2004 No. 1291

MENTAL HEALTH, ENGLAND AND WALES

The Court of Protection (Amendment) Rules 2004

Made - - - - -	*6th May 2004*
Laid before Parliament	*11th May 2004*
Coming into force - -	*1st June 2004*

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 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 2004 and shall come into force on 1st June 2004.

(2) In these Rules a reference to a rule by number alone means the rule so numbered in the Court of Protection Rules 2001(**b**) 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 in the Court of Protection Rules 2001—

(a) after the entry relating to rule 78, insert—

"**78A** Account fee"; and

(b) after the entry relating to rule 80, insert—

"**80A** Fees where officer of the court appointed receiver".

3. In rule 65—

(a) omit paragraph (1); and

(b) in paragraph (6), for "paragraph (1)", substitute "paragraph (3)".

4. In rule 66, for "63", substitute "61".

5. In rule 76(3), for "rules 77A, 78, 79 and 82", substitute "rules 77A, 78 and 78A".

6. In rule 78—

(a) for paragraph (1), substitute—

"(1) An administration fee shall be payable—

(a) on the first and every subsequent anniversary of the date of the appointment of a receiver, until the termination of the proceedings; and

(**a**) 1983 c. 20.
(**b**) S.I. 2001/824; amended by S.I. 2001/2977, S.I. 2002/833 and S.I. 2003/1733.

(b) 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."; and

(b) omit paragraph (5).

7. After rule 78, insert—

"**Account fee**

78A.—(1) An account fee shall be payable on the twenty-eighth day after the last day of the period in respect of which an account is to be delivered under rule 61(1) or 65(2).

(2) Where the court dispenses with the passing of an account under rule 61(4) or 65(3) the account fee—

(a) if paid, shall be refunded; or

(b) if not paid, shall cease to be payable."

8. After rule 80, insert—

"**Fees where officer of the court appointed receiver**

80A.—(1) Subject to paragraph (2), an appointment fee shall be payable, as set out in paragraph 4A of the Appendix, on the appointment of an officer of the court as receiver for a patient.

(2) Where proceedings are terminated within 4 weeks after the appointment, the fee referred to in paragraph (1) shall cease to be payable and any fee paid in accordance with that paragraph shall be refunded.

(3) Where an officer of the court has been appointed receiver for a patient—

(a) a fee shall be payable, as set out in paragraph 4B of the Appendix, in respect of completing an Inland Revenue tax return on behalf of the patient;

(b) a receivership administration fee shall be payable, as set out in paragraph 4C of the Appendix—

(i) on the first and every subsequent anniversary of the date of the officer's appointment as receiver until the termination of the proceedings; and

(ii) at such other times either during the proceedings or at their termination as the court may direct, and

where the period for which the receivership 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; and

(c) the court shall annually, or at such other intervals as it may direct, issue a certificate in respect of each patient stating—

(i) the amount of the receivership administration fee payable in respect of the patient at the date of the certificate;

(ii) the period in respect of which that fee in payable; and

(iii) the name of the person who must make the payment.

(4) Upon the issue of a certificate under paragraph (3)(c) 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 paragraph (3)(c) has been wrongly assessed, the court may direct that the fee is to be adjusted as it appears to it to be convenient."

9. In rule 84(1), after "paid out of his estate", insert "or paid".

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

(2) In column 2 of paragraph 1 for "£70.00", substitute "£230.00".

(3) In column 2 of paragraph 1A for "£515.00", substitute "£300.00".

(4) In column 2 of paragraph 2 for "£220.00", substitute "£230.00".

(5) After paragraph 2 insert—

"

Account fee (rule 78A)	
2A. On the twenty-eighth day after the last day of the period in respect of which an account is to be delivered under rule 61(1) or 65(2).	£95.00

".

(6) In column 1 of paragraph 3(1)—

(a) for "£50.00", substitute "£100.00"; and

(b) for "£500.00", substitute "£1,000.00".

(7) In column 2 of paragraph 3(1)(i) and (ii) for "£50.00", wherever it occurs, substitute "£100.00".

(8) In column 2 of paragraph 3(1) (iii) for "£50.00", substitute "£60.00".

(9) In column 2 of paragraphs 3(1)(iv), (v) and (vi) and 3(2), for "£120.00", wherever it occurs, substitute "£125.00".

(10) In column 2 of paragraph 3(3), for "£505.00", substitute "£520.00".

(11) In column 2 of paragraph 3(4), for "£185.00", substitute "£190.00".

(12) In column 2 of paragraph 3(5), for "£155.00", substitute "£160.00".

(13) For paragraph 4, substitute—

"

Detailed assessment of costs (rule 80)	
4.—(1) On the filing of a request for a detailed assessment of costs—	
(i) where the bill of costs does not exceed £3,000 excluding VAT and disbursements	£100.00
(ii) in all other cases	£200.00
(2) On an appeal against a decision made in a detailed assessment of costs or on an application to set aside a default costs certificate	£60.00

".

(14) After paragraph 4, insert—

"

Fees where officer of the court appointed receiver (rule 80A)	
4A. On the appointment of an officer of the court as receiver	£1,000.00
4B. On the completion of an Inland Revenue tax return on behalf of the patient, where an officer of the court has been appointed receiver	£500.00
4C. Receivership administration fee, where an officer of the court has been appointed receiver	£3,500.00

".

(15) For paragraph 7, substitute—

"

Winding up fee (rule 82)	
7. On the death of a patient:	
(i) where an officer of the court has been appointed receiver	£850.00
(ii) otherwise	£275.00

".

Transitional provisions

11.—(1) Where an appointment fee is payable under rule 77A upon the appointment of a receiver but the application for his appointment was received by the court before 1st June 2004, the Court of Protection Rules 2001 ("the 2001 Rules") shall have effect as if—

(a) rule 10(3) of these Rules had not been made; and

(b) in column 2 of paragraph 1A of the Appendix to the 2001 Rules for "£515.00", there were substituted "£460.00".

(2) Where—

(a) a transaction fee under rule 79(1) is payable which, by virtue of rule 79(4)(a), is to be taken upon the approval of the transaction; and

(b) the application for approval was received by the court before 1st June 2004,

the 2001 Rules shall have effect as if rules 10(6) and 10(7) of these Rules had not been made.

(3) No transaction fee under rule 79(1) shall be payable where—

(a) an officer of the court is receiver for the patient;

(b) but for this paragraph that fee would, by virtue of rule 79(4)(a), be taken upon the approval of the transaction; and

(c) the application for such approval was received by the court before 1st June 2004.

(4) No appointment fee under rule 80A(1) shall be payable where the application for the appointment of a receiver was received by the court before 1st June 2004.

(5) Where a receivership administration fee is payable under rule 80A(3)(b) on an anniversary date falling before 31st May 2005, the fee payable shall be the proportion of the full fee as the period between 1st June 2004 and the anniversary bears to one year.

Signed by authority of the Lord Chancellor

Filkin
Parliamentary Under Secretary of State
Department for Constitutional Affairs

Date 5th May 2004

We consent

Two of the Lord's Commissioners of Her Majesty's Treasury

Joan Ryan,
John Heppell

Dated 6th May 2004

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).

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

Fees	*Old Fee*	*New Fee*
Commencement fee (rule 77)	£70	£230
Receivership appointment fee (rule 77A)	£515	£300
Administration fee (rule 78)	£220	£230
Transaction fees (rule 79):		
Applications for orders etc under—		
— Mental Health Act 1983, s 100 (vesting of stock in a curator)	£50.00	£60.00
— Mental Health Act 1983, s 96(1)(k) (exercise of powers)	£120	£125
— Trustee Act 1925, s 54 (trusts)	£120	£125
— Trusts of Land and Appointment of Trustees Act 1996, s 20 (authorisation of person to act as trustee)	£120	£125
— Mental Health Act 1983 s 96 (1) (settlement or gift of property, carrying out of contract) and Variation of Trusts Act 1958 s 1(3) (variation of trust for benefit of patient).	£50 or, in a "special case" 1/4% of the pecuniary consideration as referred to in rule 79 up to a maximum of £500	£100 or, in a "special case" 1/4% of the pecuniary consideration as referred to in rule 79 up to a maximum of £1000
— Trustee Act 1925, s 36(9) (appointment of trustees)	£120	£125
— Mental Health Act 1983, s 96(1)(e) (execution of will)	£505	£520
Application for the appointment of a new receiver	£185	£190
Application for an order or direction under s 96(1)(b) or (c) of the Mental Health Act 1983 ordering or authorising the sale or purchase of any land	£155	£160
Winding-up fee (rule 82)—Death of a patient	£360	£275

(2) Some minor drafting amendments are made to rules 65, 78 and 84 and paragraph (5) of rule 78 is omitted because it has become obsolete (*rules 3, 4, 6 and 9*).

(3) Rule 76(3) is amended so that the new account fee payable under rule 78A (see below) is disapplied and the transaction and winding up fees are reinstated, where the receiver is an officer of the court (*rule 5*).

(4) A new rule 78A is inserted providing for a new account fee, payable on the twenty-eighth day after the last day of the period in respect of which an account is to be delivered under rule 61(1) or 65(2). This fee is set at £95.00 (*rule 7*).

(5) A new rule 80A is inserted to introduce fees payable where an officer of the court has been appointed as receiver. Appointment and administration fees are set at £1,000.00 and £3,500.00 respectively. Appointment and administration fees existed in the Court of Protection Rules 2001, but were removed in the Court of Protection (Amendment) Rules 2002(**a**). In addition a

(**a**) S.I. 2002/833.

new fee is introduced, payable on completion of an Inland Revenue tax return on behalf of the patient, where an officer of the court has been appointed receiver. This fee is set at £500.00 (*rule 8*).

(6) The Appendix is amended in various respects including—

— the introduction of two tiers of fees where there is to be a detailed assessment of costs. These fees are set at £100.00 for bills not exceeding £3,000.00 excluding VAT and disbursements and £200.00 for all other bills (*rule 10(13)*); and

— the reinstatement of the winding up fee under rule 82 where an officer of the court has been appointed as receiver for the patient. This fee was in the Court of Protection Rules 2001, but was removed in the Court of Protection (Amendment) Rules 2002. This fee is set at £850.00 (*rule 10(15)*).

(7) Rule 11 provides various transitional provisions. Rule 11(1) provides that where an application for the appointment of a receiver is received before 1st June 2004, the receivership appointment fee shall be £460 instead of the new fee of £300. This is because in those cases the previous commencement fee of £70 payable on the application will apply instead of the new fee of £230. Therefore the joint cost of the fees on the appointment of a receiver (£530) will be the same as if the new fees had been applicable. Before the amendments made by these Rules the joint cost of the fee payable on the appointment was £585.

STATUTORY INSTRUMENTS

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The Court of Protection (Amendment) Rules 2004

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