STATUTORY INSTRUMENTS

1980 No. 1164 (L.15)

MENTAL HEALTH

The Court of Protection (Amendment) Rules 1980

Made - - - -	*5th August* 1980
Laid before Parliament	*8th August* 1980
Coming into Operation	*1st October* 1980

The Lord Chancellor, in exercise of the powers conferred on him by section 112(2) and (5) and section 114 of the Mental Health Act 1959**(a)** and with the consent of the Treasury, hereby makes the following Rules:—

Citation and commencement

1. These Rules may be cited as the Court of Protection (Amendment) Rules 1980 and shall come into operation on 1st October 1980.

Interpretation

2. In these Rules, a rule or schedule referred to by number means the rule or schedule so numbered in the Court of Protection Rules 1960**(b)** as amended **(c)**.

Amendment of rules

3. In rule 6 (*summary order in small cases*), for the figure "£1,000" there shall be substituted the figure "£2,000".

4. In rule 38 (*evidence to be filed on originating application for receiver, etc.*), in paragraph (2) for the figure "£300" there shall be substituted the figure "£500" and for the figure "£3,000" there shall be substituted the figure "£5,000".

5. In rule 72 (*default by receiver*), for the figure "£5" there shall be substituted the figure "£10".

6. In rule 73 (*payment of maintenance and costs*), for the word "percentage" there shall be substituted the words "fees payable under these Rules".

7. For rules 87 to 95 (Part XIX. FEES) there shall be substituted the following rules:—

(a) 1959 c.72. **(b)** S.I. 1960/1146.
(c) The relevant amending instruments are S.I. 1962/553, 1970/1783, 1973/791, 1975/1399.

"Appendix of fees

87.—(1) The Appendix to these Rules, in this Part of these Rules described as the "Appendix", shall apply so as to fix the fees payable in relation to the proceedings in respect of any patient in the events set out in rules 88 to 93 of these rules.

(2) The fees set out in column 2 of the Appendix shall be taken in respect of the event referred to in column 1.

(3) Unless the court otherwise directs, all fees (other than fees payable out of funds in court or by the Official Solicitor) shall be taken in cash and the document indicated in column 3 of the Appendix shall be marked by the officer of the court receiving the fee so as to show the amount of fee and the date of its receipt.

(4) Subject to paragraph (5) below, the person by whom any fee (other than a fee payable under rule 91 or 93) is payable shall, unless the court otherwise directs, make the payment out of the income of the patient, or, if he is dead, out of his estate.

(5) Where the court directs that a fee is to be paid by the Accountant General wholly or partly out of funds in court, then, unless the court directs payment to be made out of capital, the Accountant General shall meet the fee out of the income arising from the fund.

Commencement fee

88. A commencement fee shall be payable on any originating application made under rule 5 or other originating process in respect of any patient, except where the clear annual income at the patient's disposal is less than the exemption for small estates specified in item 1 of the Appendix.

Administration fee

89.—(1) An annual administration fee shall be payable in respect of the clear annual income at the disposal of the patient from the date of issue of the originating application or other originating process until the termination of the proceedings.

(2) The court shall annually, or at such other intervals as may be convenient, issue a certificate in respect of each patient in which there shall be stated—

(*a*) the amount of the administration fee payable in respect of the patient at the date of the certificate;

(*b*) the period in respect of which the administration fee is payable, and

(*c*) the name of the person by whom the payment is to be made.

(3) The court may, if it thinks fit, issue a certificate for the payment of an estimated administration fee.

(4) Upon the issue of a certificate under this rule the amount of the fee shall be charged upon the patient's estate, and the payment shall be made within such time (not exceeding one month from the date of the certificate) as the court may allow.

(5) In any case in which it appears to the court that the amount of the fee certified under this rule has been wrongly assessed, the court may direct that the fee is to be adjusted upon the passing of the receiver's accounts or at such other time as appears to the court to be convenient.

(6) Without prejudice to the generality of rule 94 (*Remission, postponement and exemption*)—

(*a*) no administration fee may be taken where the proceedings are terminated before any order is made, and

(*b*) the clear annual income at the patient's disposal for the purposes of this rule does not include income which accrued and became payable to him more than six months prior to the date of the originating application or process but which was received after that date.

Transaction fee

90.—(1) A transaction fee shall be payable in respect of any order made in exercise of the specific powers conferred on the court by—

(*a*) paragraphs (*b*), (*c*) and (*g*) (in this rule described as the "special cases") and paragraphs (*d*), (*dd*), and (*j*) of section 103(1) of the Act;

(*b*) section 106 of the Act;

(*c*) section 36(9) and 54 of the Trustee Act 1925, and

(*d*) section 1(3) of the Variation of Trusts Act 1958**(a)**.

(2) In the special cases and in the case of an order under paragraph (1)(*d*) above, the standard fee payable in accordance with the Appendix shall be increased in accordance with the Appendix where there is readily ascertainable pecuniary consideration in the nature of capital arising to or provided by the patient (otherwise than by way of loan to, or repayment of a loan by, the patient), no account being taken of the possible capitalisation of value of rents or interest or other income payments.

(3) Where a transaction is to be approved under an order mentioned in paragraph (1) above, the fee shall be taken on the approval of the transaction and the court shall issue a certificate stating the amount payable.

Fees on documents

91. A fee shall be payable on any copy of any document supplied under rule 86, except that no fee shall be payable by the person having conduct of proceedings in respect of any documents supplied to him under rule 86(1)(*b*).

Personal Application Branch fee

92. A fee shall be payable in respect of an application made through the Personal Application Branch of the Court of Protection.

Fee on taxation

93.—(1) A fee shall be payable in respect of the taxation of a bill of costs.

(2) On the withdrawal of a bill of costs which has been lodged for taxation there shall be payable such a fee (not exceeding the amount which would have been payable under paragraph (1) of this rule if the bill had been allowed in full) as appears to the taxing officer to be fair and reasonable.

(a) 1958 c. 53.

Remission, postponement and exemption

94.—(1) The court may remit or postpone the payment of the whole or part of any fee where in the opinion of the court hardship might otherwise be caused to the patient or his dependants or the circumstances are otherwise exceptional.

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

(3) No fee shall be payable pursuant to rule 89 on any income by way of a war pension or war injuries (civilian) pension in respect of—

(*a*) service in the armed forces of the Crown to which section 2 of the War Pensions Act 1920(**a**) applies; or

(*b*) service in the armed forces in the Crown during the period after 2nd September 1939; or

(*c*) service before the 15th day of August 1945 to which the Pensions (Polish Forces) Scheme 1949(**b**) applies; or

(*d*) detention, capture, war injury or war risk injury within the meaning of any scheme (other than that mentioned in paragraph (*c*) above) made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(**c**), or under that Act as amended and applied by the Pensions (Mercantile Marine) Act 1942(**d**); or

(*e*) war service injury within the meaning of the Personal Injuries (Civilians) Scheme 1976(**e**) as amended in the case of a civil defence volunteer to whom that Scheme applied."

(**a**) 1920 c.23.
(**b**) S.I. 1949/1058.
(**c**) 1939 c. 83.
(**d**) 1942 c. 26.
(**e**) S.I. 1976/585.

8. For the Second Schedule there shall be substituted the following Appendix:—

"APPENDIX

Rule 87

Column 1	*Column* 2	*Column 3*
Item	Fee £	Document
Commencement fee (rule 88)		
1. On an originating application or process, except where it appears that the patient's clear annual income is less than £500 per year.	50·00	The originating application, or process or fee sheet,
Annual administration fee (rule 89)		
2. On a certificate issued by the court.	In accordance with the following Table:	The certificate.

Clear annual income			Fee
Income Band	Exceeding	Not Exceeding	
(i)	£0	£500	None
(ii)	£500	£1,000	£25
(iii)	£1,000	£2,000	£75
(iv)	£2,000	£3,000	£150
(v)	£3,000	£5,000	£225
(vi)	£5,000	£7,000	£375
(vii)	£7,000	£10,000	£600
(viii)	£10,000	£20,000	£850
	Over £20,000		£850 plus 5% of income exceeding £20,000

Where income exceeds the lower limit of a band by less than the difference between the fees for that band and the next lower band, the fee charged shall be the fee for the lower band plus the amount by which the income exceeds the upper limit of that band.

For example, on a clear annual income of £1,030, (which exceeds the lower limit (£1,000) on Band (iii) by less than the difference (£50) between the fees (£75) on Band (iii) and (£25) on Band (ii)), the fee payable is—

£25 (the fee on Band (ii))
\+ *£30 (the amount by which the income exceeds £1,000)*

£55

Column 1	*Column* 2	*Column* 3
Item	Fee £	Document
Transaction fee (rule 90)		
3. On any order (or, as the case may be, on any approval given by the court under an order) made by the court in the exercise of powers conferred by— (i) section 103(1)— (*b*) (sale, exchange etc. of property) (*c*) (acquisition of property) (*d*) (settlement or gift of property) (*dd*) (execution of will) (*g*) (carrying out of contract) or (*j*) (exercise of powers) of the Act; (ii) section 106 of the Act (vesting of stock in curator appointed outside England and Wales); (iii) section 36(9) of the Trustee Act 1925 (appointment of new trustee); (iv) section 54 of the Trustee Act 1925 (concurrent jurisdiction with High Court over trusts); (v) section 1(3) of the Variation of Trusts Act 1958 (variation of trusts for benefit of patient); provided that no fee under this item shall be taken if the property is worth less than £50·00 and no such fee shall exceed £500·00.	50·00 (or, in a "special case" or on a variation of a trust, ¼%, if greater, of the pecuniary consideration as defined in rule 90).	The order or certificate.
Documents (rule 91)		
4. For a copy of a chargeable document supplied.	0·25	The fee sheet.
Personal Application Branch fee (rule 92)		
5. On issuing an originating application through the Personal Application Branch of the Court of Protection, in addition to fee number 1, for every £100 or fraction of £100 of the clear annual income at the patient's disposal at the date of the application exceeding £500.	4·00	The originating application.

Column 1	*Column* 2	*Column* 3
Item	Fee £	Document
Taxation (rule 93)		
6. On the taxation of a bill of costs, for every £1 or fraction of £1 allowed.	0·05	The bill.

Transitional provisions

9. The revocations made by these rules shall not affect any obligation to pay or any exemption from percentage in respect of any period ending before the date on which the revocation takes effect, but a period before that date not exceeding one year may be taken into account by the court in issuing its certificate in respect of an annual administration fee which is to become payable on or after that date.

Revocation of rules

10. The Court of Protection (Amendment No. 2) Rules 1975(**a**) are hereby revoked.

Dated 1st August 1980

Hailsham of St. Marylebone, C.

We concur,

David Waddington,
John MacGregor,
Two of the Lords Commissioners of Her Majesty's Treasury.

Dated 5th August 1980.

(**a**) S.I. 1975/1399.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules make amendments to rules 87-95 of the Court of Protection Rules 1960 by substituting new fees instead of the percentage hitherto charged on the estate of each patient. With effect from 1st October 1980, a commencement fee of £50·00 will be taken on the commencement of proceedings in the Court of Protection, except in respect of small estates (those with incomes under £500·00 per year) (fee No. 1 in the Appendix inserted by rule 8). An annual administration fee will also be charged on the income of patients under the Court's management: fee No. 2 fixes 7 bands of income above the same small estate exemption and graduated fees to be charged on income falling in those bands, above which a percentage of £5 per centum is to be taken. A fee of £50·00 or ¼% of value will also be taken on certain specified transactions (Fee No. 3). The other fees are broadly unchanged except that the present fees on an order and on an attendance of an officer as a witness are no longer to be taken. Other minor changes in financial limits for simplified procedure and in a rate of interest payable on default of a receiver are also made.