

1970 No. 1783 (L. 30)

MENTAL HEALTH

The Court of Protection (Amendment) Rules 1970

<i>Made</i>	- - -	<i>27th November 1970</i>
<i>Laid before Parliament</i>		<i>11th December 1970</i>
<i>Coming into Operation</i>		<i>1st January 1971</i>

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:—

Citation and commencement

1. These Rules may be cited as the Court of Protection (Amendment) Rules 1970 and shall come into operation on 1st January 1971.

Interpretation

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, unless the context otherwise requires, “the principal Rules” shall mean the Court of Protection Rules 1960(c), as amended (d), and these Rules shall be construed together with the principal Rules.

Application for execution of will of patient

3. In Rule 21(1) of the principal Rules, which provides for applications for the settlement of patients’ property, the words “An application under section 103(1)(d) of the Act for an order for the settlement of any property of a patient may be made by” shall be deleted, and in their place there shall be inserted the words “An application under section 103(1)(d) of the Act for an order for the settlement of any property of a patient, or an application under section 103(1)(dd) of the Act for an order for the execution for a patient of a will, may be made by”.

Service

4. In Rule 23 of the principal Rules, which provides that service shall be unnecessary where the respondent consents to the order sought, the words “verified by a solicitor” shall be deleted, and the words “verified by some other person” shall be inserted in their place.

(a) 1959 c. 72.

(c) S.I. 1960/1146 (1960 II, p. 1935).

(b) 1889 c. 63.

(d) S.I. 1962/553 (1962 I, p. 529).

Evidence: medical certificates

5. Rule 38 of the principal Rules shall be revoked and the following provision substituted in its place:—

“Evidence to be filed on originating application for receiver, etc.

38.—(1) On the issue of an originating application for the appointment of a receiver for a patient or for an order authorising any person to do any act or carry out any transaction on behalf of a patient without appointing him receiver, the applicant shall, unless the court otherwise directs, file a medical certificate and, subject to paragraphs (2) and (3) of this Rule, an affidavit of kindred and fortune.

(2) Where either the income of the patient does not exceed £300 per annum or the capital value of the patient’s estate does not exceed £3,000 a certificate of kindred and fortune shall be filed instead of an affidavit of kindred and fortune.

(3) Where the applicant is the Official Solicitor, no affidavit or certificate of kindred and fortune shall be necessary if—

- (a) there is filed a certificate by the Official Solicitor that the patient is possessed of property and that the relief asked for is desirable in order to manage or protect that property, or
- (b) a report to the like effect is made under Rule 76(1)(a).

(4) In this Rule—

“a medical certificate” means a certificate by a medical practitioner that the patient is incapable, by reason of mental disorder, of managing and administering his property and affairs, and

“an affidavit of kindred and fortune” means an affidavit giving particulars of the patient’s relatives, property and affairs and of the circumstances giving rise to the application, and

“a certificate of kindred and fortune” shall be construed accordingly.”

Evidence: consents to act as trustee

6.—(1) In Rule 41 of the principal Rules, which provides for evidence of consent to act by proposed trustees, the words “verified by a solicitor” shall be deleted and the words “verified by some other person” shall be inserted in their place.

(2) In Form E of the First Schedule to the principal Rules, which prescribes the form of consent of a proposed new trustee to act, the word “Solicitor” shall be deleted.

Attendance on Judge and Court of Appeal

7. In Rule 64 of the principal Rules, which provides for the attendance of an officer of the Court of Protection as Registrar at hearings before the Judge or appeals to the Court of Appeal, the words “The Chief Clerk of the Court of Protection” shall be deleted, and the words “The Registrar of the Court of Protection” shall be inserted in their place.

Method of payment of fees

8. Rule 93 of the principal Rules shall be revoked, and the following provision substituted in its place:—

“Method of payment of fees

93. 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 order, certificate, application, bill of costs or other document in respect of which the fee is paid shall be marked by the officer of the court receiving the fee so as to show the amount of the fee and the date of its receipt.”

Amount of fees

9.—(1) In this Rule, and in the principal Rules as amended by this Rule, references to amounts of money which are printed within square brackets and in italics shall be construed as references to the decimal equivalents of the amounts of money expressed in sterling which immediately precede them.

(2) In proviso (a) to Rule 87 of the principal Rules, which provides for the charge of percentage, the expression “[£1·50]” shall be inserted after the words “percentage shall be £1 10s. 0d.”

(3) In Rule 88(2)(a) of the principal Rules, which provides for the contents of a percentage certificate, the expression “[5p]” shall be inserted after the words “one shilling”.

(4) In Rule 91 of the principal Rules, which provides for fees on taxation—
the expression “(25p)” shall be inserted after the words “five shillings” in paragraph 1(a); and
the expression “(5p)” shall be inserted after the words “one shilling” wherever they occur in paragraph 1(b) and (c).

(5) The following Schedule shall be substituted for the Second Schedule to the principal Rules:—

“SECOND SCHEDULE

Rule 89

PART I—FEES ON DOCUMENTS

- | | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|------|-----------|
| 1. (a) On an order... .. | £4 | 0s. | 0d. |
| (b) on a certificate under the seal of the court other than a percentage certificate or a certificate of the result of a taxation | £2 | 0s. | 0d. |
| (c) on an authority or direction under the seal of the court (not being a direction to the Accountant General)... | £0 | 10s. | 0d. [50p] |
| (d) for a copy of such an authority or direction | £0 | 2s. | 0d. [10p] |
| (e) for a copy of any document other than an authority or direction—
for a <i>photographic copy</i> of all or part of any document,
for each photographic sheet—
(i) of A.4ISO size, foolscap or smaller size | £0 | 2s. | 0d. [10p] |

- (ii) of larger size £0 4s. 0d. [20p]
 for a *typewritten copy* of any document, for each page—
- (i) of A.4ISO size, foolscap or smaller size ... £0 4s. 0d. [20p]
 (ii) of larger size £0 6s. 0d. [30p]
 and for each page of any additional *carbon copy* of a
 typewritten copy bespoken, half the fee specified above.

Rule 90

PART II—PERSONAL APPLICATION BRANCH FEES

1. (a) On issuing an originating application or on proceeding
 in a summary manner under Rule 6—
- (i) where the annual income appears not to exceed
 £40, subject to a minimum fee of 10s. [50p] ... 10 per cent.
- (ii) where the income appears to exceed £40, subject to
 a minimum fee of £4 and a maximum fee of £50... 4 per cent.
- (b) on making an application for an order determining
 proceedings upon the recovery of the patient £0 10s. 0d. [50p]
- (c) on making any other application for an order £1 0s. 0d.
2. In this Part of this Schedule, “income” means the income which a patient’s
 estate might be expected to yield if duly administered by the court.
3. Sums less than one shilling [5p] shall be disregarded in assessing the fees payable
 under this Part of this Schedule.
4. Every fee payable under this Part of this Schedule shall include the fees payable
 on two copies of any order made on the application, but shall not include any other
 fee payable under Part I.”

Dated 26th November 1970.

Hailsham of St. Marylebone, C.

We concur,

Dated 27th November 1970.

V. H. Goodhew,
Bernard Weatherill,
 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 procedural amendments to the Court of Protection Rules 1960, and in particular replace the requirement of a medical affidavit on an application for the appointment of a receiver by a requirement for a medical certificate in every case. They also amend the provisions relating to fees so as to abolish the method of payment by impressed stamps, and so as to take account of the forthcoming decimalisation of the coinage.

SI 1970/1783
ISBN 0-11-001783-8



780110 017839