.00

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