
STATUTORY INSTRUMENTS

2007 No. 2617

**SUPREME COURT OF ENGLAND AND WALES
COUNTY COURTS, ENGLAND AND WALES**

The Court Funds (Amendment No 2) Rules 2007

Made - - - - *7th September 2007*
Laid before Parliament *7th September 2007*
Coming into force - - *1st October 2007*

The Lord Chancellor, in exercise of the powers conferred on him by section 38(7) of the Administration of Justice Act 1982(1), and with the concurrence of the Treasury, makes the following Rules:

Citation, commencement and interpretation

1. These Rules may be cited as the Court Funds (Amendment No 2) Rules 2007 and come into force on 1st October 2007.
2. In these Rules, a reference to a rule by number alone means the rule so numbered in the Court Funds Rules 1987(2).

Amendments to the Court Funds Rules 1987

3. Rule 2(2) is amended as follows—
 - (a) before the definition of “Accountant General”, insert—

““The 2005 Act” means the Mental Capacity Act 2005;”;
 - (b) in the definition of “Bankers’ Automated Clearing System”, after the words “one bank”, insert “in the United Kingdom”;
 - (c) in the definition of “Court”, after the entry “The Supreme Court”, insert “The Court of Protection”;
 - (d) after the definition of “Court Funds Office Account”, insert—

““Deputy” means, in relation to a person who lacks capacity, a person—

(1) 1982 c. 53.

(2) S.I. 1987/821; relevant amending instruments are S.I. 1988/817, 1991/1227, 1997/177, 2000/2918, 2001/703, 2003/375, 2003/720 and 2007/729.

- (i) appointed by the Court under section 16(2)(b) of the 2005 Act to make decisions on that person's behalf; or
 - (j) deemed to be so appointed by virtue of paragraph 1 of Schedule 5 to that Act (existing receivers);”;
- (e) in the definition of the “Employment Appeal Tribunal”, for the words “under section 87 of the Employment Protection Act 1975” substitute “by the Employment Tribunals Act 1996(3)”;
- (f) after the definition of “Interest bearing account”, insert—
- ““International money transfer” means a method of payment by which funds are transferred from a bank in the United Kingdom to a bank outside the United Kingdom by means of an automated system;”;
- (g) in the definition of “Master”, omit the words “or Master of the Court of Protection”;
- (h) omit the definition of “Master of the Court of Protection”;
- (i) In the definition of “Order”, for the words “an order or judgment”, substitute “a judgment or an order under the seal”;
- (j) omit the definition of “Patient”;
- (k) in the definition of “Person under a disability”, for the word “patient”, substitute “person who lacks capacity”; and
- (l) after the definition of “Person under a disability”, insert—
- ““Person who lacks capacity” means a person who—
- (i) immediately before 1 October 2007, was a patient within the meaning of Part VII of the Mental Health Act 1983 (as that Act was in force immediately prior to that date); or
 - (j) a court has found lacks capacity within the meaning of the 2005 Act and whose lack of capacity relates (directly or indirectly) to funds in court held (or to be held) on his behalf;”.
4. Before rule 2(3), insert—
- “(2A) Where two or more deputies are appointed in relation to a person who lacks capacity, in these Rules—
- (i) the word “deputy” is to be construed as a reference to those deputies acting jointly if and to the extent that joint action is required by the terms of their appointment; and
 - (ii) any rule permitting the Accountant General to refuse to—
 - (a) follow a direction given by; or
 - (b) undertake any other act at the request of,a deputy includes a power, where more than one deputy has been appointed, to refuse to do so on the grounds that while the terms of appointment require the deputies to act jointly, the direction or request was not jointly made.”

5. Rule 6 is amended as follows—

 - (a) at the end of the heading, add “or other authority to lodge”;
 - (b) at the beginning of paragraph (1), add “Subject to paragraph (1A)”;
 - (c) in paragraph 1(i), omit the words “or in the Court of Protection”; and

(d) after paragraph (1), insert—

“(1A) Paragraph (1) does not apply to proceedings in the Court of Protection.

(1B) Where, in proceedings in the Court of Protection, a person (“Person A”) seeks to lodge funds in court on behalf of a person who lacks capacity (“Person B”), the Accountant General must not make such lodgment until he has received one of the following documents—

- (i) a lodgment schedule;
- (ii) where a deputy has not been appointed in relation to Person B, and the funds are required to be lodged by Person A by court order, a copy of that order;
- (iii) where, prior to 1st October 2007, Person A had been appointed as Person B’s receiver under Part VII of the Mental Health Act 1983 (as that part was in force immediately prior to that date), a copy of the order of the Court of Protection by which Person A was so appointed; or
- (iv) a copy of the order of the Court of Protection appointing Person A as Person B’s deputy.”.

6. Omit rule 9.

7. Rule 14 is amended as follows—

- (a) at the end of the heading, add “or other authority to lodge”;
- (b) in paragraph (1)(i), omit “in the Court of Protection and”; and
- (c) after paragraph (1), insert—

“(1A) Where, in proceedings in the Court of Protection, a person (“Person A”) seeks to lodge funds in court on behalf of a person who lacks capacity (“Person B”), the Accountant General must not make such lodgment until he has received one of the following documents—

- (i) a lodgment schedule;
- (ii) where a deputy has not been appointed in relation to Person B, and the funds are required to be lodged by Person A by court order, a copy of that order;
- (iii) where, prior to 1st October 2007, Person A had been appointed as Person B’s receiver under Part VII of the Mental Health Act 1983 (as that part was in force immediately prior to that date), a copy of the order of the Court of Protection by which Person A was so appointed; or
- (iv) a copy of the order of the Court of Protection appointing Person A as Person B’s deputy.”.

8. In rule 28(1), for the words “Courts Fund” substitute “Court Funds”.

9. Rule 34 is amended as follows—

- (a) in paragraph (1), for the words “paragraph (3)”, substitute “paragraph (5)”;
- (b) in paragraph (2), omit the words “by him”; and
- (c) for paragraph (3), substitute—

“(3) Paragraph (2) does not apply to money under the control of or subject to an order of the Court of Protection.

(4) In paragraphs (5) to (7), “investment manager” means a person appointed by a deputy to make decisions as to the investment of money held in court on behalf of a person who lacks capacity.

(5) Money under the control of or subject to an order of the Court of Protection may be invested or reinvested by the Accountant General in such investments—

- (i) as the court may direct;
- (ii) if a deputy has been appointed to make decisions in relation to that money on behalf of a person who lacks capacity, as the deputy may in writing direct; or
- (iii) if the deputy has appointed an investment manager, as the investment manager may in writing direct.

(6) If a deputy decides to appoint an investment manager for the purposes of this rule, he must send in writing to the Accountant General—

- (i) contact details of the investment manager; and
- (ii) authority for the investment manager to give directions for the investment of the funds held in court.

(7) The Accountant General may refuse to comply with a direction made under paragraph (5), if—

- (i) in relation to a direction given by a deputy, it appears to him that the direction is not within the powers conferred on the deputy by the terms of his appointment;
- (ii) in relation to an investment manager, it appears to him that—
 - (a) it was not within the powers of the deputy to appoint an investment manager;
 - (b) the deputy has not complied with paragraph (5); or
 - (c) it was not within the powers of the investment manager to give that direction; or
- (iii) the court has made a contrary direction,
or for another good reason.”.

10. Rule 40 is amended as follows—

(a) for paragraph (2), substitute—

“(2) Subject to paragraphs (4) to (9) below, the Accountant General may make payment out of money lodged in court by means of—

- (i) the Bankers’ Automated Clearing System to a bank in the United Kingdom;
or
- (ii) international money transfer to a bank outside the United Kingdom,
for the credit of the account of the payee at that bank.”;

(b) for paragraph (5), substitute—

“(5) Subject to paragraph (5A), on receipt of a written request from a donee under a power of attorney given by the payee, the Accountant General may make payment by means of—

- (i) the Bankers’ Automated Clearing System (if the account is held at a bank in the United Kingdom); or
- (ii) international money transfer (if the account is held at a bank outside the United Kingdom),
for the credit of the account of the payee at that bank.

(5A) The request for payment referred to in paragraph (5) must be accompanied by—

- (i) an office copy of that power of attorney showing that it has been registered as required by the relevant Act in the case of—
 - (a) a lasting power of attorney made under section 9 of the 2005 Act; or
 - (b) an enduring power of attorney (as defined in paragraph 2 of Schedule 4 to the 2005 Act) made before 1st October 2007 which was registered—
 - (aa) before that date under the Enduring Powers of Attorney Act 1985 (as that Act was in force immediately prior to that date); or
 - (ab) on or after that date under the 2005 Act; and
 - (ii) in all other cases, a copy of the power of attorney by which the donee was appointed, certified in accordance with the provisions of section 3 of the Powers of Attorney Act 1971.
- (5B) The Accountant General may refuse to make the payment referred to in paragraph (5) if—
- (i) the requirements of paragraph (5A) have not been met; or
 - (ii) he considers that the request for payment is not within the powers conferred on the donee by the power of attorney.”;
- (c) for paragraph (7)(i) substitute—
- “(i) the payee does not have an account which is suitable for the receipt of funds—
 - (a) (in respect of an account held at a bank in the United Kingdom) by Bankers’ Automated Clearing System; or
 - (b) (in respect of an account held at a bank outside the United Kingdom) by international money transfer; or”;
 - (d) in paragraph (9)(ii), after the words “Bankers’ Automated Clearing System”, insert “or international money transfer”.
- 11.** In rule 41, for the words “Receiver under Part VII of the Mental Health Act 1983” substitute “deputy”.
- 12.** For rule 42, substitute—
- “**42.** Where a person who lacks capacity is entitled to a fund in court (other than pursuant to an order made under Part VII of the Mental Health Act 1983 as that Act was in force immediately prior to 1st October 2007, or under Part I of the 2005 Act) the Accountant General shall, on receipt of a direction from the Court of Protection, either—
- (a) pay the money to the person’s deputy; or
 - (b) carry it over to such account as that court may direct.”
- 13.** After rule 43(3), insert—

“Payment of funeral expenses out of funds in court

- 43A.—**(1) In this rule and rule 43B, “the deceased” means a person—
- (i) who immediately prior to his death was entitled to a fund in court in his own right;
 - (ii) in respect of whom—
 - (a) a deputy had been appointed; or

- (b) where the person died before 1st October 2007, a receiver had been appointed under Part VII of the Mental Health Act 1983 (as that Act was in force immediately prior to that date); and
 - (iii) in respect of whose estate no grant of probate or administration has been issued.
- (2) On the written request of the person who—
- (i) is the executor of the deceased's will; or
 - (ii) if the deceased died intestate, arranged the deceased's funeral,
- the Accountant General may, on receipt of an invoice issued by funeral directors, pay direct to those directors such amounts as have been reasonably incurred for the purposes of arranging and conducting the deceased's funeral.
- (3) The Accountant General may, if he thinks fit, refuse to make the payment referred to in paragraph (2) in any individual case if—
- (i) he has not received the invoice referred to in that paragraph;
 - (ii) the person requesting such payment fails to provide him with sufficient evidence as to his entitlement to make the request; or
 - (iii) the fund in court to which the deceased was entitled is insufficient to meet the cost of arranging and conducting the funeral,
- or for another good reason.

Payment of inheritance tax out of funds in court

- 43B.**—(1) On the written request of the person who—
- (i) is the executor of the deceased's will; or
 - (ii) if the deceased died intestate, appears to the Accountant General to have the prior right to a grant of administration of the estate,
- the Accountant General may pay direct to Her Majesty's Revenue and Customs such funds as may be required to satisfy all, or any part, of the inheritance tax due on the deceased's estate.
- (2) A request under paragraph (1) must be accompanied by—
- (i) such information as Her Majesty's Revenue and Customs may require to be sent to financial institutions for the purposes of enabling those institutions to make direct payment of inheritance tax;
 - (ii) in the case of a request from the person mentioned in paragraph (1)(i), a certified copy of the will by which he was appointed; and
 - (iii) in the case of a request from the person mentioned in paragraph (1)(ii), a written declaration of kinship,
- and the Accountant General may refuse to make payment if the requirements of this paragraph are not met, or for another good reason.”.

14. Rule 44 is amended as follows—

- (a) in paragraph (2)(i), omit the word “or”;
- (b) at the end of paragraph (2)(ii), insert the word “or”;
- (c) after paragraph (2)(ii), insert—
 - “(iii) to a bank outside the United Kingdom by means of international money transfer for the credit of the account of the claimant at that bank,”;

- (d) in paragraph (2A), for the words “sub-paragraph (ii)”, substitute “sub-paragraphs (ii) or (iii)”;
- (e) for paragraph (2B)(i), substitute—
 - “(i) the claimant does not have an account which is suitable for the receipt of funds—
 - (a) in respect of an account held at a bank in the United Kingdom, by Bankers’ Automated Clearing System; or
 - (b) in respect of an account held at a bank outside the United Kingdom, by international money transfer; or”;
- (f) in paragraph (2C), after the words “Bankers Automated Clearing System”, insert “or international money transfer”; and
- (g) in paragraph (4)(iii), for the words “child or patient” substitute “person under a disability”.

15. Rule 57 is amended as follows—

- (a) in paragraph (1), omit the words “when ten years have elapsed since an account was opened for the fund”;
- (b) in paragraph (2)(ii), omit the words “subject to paragraph (4),”; and
- (c) omit paragraph (4).

2nd September 2007

Jack Straw
Lord Chancellor

We concur,

7th September 2007

Dave Watts
Steve McCabe
Two of the Lords Commissioners of Her
Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules contain amendments to the Court Funds Rules 1987 consequential on the coming into force of the Mental Capacity Act 2005.

In addition, the Court Funds Rules are amended as follows:

- The opportunity has been taken to correct typographical errors.
- The definition of “Employment Appeal Tribunal” in rule 2(2) is amended to correct an obsolete statutory reference.
- Rule 9 is revoked on the basis that practice is now to pay costs out of a fund in court on receipt of a payment schedule, as opposed to a certificate from a Master or costs officer as provided for in Rule 9 as originally enacted.
- Rules 40 and 44 are amended (with consequential additions and amendments to the definitions in rule 2(2)) to permit the Accountant General to make payments to bank accounts held outside the UK by international money transfer on receipt of a request for payment.
- A new rule 43A is inserted to permit the Accountant General to make a payment direct to funeral directors to cover funeral expenses of a person in respect of whom a deputy or receiver had been appointed where a grant of probate or administration has not yet been obtained, provided that there are sufficient funds in court to cover the payment.
- A new rule 43B is inserted to permit the Accountant General to make payments to HM Revenue and Customs (as part of the scheme for direct payment of inheritance tax) to pay all or part of the inheritance tax due on the estate of a person who was entitled to a fund in court and in respect of whom a deputy or receiver was appointed.
- Rule 57 is amended to remove the requirement for an account to be open for ten years before the Accountant General can transfer the funds in that account to an account of unclaimed balances. An account can now be moved to unclaimed balances if there has been no activity (other than crediting interest or dividends, or the proceeds of the sale of securities) on the account for 10 years or the Accountant General is satisfied that the person cannot be traced. In respect of accounts held for children, the 10 year period does not start to run until the child’s eighteenth birthday or, if the child’s date of birth is not known, until the eighteenth anniversary of the opening of the account.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.