STATUTORY INSTRUMENTS

1973 No. 791 (L.12)

MENTAL HEALTH

The Court of Protection (Amendment) Rules 1973

Made - - -	*16th April* 1973
Laid before Parliament	*4th May* 1973
Coming into Operation	*1st June* 1973

The Lord Chancellor, in exercise of the powers conferred on him by sections 112 and 114 of the Mental Health Act 1959(**a**), and with the consent of the Treasury as to fees, hereby makes the following Rules:

1. These Rules may be cited as the Court of Protection (Amendment) Rules 1973 and shall come into operation on 1st June 1973.

2.—(1) The Interpretation Act 1889(**b**) shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

(2) In these Rules a rule referred to by number or a form referred to by letter means the rule so numbered in, or the form so lettered in the First Schedule to, the Court of Protection Rules 1960(**c**), as amended(**d**), and these Rules and those Rules shall be construed together.

3. In rule 6, for the figure "£500" there shall be substituted the figure "£1,000".

4. In the proviso to rule 28(1), after the words "court may" there shall be inserted the words "at any time".

5. In rule 32 at the end there shall be added the words "so, however, that nothing in this rule shall enable a Visitor to be required to give oral evidence or to produce a report, record or other document."

6. After rule 32 there shall be added the following rule:—

"32A.—(1) Where a Visitor's report, or information contained in such a report, has been disclosed to any person in pursuance of section 109(5) 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.

(**a**) 1959 c. 72. (**b**) 1889 c. 63.
(**c**) S.I. 1960/1146 (1960 II, p. 1935).
(**d**) S.I. 1962/553, 1970/1783 (1962 I, p. 529; 1970 III, p. 5788).

(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, and to the Official Solicitor, on such conditions, if any, as it thinks fit."

7. In rule 35(*a*), for the words "first class clerk" there shall be substituted the words "higher executive officer".

8. For rule 83(3) there shall be substituted the following paragraph:—

"(3) The court may at any time pending notification to the court 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."

9. Rule 94 shall stand as paragraph (1) thereof and at the end there shall be added the following new paragraph:—

"(2) Without prejudice to the generality of the foregoing paragraph the court may remit percentage on the income of any patient which accrued and became payable to the patient more than six months prior to the date of the first order in the proceedings but was received after the date of that order."

10. For Form D there shall be substituted the following form.

"FORM D

Rule 28(1)

Notice of Originating Proceedings

[*Appropriate title as in Form A*]

To [*name of patient*]

1. You are informed that on , the day of 19 , at o'clock, the Court will [*or, if the Court proposes to make an order in a summary manner,* that the Court proposes to] consider whether steps should be taken in your interests to protect and manage your property and affairs if it appears that you are unable to do so yourself [and whether (*state full name of proposed Receiver followed by his address and description*) of..... .....or some other fit and proper person should be appointed to act as Receiver under the directions of the Court].

2. If you wish to make any objection or observation by letter, the letter should be addressed as follows:—

The Chief Clerk,
Court of Protection,
25, Store Street,
London, WC1E 7BP

3. No order (other than an interim order) will be entered until the date mentioned above or until seven clear days have elapsed from the day when you receive this communication whichever is the later.

Dated the day of 19 .

[Seal of court where notice sent by officer of court, otherwise signature and address of applicant's solicitor or of applicant if acting in person.]"

11. At the end of Part I of the Second Schedule to the Court of Protection Rules 1960 there shall be inserted the following new paragraph:—

"(2) Fees (*a*), (*b*) and (*c*) shall be payable notwithstanding the termination of the proceedings, provided that the document has previously been settled by the court."

Dated 12th April 1973.

Hailsham of St. Marylebone, C.

We concur.

Dated 16th April 1973.

V. H. Goodhew,
P. L. Hawkins,
Two of the Lords Commissioners of Her Majesty's Treasury.

EXPLANATORY NOTE

(*This Note is not part of the Rules.*)

These Rules make a number of minor amendments to the Court of Protection Rules 1960 as amended.

Rule 3 increases the jurisdiction of the court to make a summary order in small cases, and rules 4 and 8 enlarge the jurisdiction to make orders to dispense with service or to transfer funds into court.

Rules 5 and 6 make it clear that a Visitor may not under rule 32 be required to give oral evidence or to produce a report or other document and add a new rule 32A enabling the court to allow written questions to be put to a Visitor on any matters relevant to the issues before the court.

Rule 9 embodies a current practice relating to the remission of fees, by rule 10 Form D is reproduced in the form approved by the court in 1962 and rule 11 restores a provision about the payment of fees following the termination of the proceedings.

SI 1973/791
ISBN 0-11-030791-7

