
STATUTORY INSTRUMENTS

2001 No. 824

MENTAL HEALTH, ENGLAND AND WALES

The Court of Protection Rules 2001

Made - - - - - *6th March 2001*
Laid before Parliament *9th March 2001*
Coming into force - - *1st April 2001*

The Lord Chancellor, in exercise of the powers conferred on him by sections 106, 107 and 108 of the Mental Health Act 1983(1) and section 54 of the Trustee Act 1925(2) and with the consent of the Treasury so far as is required by section 106(5) of the said Act of 1983, hereby makes the following Rules:-

PART I
PRELIMINARY

Title and Commencement

1. These Rules may be cited as the Court of Protection Rules 2001 and shall come into force on 1st April 2001.

Interpretation

2.—(1) In these Rules, unless the context otherwise requires—
expressions used in the Supreme Court Act 1981(3) shall have the same meanings as they have for the purposes of that Act;

“the Act” means the Mental Health Act 1983;

“attended hearing” means a hearing where one or more of the parties to the proceedings have been invited to attend the court for the determination of the application;

“court” means the Court of Protection;

“direction” means a direction or authority given under the seal of the court;

(1) 1983 c. 20.

(2) 1925 c. 19; section 54 was substituted by the Mental Health Act 1959 (c. 72), Schedule 7.

(3) 1981 c. 5.

- “entered” means entered in the books of the court;
- “filed” mean filed in the court office;
- “function” means any power, discretion or function conferred by the Act;
- “hearing” means an attended or unattended hearing;
- “judge” means the Lord Chancellor or a nominated judge;
- “Master” means the Master of the Court of Protection;
- “medical certificate” means a certificate by a registered medical practitioner that a patient is incapable, by reason of mental disorder, of managing and administering his property and affairs;
- “order” includes a certificate, direction or authority of the court under seal;
- “patient” includes a person who is alleged to be or who the court has reason to believe may be incapable by reason of mental disorder of managing and administering his property and affairs;
- “receiver” means a receiver appointed under section 99(1) of the Act;
- “seal” means an official seal of the Court and “sealed” shall be construed accordingly;
- “stock” includes shares in any fund, annuity or security transferable in the books kept by any body corporate or unincorporated company or society, or by an instrument of transfer either alone or accompanied by other formalities and includes any dividends paid in respect of them;
- “Visitor” means one of the Lord Chancellor’s Visitors

(2) In these Rules—

- (a) any reference to a numbered rule is a reference to the rule of these Rules so numbered in these Rules;
- (b) any reference in a rule to a numbered paragraph is a reference to the paragraph so numbered in the rule in which the reference occurs;
- (c) a form referred to by letter alone means the form so designated in the Schedule to these Rules or a form to the same effect with such variations as the circumstances may require or the court may approve and in all cases shall include a Welsh translation of the form.

Exercise of the court’s functions

3. Where any function (in whatever words) is expressed by these Rules to be exercisable by the court then, subject to the provisions of the Act, that function may be exercised—

- (a) by a judge;
- (b) by the Master;
- (c) to the extent to which he is authorised to exercise it under section 94 of the Act, by any nominated officer.

Computation of time

4.—(1) Where a period of time fixed by these Rules or by any order or direction of the court for doing an act expires on a day on which the court office for doing that act is closed and for that reason the act cannot be done on that day, the act shall be done in time if done on the next day on which that office is open.

(2) Where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.

(3) Where any period of time as mentioned in paragraph (1) is less than six days, any day on which the court office is closed shall not be included in that computation.

Power to vary time

5. The court may extend or abridge the time limited by these Rules or any order or direction of the court for doing any act or taking any proceedings upon such terms as the court thinks fit and notwithstanding, in the case of an extension, that the time so limited has expired.

PART II

EXERCISE OF JURISDICTION

Exercise of jurisdiction

6. Except where these Rules otherwise provide, any function may be exercised—
- (a) without fixing an appointment for a hearing;
 - (b) by the court of its own motion or at the instance or on the application of any person interested;
 - (c) whether or not any proceedings have been commenced in the court with respect to the patient.

PART III

APPLICATIONS

Forms of application

7.—(1) Subject to paragraph (3), a first application to the court for the appointment of a receiver shall state the name and address of the applicant and the proposed receiver and their relationship (if any) to the patient in such manner as the court shall direct and an application to the court respecting the exercise of any of its other jurisdiction in relation to a patient, may be made by letter unless the court otherwise directs that it should be formal, in which case it shall be made in Form A.

(2) An application for the appointment of a receiver shall be treated as an application for the appointment as receiver of the person named in the application or some other suitable person.

(3) On grounds of urgency the court may dispense with the need for an application in writing.

(4) An application relating to the committal of a person for contempt of court shall be made to a judge but all other applications to the court shall be made in the first instance to the Master.

Procedure for short order or direction without appointment of a receiver

8.—(1) Without prejudice to the generality of Rule 6, if it appears to the court that—

- (a) the property of the patient does not exceed £10,000 in value; or
- (b) it is otherwise appropriate to proceed under this rule,

and that it is not necessary to appoint a receiver for a patient, the court may make a short order or direction under this rule whether or not the application was made for the appointment of a receiver for the patient.

(3) A short order or direction under this rule is an order or direction directing an officer of the court or some other suitable person named in the order or direction to deal with the patient's property (or any part of it), or with his affairs, in any manner authorised by the Act and specified in the order or direction.

Date for hearing

9.—(1) Upon receiving an application under rule 7 the court shall fix a date for the hearing of the application unless it considers that the application can properly be dealt with without a hearing, and on this ground the court may cancel any hearing fixed under this paragraph.

(2) Where a hearing is fixed under paragraph (1) an officer shall notify the applicant, by letter, of the date and time of the hearing.

Consolidation of Proceedings

10. The court may allow one application to be made in respect of two or more patients or may consolidate an application relating to two or more patients, if in its opinion the proceedings relating to them can be more conveniently dealt with together.

Power to direct applications by officer of the court or Official Solicitor

11. Where, in the opinion of the court, an application ought to be made for the appointment or discharge of a receiver or for a direction with regard to the exercise of any other function with respect to the property and affairs of a patient, and there appears to be no other suitable person able and willing to make the application, or the court for any other reason thinks fit, the court may direct that the application be made by an officer of the court or, if he consents, the Official Solicitor.

Representation of patient by receiver

12.—(1) Except as mentioned in rule 18 (c), (d) and (e), an application on behalf of a patient for whom a receiver has been appointed shall, unless the court otherwise directs, be made by a receiver in his own name.

(2) Subject to any directions given by the court, a patient for whom a receiver has been appointed may be represented by the receiver at any hearing relating to the patient or of which the patient has been given notice.

Representation of patient by the Official Solicitor

13. Where, in any proceedings, the court considers that the interests of the patient are not adequately represented, the court may, with the consent of the Official Solicitor, direct that the Official Solicitor shall act as a solicitor for the patient either generally in the proceedings or for any particular purpose connected with the proceedings, except that it shall not be necessary to appoint the Official Solicitor to be receiver or guardian ad litem for the patient.

Persons under a disability

14.—(1) In this rule, “person under a disability” means a minor or a patient for whom no receiver has been appointed.

(2) A person under a disability shall not make an application in proceedings relating to another person except by his next friend and shall not resist an application in any such proceedings except by his guardian ad litem.

(3) Where a person is to be appointed next friend or guardian ad litem of a person under a disability in substitution for the person previously acting as next friend or guardian ad litem, the appointment shall be made by the court but, except for this, an order of the court appointing a next friend or guardian ad litem of a person under a disability shall not be necessary.

(4) Before the name of any person is used in any proceedings as next friend or guardian ad litem of a person under a disability there shall be filed—

- (a) a written consent of the first-mentioned person to act as next friend or (as the case may be) guardian ad litem of the person under a disability in the proceedings, and
- (b) a certificate by the solicitor acting for the person under a disability certifying—
 - (i) that he knows or believes that the person to whom the certificate relates is a minor or patient giving (in the case of a patient) the grounds of his knowledge or belief, and
 - (ii) except where the person named in the certificate is the Official Solicitor, that the person so named has no interest in the proceedings adverse to that of the person under a disability.

Application under section 54 of the Trustee Act 1925

15. An application to the court with respect to the jurisdiction referred to in section 54(2) of the Trustee Act 1925 may be made only by—

- (a) the receiver for the patient, or
- (b) any person who has made an application for the appointment of a receiver which has not yet been fully determined, or
- (c) a continuing trustee, or
- (d) any other person who, according to the practice of the Chancery Division, would have been entitled to make the application if it had been made in the High Court.

Application under section 36(9) of the Trustee Act 1925

16. No person other than a co-trustee, or other person with power to appoint a new trustee, may make an application to the court under section 36(9) of the Trustee Act 1925 for leave to appoint a new trustee in place of a patient.

Application under section 96(1)(k) of the Act

17. The provisions of rule 15 shall apply with such modifications as may be necessary to an application under section 96(1)(k) of the Act for an order for the exercise of any power vested in a patient of appointing trustees or retiring from a trust.

Application for settlement or gift of patient's property or for execution of will of patient

18. An application under section 96(1)(d) of the Act for an order for the settlement or gift of any property of a patient, or an application under section 96(1)(e) of the Act for an order of execution for a patient of a will, may be made only by—

- (a) the receiver for the patient, or
- (b) any person who has made an application for the appointment of a receiver which has not yet been determined, or
- (c) any person who, under any known will of the patient or under his intestacy, may become entitled to any property of the patient or any interest in it, or
- (d) any person for whom the patient might be expected to provide if he were not mentally disordered, or
- (e) any attorney acting under a registered enduring power of attorney, or
- (f) any other person whom the court may authorise to make it.

PART IV

SERVICE

Notice of hearing

19.—(1) Except where these rules provide otherwise or the court directs otherwise, the applicant shall give notice of the hearing of an application in accordance with the following provisions of this rule.

(2) Where a receiver has been appointed for a patient he shall, unless he is the applicant, be given notice of the hearing of any application relating to the patient.

(3) Where the application is one to which rules 15 or 17 relate, notice of the hearing of the application shall also be given to every person who would have been required to be served with the application notice if the application had been made to the High Court.

(4) Notice of the hearing of the application shall also be given to such other persons who appear to the court to be interested as the court may specify.

(5) Notice of a hearing shall be given—

(a) in the case of a first application for the appointment of a receiver, or an application under rule 16, not less than ten clear days and

(b) in the case of any other application, not less than two clear days before the date fixed for the hearing.

(6) For the purposes of this rule notice of a hearing shall be given to the person concerned in such manner as the court may direct.

Mode of service

20. Except where these rules otherwise provide, any document required by these Rules to be served on any person shall be served by—

(a) delivering it to him personally;

(b) sending it to him by first class post or through a document exchange at his last known address; or

(c) by transmitting it to him at his last known address by fax or other electronic means.

Service on solicitor

21. Where a solicitor acting for the person to be served with any document endorses on the document or a copy of it a statement that he accepts service on behalf of that person, the document shall be deemed to have been duly served on that person and to have been served on the date on which the endorsement was made.

Substituted service

22. Where it appears to the court that it is impracticable for any reason to serve a document in accordance with rule 20, the court may make an order for substituted service of the document by taking such steps as the court may direct to bring it to the notice of the person to be served.

Service on person under a disability

23.—(1) Unless the court otherwise directs, any document required by these Rules to be served on a person who is a minor or patient (in this rule referred to as a person under a disability) shall be served—

- (a) in the case of a minor who is not also a patient, on his parent or guardian or, if he has no parent or guardian, on the person with parental responsibility as defined in section 3 of the Children Act 1989(4);
 - (b) in the case of a patient—
 - (i) on his receiver or, if he has no receiver,
 - (ii) on the person acting in pursuance of an order or direction under rule 8, or, if there is no such person,
 - (iii) on an attorney acting under a registered power of attorney, or, if there is no such attorney,
 - (iv) on the person with whom he resides or in whose care he is;
- and must be served in a manner required by these Rules.

(2) Notwithstanding anything in paragraph (1), the court may order that any document which has been served on the person under a disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under a disability.

(3) Nothing in this rule shall apply to an order required by rule 42 to be served on a patient.

Notification of application for appointment of receiver, etc

24.—(1) Where—

- (a) a first application is made for the appointment of a receiver for a patient or for an order authorising a person to do any act or carry out any transaction on behalf of a patient without appointing him receiver, or
- (b) the court proposes to make a short order or direction;

the patient shall be notified in such manner as the court may direct.

(2) Where the patient is a minor, notification under paragraph (1) shall be given to his parent or guardian or, if he has no parent or guardian, to the person with parental responsibility within the meaning of the Children Act 1989.

Notification to next of kin etc. of intention to make application for appointment of receiver

25.—(1) Where an applicant proposes to make an application for the appointment of a receiver or a new receiver, the applicant shall give notice of his intention to—

- (a) all relatives of the patient who have the same or a nearer degree of relationship to the patient than the applicant or proposed receiver; and
- (b) such other persons who appear to the court to be interested as the court may specify;

unless the court directs that such notification shall be dispensed with.

(2) For the purposes of this rule, notice of the intention to make an application is given if the person concerned is notified, in such manner as the court may direct, of the identities of the patient, the applicant and the proposed receiver and supplied with such additional information as the court may direct.

(4) 1989 c. 41.

Certificate of service or notification

26.—(1) If the court so directs, a certificate of service showing where, when, how and by whom service was effected shall be filed as soon as practicable after service of a document has been effected in accordance with these Rules.

(2) The provisions of paragraph (1) shall apply to the giving of notification under rules 24 and 25 as they apply to the service of documents and references in that paragraph to service shall accordingly be construed as including references to notification and the giving of notification respectively.

PART V

EVIDENCE

Affidavit evidence

27.—(1) Except where these Rules provide otherwise, evidence in proceedings governed by these Rules shall be given by affidavit.

(2) An affidavit for use in proceedings under these Rules may be sworn—

- (a) in England or Wales, before any person authorised to take affidavits under the Commissioners for Oaths Acts 1889 and 1891⁽⁵⁾, under the Solicitors Act 1974⁽⁶⁾, or under the Courts and Legal Services Act 1990⁽⁷⁾ or before any officer of the court of, or above, the rank of higher executive officer;
- (b) outside England and Wales, before any person before whom an affidavit may be sworn for use in the Supreme Court.

Unsworn evidence

28.—(1) Notwithstanding rule 27(1), the court may accept and act upon a statement of facts or other such evidence, whether oral or written, as the court considers sufficient, although not given on oath and whether or not it would be admissible in a court of law apart from this rule.

(2) The court may give directions as to the manner in which a statement of facts or other written evidence under paragraph (1) is to be given but subject to such directions any such statement or other evidence shall—

- (a) be drawn up in numbered paragraphs and dated; and
- (b) be signed by the person by whom it is given.

Written questions to Visitors

29.—(1) Where a Visitor's report, or information contained in such a report, has been disclosed to any person in pursuance of section 103(8) 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.

(2) The questions sought to be put to the Visitor shall be submitted to the court, which may put 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.

(5) 1889 c. 10; 1891 c. 50.

(6) 1974 c. 47.

(7) 1990 c. 41.

(3) The court may disclose the replies given by the Visitor under this rule to any person who appears to the court to be interested, or to his legal or medical adviser, on such conditions (if any) as it thinks fit.

(4) No Visitor shall be required to give written evidence for the purpose of any proceedings to which these rules relate, other than in accordance with this rule.

(5) In this rule, “Visitor” means a Medical or Legal Visitor.

Cross-examination of deponent

30. Any person who has made an affidavit or given a certificate or other written evidence for use in proceedings under these Rules may be ordered by the court to attend for cross-examination.

Administration of oaths

31. The court may direct that an oath be administered to any witness or interpreter in any proceedings before the court.

Filing of written evidence

32.—(1) Before an affidavit certificate or other evidence is used in any proceedings under these rules it shall be filed but the court may make an order on the basis of such evidence before it is filed if the person tendering it undertakes to file it before the order is drawn up.

(2) There shall be endorsed on every affidavit, certificate or other written evidence the name and address of the solicitor, if any, acting for the person on whose behalf it is filed.

Use of evidence in subsequent proceedings

33.—(1) Except where the court otherwise directs, evidence which has been used in any proceedings relating to a patient may be used at any subsequent stage of those proceedings or in any other proceedings relating to the same patient or to another member of the patient’s family.

(2) Without prejudice to paragraph (1), the Master may, upon application being made for that purpose, authorise the use of such evidence in any legal proceedings that he may specify.

Evidence to be filed on a first application for receiver, etc

34.—(1) Where a first application has been made for the appointment of a receiver for a patient or for a short order or direction under rule 8 authorising any person to do any act or carry out any transaction on behalf of a patient without appointing him receiver—

(a) the applicant shall, unless the court otherwise directs, file a medical certificate and evidence of family and property; and

(b) the court may—

(i) require the applicant to produce to it such evidence as it shall direct of the suitability of the applicant to be appointed a receiver or to do any such act or carry out any such transaction without being appointed receiver; and

(ii) make such enquiries as it shall think fit with regard to the suitability of the applicant for such appointment.

(2) In this rule, “evidence of family and property” means a certificate or, if the court so directs, in a particular case, an affidavit giving particulars of the patient’s relatives and such other persons as the court may direct, property and affairs and of the circumstances giving rise to the application.

(3) Rule 28 applies to unsworn evidence of family and property as it applies to unsworn evidence generally.

Evidence of patient’s recovery or death and inquiry by court as to whether patient has recovered

35.—(1) Where at any stage of proceedings relating to a patient the court has reason to believe that the patient has recovered or has died, the court may require medical evidence of the recovery or evidence of the death (as the case may be) to be furnished to it by such person as it thinks appropriate.

(2) The court shall, from time to time, review a patient’s case where a medical certificate provided to the court expressed an opinion that there is a possibility of mental recovery and make such inquiries and carry out such investigations as it thinks fit to establish whether or not the patient has recovered.

Proof of amount due to public authority

36. The amount due to any public authority for the past maintenance of a patient may, unless the court otherwise directs, be proved by the filing of an account certified under the hand of the proper officer of the authority.

PART VI

HEARING OF PROCEEDINGS

Privacy of applications

37.—(1) Every application shall be heard in chambers unless, in the case of an application for a hearing by the judge, the judge otherwise directs.

(2) The court shall give such directions as it thinks fit concerning the privacy of applications made to it.

Persons attending the hearing

38. Subject to rule 14 the court may determine what persons are to be entitled to attend at any stage of the proceedings relating to a patient.

Representation at hearing

39. Where two or more persons appearing at a hearing are represented by the same legal representative, the court may, if it thinks fit, require any of them to be separately represented.

Reference of proceedings to judge

40. Where a function of the court is not being exercised by a judge, the court, after giving such direction as it thinks fit, shall refer to the judge any proceedings or any question arising in any proceedings which ought, by virtue of any enactment or in its opinion, to be considered by the judge.

Reference of proceedings to Master

41. The judge may refer any proceedings before him or any question arising in them to the Master for inquiry and report.

PART VII

RECEIVERS

Interim provision

42.—(1) Where in the opinion of the court it is necessary to make immediate provision in relation to the property and affairs of a patient for any of the matters referred to in section 95(1) of the Act—

- (a) the court may by certificate or direction direct or authorise any named person to do any act or carry out any transaction specified in the certificate or direction; or
- (b) the court may by order appoint an interim receiver for the patient and, subject to any direction given by the court, such appointment shall continue until further order.

(2) An order appointing an interim receiver shall, unless the court otherwise directs, be served upon the patient within such time as the order may specify and the patient may, within such further time as the order may specify, apply under rule 54 for the review of the order by the court or, if the order was made by a judge, apply to have the order set aside.

Remuneration of receiver

43.—(1) Where a receiver is appointed for a patient, the court may, during the receivership, allow the receiver remuneration for his services at such amount or at such rate as it considers reasonable and proper and any remuneration so allowed shall constitute a debt due to the receiver from the patient and his estate.

(2) No request by a receiver to have the sum payable for this remuneration fixed after the death or recovery of the patient shall be entertained unless the court has during the receivership directed that remuneration be allowed and the request is made within six years from the date of the receiver's discharge.

Appointment of receivers with survivorship

44. Where in the opinion of the court two or more persons ought to be appointed receivers of the same patient and more than one of them ought to continue to act after the death or discharge of any of the others, the court when appointing them receivers direct that the receivership shall continue in favour of the surviving or continuing receiver or receivers.

PART VIII

ENTRY AND ENFORCEMENT OF ORDERS

Sealing and filing of orders

45. Every order, certificate, direction or authority of the court which is drawn up shall, when entered, be sealed and filed.

Entry of order after notification to a patient

46.—(1) Where—

- (a) an order is made on a first application appointing a receiver for a patient or directing or authorising any person to do any act or carry out any transaction on behalf of a patient without appointing him receiver; or

(b) an order or direction with respect to a patient's property under rule 8, the order or direction shall not be entered until the expiration of ten clear days after the patient has been notified in accordance with rule 24(1) unless such notification is dispensed with.

(2) Nothing in paragraph (1) shall prevent the entry of an interim order, certificate or direction under rule 42 for the protection of a patient's property or for the application of a patient's property for his benefit.

Enforcement of orders

47. Every writ of execution or other process for the enforcement of an order of the court shall be issued out of the Central Office of the Supreme Court.

PART IX

SUMMONSES AND ORDERS FOR ATTENDANCE OF WITNESSES AND OTHER PERSONS

Summoning of witnesses

48.—(1) In any proceedings under these Rules the court may allow or direct any person to take out a witness summons in Form B requiring the person named in it to attend before the court and give oral evidence or produce any document.

(2) An application by a person allowed to take out a witness summons shall be made by filing a statement giving—

- (a) the name and address of the person making the application and of his solicitor, if any;
- (b) the name, address and occupation of the proposed witness;
- (c) particulars of any document which the proposed witness is to be required to produce; and
- (d) the grounds on which the application is made.

(3) A witness summons shall be served on the witness personally a reasonable time before the day fixed for his attendance and he shall be entitled to the same conduct money and payment of expenses and loss of time as if he had been summoned to attend the trial of an action in the High Court.

Powers of court where undue delay, etc

49.—(1) If the court is dissatisfied with the conduct of any proceedings or the carrying out of an order whether by reason of undue delay or otherwise, the court may require the person having the conduct of the proceedings, or any other person appearing to be responsible, to explain the delay or any other cause of dissatisfaction, and may then make such order for expediting the proceedings or otherwise as may be appropriate.

(2) For the purposes of paragraph (1), the court may direct any person to make any application and to conduct any proceedings and carry out any directions which the court may specify; and the court may, if it thinks fit and he consents, appoint the Official Solicitor to act as solicitor for the patient in the proceedings in the place of any solicitor previously acting for him.

Order for examination of patient

50. In any proceedings relating to a patient, a judge or Master may make an order for the patient's attendance at such time and place as he may direct for examination by the Master, a Visitor or any medical practitioner.

PART X AMENDMENT

Amendment of application

51.—(1) The court may allow or direct an applicant, at any stage of the proceedings, to amend his application in such manner and on such terms as to costs or otherwise as may be just.

(2) The amendment may be effected by making in writing the necessary alterations to the application, but if the amendments are so numerous or of such a nature or length that written alterations would make it difficult or inconvenient to read, a fresh application amended as authorised or directed may be issued.

Clerical mistakes and slips

52. The court may at any time correct any clerical mistakes in an order or direction or any error arising in an order or direction from any accidental slip or omission.

Endorsement of amendment

53. Where an application, order or direction has been amended under rule 51 or 52, a note shall be placed on it showing the date on which it was amended and the alteration shall be sealed.

PART XI REVIEWS AND APPEALS

Review of decision not made on an attended hearing

54.—(1) Any person who is aggrieved by a decision of the court that was made without an attended hearing may apply to the court within fourteen days of the date on which the decision was given to have the decision reviewed by the court.

(2) No review shall lie from any decision under rule 83 of these Rules.

(3) On considering an application for review the court may either confirm or revoke the previous decision or make any other order or decision which it thinks fit.

(4) Any person aggrieved by any order or decision of the court made on considering an application for review may apply to the court for an attended hearing.

Appeal from a decision made on an attended hearing

55.—(1) Any person aggrieved by a decision of the court made on an attended hearing may, within fourteen days from the date of entry of the order or (as the case may be) from the date of the decision, appeal to a nominated judge.

(2) The applicant shall within the fourteen days—

(a) serve a notice of appeal in Form C on—

(i) every person who appeared, or was represented before, the court when the order or decision was made or given, and

(ii) any other person whom the court may direct; and

(b) lodge a copy of the notice at the court office.

(3) The time and place at which the appeal is to be heard shall be fixed by the court and it shall cause notice of the time and place so fixed to be sent to the appellant who shall immediately send notice of it to every person who has been served with notice of the appeal.

(4) No evidence further to that given at the hearing shall be filed in support of or in opposition to the appeal without leave of the court.

PART XII

SECURITY

Receiver to give security

56.—(1) Where an order is made appointing a person other than an officer of the court or the Official Solicitor as receiver for a patient—

- (a) the person appointed shall, unless the court otherwise directs, give such security for the due performance of his duties as the court may approve and shall give it before acting as receiver unless the court allows it to be given subsequently; and
- (b) the order shall not be entered until the person appointed has given to the satisfaction of the court any security required to be given by him before acting.

(2) The court may from time to time vary or dispense with any security required.

Manner of giving security

57. Subject to any directions of the court, security may be given in any one of the following ways, or partly in one of those ways and partly in another—

- (a) by a bond approved by the court and given by the person giving security and also by—
 - (i) an insurance company, a group of underwriters or a bank approved by the court; or
 - (ii) with the approval of the court, two personal sureties; or
- (b) in such other manner as the court may approve.

Lodgement of security

58. Any security given by lodgment of money or stock shall be dealt with in accordance with the terms of the direction filed when the lodgment was made.

Discharge of security where new security given

59. Where a receiver is authorised or directed to give new security, and—

- (a) the new security has been completed; and
- (b) he has paid or secured to the satisfaction of the court any balance due from him,

the former security shall, unless the court otherwise directs, be discharged.

Maintenance of security by bond

60. Every person who has given security by a bond shall, whenever his accounts are passed, or the court so directs, satisfy the court—

- (a) that any premiums payable in respect of the bond have been duly paid;

(b) if the bond was given by personal sureties, that each surety is living and within the jurisdiction and has neither been adjudicated bankrupt nor compounded with his creditors, and, if the court is not so satisfied, it may require new security to be given or may give such other directions as it thinks fit.

PART XIII

ACCOUNTS

Passing of accounts

61.—(1) Every receiver shall—

- (a) annually;
- (b) on the death or recovery of the patient for whom he has been appointed receiver; and
- (c) at any other time that the court may direct

deliver his accounts to the court within such time and in such manner as the court shall direct.

(2) The receiver shall answer such requisitions on his accounts as the court shall raise and in such manner and in such time as the court shall direct.

(3) On the passing of any accounts the court shall make all proper allowances out of the patient's estate, including an allowance in respect of the reasonable and proper costs of the receiver in passing the accounts.

(4) The court may direct that a receiver need not account under this rule or may dispense with the passing of any accounts at any time at which they would otherwise require to be passed.

Application of balance due from receiver

62. The balance found due from a receiver on the passing of his accounts or so much of it as the court may direct, shall—

- (a) be paid by the receiver into court to the credit of the proceedings and invested in such manner as the court may direct, or
- (b) be invested or otherwise dealt with by the receiver in such manner as the court may direct.

Default by receiver

63. Where a receiver fails to comply with rule 61 or 62 or fails to pay into court or invest or otherwise deal with any money in accordance with any direction of the court, the court may disallow any remuneration which would otherwise be due to the receiver and, if he has made default in paying into court or investing or otherwise dealing with any money, may charge him with interest on it at such rate as the court may reasonably fix, for the period of his default.

Payment of maintenance and costs

64. Unless otherwise directed, any money ordered to be paid by a receiver for maintenance shall be paid out of income and any costs ordered to be paid by a receiver may, when agreed, assessed by way of detailed assessment or fixed, be paid out of any moneys coming into his hands, after providing for any maintenance and fees payable under these Rules.

Final accounts

65.—(1) Every receiver shall, on the death or recovery of the patient for whom he has been appointed receiver, deliver his final account to the court within such time and in such manner as the court shall direct.

(2) On the discharge or death of a receiver, the receiver, or in the case of his death, his personal representatives, shall deliver a final account to the court within such time as the court shall direct.

(3) The court shall pass the final account of a receiver from the date of the receiver's last account or, if no account of his has previously been passed, from the date of his appointment, unless in the opinion of the court the passing of such accounts may properly be dispensed with.

(4) If a balance is found due from a receiver or his estate, he or his personal representatives (as the case may be) shall pay it into court or otherwise deal with as the court may direct.

(5) If a balance is found due to the receiver or his estate, it shall be paid to him or his personal representatives (as the case may be) by the patient or out of the patient's estate.

(6) On payment of any balance found due from a receiver, or if no balance is found due from him or the passing of his accounts has been dispensed with under paragraph (1), the security of the receiver shall be discharged.

Accounting by other persons

66. Rules 63 to 65 shall also apply, to the extent directed by the court, to any person who is—

- (a) directed to deal with the patient's property or affairs under rule 8;
- (b) directed or otherwise authorised to act under rule 42(1)(a); or
- (c) appointed an interim receiver under rule 42(1)(b),

as they apply to a receiver.

PART XIV INQUIRIES

Inquiries as to desirability of appointment of receiver, etc

67.—(1) Where the court has reason to believe that a receiver should be appointed for a patient or that any other function of the court should be exercised with respect to the property and affairs of a patient, the court may direct—

- (a) a Medical or Legal Visitor, or, if he consents, the Official Solicitor or any other appropriate person to visit the patient and report to the court whether it is desirable in the interests of the patient that an application should be made for that purpose, and, in the case of a report by a Medical or Legal Visitor, whether there is any other matter which the court should consider before exercising its functions in relation to a patient's property and affairs; or
- (b) a Medical Visitor to visit the patient and report to the court on the capacity of the patient to manage and administer his property and affairs.

(2) On receiving any report pursuant to paragraph (1), the court may—

- (a) direct an application to be made pursuant to rule 11; or
- (b) if the report is by a Medical Visitor and the court is satisfied that the patient is incapable, by reason of mental disorder, of managing and administering his property and affairs, make an order appointing a receiver or exercising any other function with respect to the patient's property and affairs.

(3) The court may direct a General Visitor or any other appropriate person to visit the patient and report whether it is desirable for any functions in relation to the patient's property and affairs to be exercised.

(4) On receiving any report pursuant to paragraph (3)—

- (a) the court may direct that an application be made pursuant to rule 11; or
- (b) the court may exercise any function conferred on it in relation to a patient's property and affairs.

Inspection of a patient's property

68. For the purpose of any proceedings relating to the property of a patient—

- (a) the court may inspect the property or direct an officer of the court, the Official Solicitor (if he consents) or any other appropriate person to inspect the property, make any necessary enquiries and report to the court; and
- (b) the court may, if it thinks fit and of its own motion, make such an inspection and inquiries or direct some other appropriate person to do so and report to it.

Inquiries as to prior dealing with the patient's property

69. In any proceedings relating to a patient the court may make or cause to be made such inquiries as it thinks fit as to any dealing with the patient's property before the commencement of the proceedings and as to the patient's mental capacity at the time of such dealing.

Inquiries as to testamentary documents executed by patient

70. The court may make or cause to be made inquiries whether any person has in his possession or under his control or has any knowledge of any testamentary document executed by a patient, and may direct that person to answer the inquiries on oath and to produce any such document which is in his possession or under his control and to deal with it in such manner as the court may direct.

Power to direct other inquiries

71. The court may make or cause to be made any other inquiries which it or he may consider necessary or expedient for the proper discharge of its functions under the Act of these rules.

PART XV

CUSTODY AND DISPOSAL OF FUNDS AND OTHER PROPERTY

Statement of property retained or deposited

72. Where under a direction of the court any furniture or effects of a patient are allowed to remain in the possession of, or deposited with, any person, that person shall, unless the court otherwise directs, sign and file an inventory of the furniture or effects and an undertaking not to part with them during the patient's lifetime except on a direction under seal.

Stock in name of patient or receiver

73.—(1) Where any stock—

- (a) is standing in the name of a patient beneficially entitled to it; or

- (b) is standing in the name of a receiver in trust for a patient, or as part of his property, and the receiver dies intestate or himself becomes incapable by reason of mental disorder of acting as receiver, or is out of the court's jurisdiction, or it is uncertain whether he is still alive, or he neglects or refuses to transfer the stock or to receive and pay over the dividends as the court directs,

the court may order some proper person to transfer the stock into the name of the receiver or, as the case may be, a new receiver for the patient or into court or otherwise deal with it as the court may direct and also to receive and pay over the dividends as the court directs.

(2) Where an order made under paragraph (1) or under section 100 of the Act directing stock to be transferred into court, the person required to effect the transfer shall be—

- (a) in the case of stock standing in the stock register kept by the Bank of England or any other bank or by the Crown Agents for Overseas Governments and Administrations, some proper officer of the bank or Crown Agents;
- (b) in any other case, some proper officer of the company or other body whose stock is to be transferred,

and that person shall, if so ordered, receive any sum accrued due before the transfer by way of dividend, bonus or periodical payment in respect of the stock and pay it into court to the general account of the patient or to a separate account or otherwise deal with it as the court may direct.

Disposal of property on patient's recovery or death

74.—(1) On the recovery of a patient the court may order any money, securities or other property belonging to the patient, or forming part of his estate, or remaining under the control of, or held under the directions of the court, to be transferred to the person who appears to be entitled to it.

(2) On the death of a patient the court may direct any money, securities or other property belonging to the patient or forming part of his estate, remaining under the control of, or held under the direction of the court, to be transferred to the person who appears to be entitled to it.

(3) If no grant of representation has been taken out to the estate of a deceased patient and it appears to the court that the assets of the estate, after deduction of debts and funeral expenses, do not exceed £5,000 in value, the court may, if it thinks fit, provide for payment of the funeral expenses out of any funds in court standing to the credit of the deceased and order that any such funds, or the balance of them, or any other property of the patient remaining under the control, or held under the directions, of the court be paid, transferred, delivered or released (as appropriate) to the personal representative of the deceased when constituted or to the person who appears to be entitled to apply for a grant of representation to his estate.

(4) The court may at any time, pending notification to him 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 to the court.

PART XVI

COPIES OF DOCUMENTS

Copies of documents in court

75.—(1) Any person who has filed an affidavit or other document shall, unless the court otherwise directs, be entitled, on request, to be supplied with a copy of it.

(2) The person having the conduct of any proceedings shall, unless the court otherwise directs, be entitled, on request, to be supplied by the court with a copy of any order, certificate, authority, direction or other document made, given or prepared by the court in the proceedings.

(3) Any other person may, on request, be supplied with a copy of any such document as is mentioned in paragraph (1) or (2), if the court is satisfied that he has good reason for requiring it and that it is not reasonably practicable for him to obtain it from the person entitled to bespeak a copy from the court.

(4) Any copy of any document supplied under paragraphs (1), (2) or (3) shall, if so required, be marked as an office copy.

PART XVII

FEES

Appendix of fees

76.—(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 pursuant to the following provisions of this Part of these Rules.

(2) Subject to paragraph (3), the fee specified in the Appendix shall be taken in respect of proceedings governed by these Rules.

(3) The fee prescribed by rule 78 and contained in the corresponding provisions of the Appendix shall not be payable where an officer of the court has been appointed and is acting as receiver for the patient.

(4) Subject to paragraph (5), the person by whom any fee (other than a fee payable under rule 82) is payable shall, unless the court otherwise directs make the payment out of the income of the patient or, if dead, out of his estate.

(5) Where the payment of a fee is made by the Accountant General then, unless the court directs that payment is to be made out of the income of the fund, the Accountant General shall meet the fee from any cash sums held in court to the account of the patient.

Commencement fee

77. A commencement fee shall be payable on any first application for the appointment of a receiver in respect of any patient.

Administration fee

78.—(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 at such other times either during the proceedings or at their termination as the Court may direct;

(b) 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.

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

(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 made.

(3) 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.

(4) In any case in which it appears to the court that amount of the fee certified under this rule has been wrongly assessed, the court may direct that the fee is to be adjusted as it appears to it to be convenient.

(5) No administration fee shall be taken where the proceedings are terminated less than four weeks from the date of issue of the first application for the appointment of a receiver.

Transaction fee

79.—(1) A transaction fee shall be payable in respect of any order or direction or, as the case may be, any application for an order or direction to be made in exercise of the specific powers conferred by—

- (a) paragraphs (d), (e), (h) or (k) of section 96(1) of the Act;
- (b) section 100 of the Act;
- (c) sections 36(9) and 54 of the Trustee Act 1925; and
- (d) section 1(3) of the Variation of Trusts Act 1958⁽⁸⁾.

(2) A transaction fee shall be payable in respect of an application for authorisation of a person under section 20 of the Trusts of Land and Appointment of Trustees Act 1996⁽⁹⁾.

(3) In a special case, 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 a loan to, or repayment of a loan by, the patient), no account being taken of the possible capitalisation of the value of rents or interests or other income payments.

(4) Where a transaction is to be approved under an order or direction mentioned in paragraph (1), or authorisation is to be given as mentioned in paragraph (2), the fee shall be taken—

- (a) in a special case, upon the approval of the transaction;
- (b) otherwise, upon the making of the application for the order, direction or authorisation

and the court shall issue a certificate stating the amount payable.

(5) A transaction fee as specified in paragraph 3(4) of the Appendix shall be payable on application for the appointment of a new receiver.

(6) A transaction fee as specified in paragraph 3(5) of the Appendix shall be payable upon the making of the application for an order or direction to be made in exercise of the specific powers conferred by paragraph (b) of section 96(1) of the Act, offering or authorising the sale of any land as defined in the Law of Property Act 1925⁽¹⁰⁾.

(7) Except where the court otherwise directs, no fee shall be payable under this rule upon the sale or purchase of personal chattels or any investment for the time being authorised by law for the investment of trust property or in securities quoted on any stock exchange in the United Kingdom.

(8) In this rule—

- (a) “special case” means an order made by the court under paragraphs (d) or (h) of the Act or under section 1(3) of the Variation of Trusts Act 1958; and

⁽⁸⁾ 1958 c. 53.

⁽⁹⁾ 1996 c. 47.

⁽¹⁰⁾ 1925 c. 20. The definition of “land” in section 205(1)(x) was amended by Schedule 4 to the Trusts of Land and Appointment of Trustees Act 1996.

- (b) references to an application for an order or direction include (without limitation) an application for an order or direction made at the same time as a first application for the appointment of a receiver or other originating process.

Fee on detailed assessment of costs

80. A fee is payable in respect of the detailed assessment of costs and on an appeal against a decision made in a detailed assessment of costs.

Receivership fees

81.—(1) An appointment fee shall be payable, as set out in paragraph 5 of the Appendix, upon the appointment of an officer of the court as receiver for a patient.

(2) In cases where an officer of the court is receiver a receivership administration fee shall be payable—

- (a) on the first and every subsequent anniversary of the date of his appointment as receiver, until the termination of the proceedings, and at such other times either during the proceedings or at their termination as the court may direct;
- (b) 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.

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

- (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 made.

(4) No administration fee shall be taken where the proceedings are terminated less than four weeks from the date of issue of the first application for the appointment of a receiver.

Winding up fee

82. A winding up fee shall be payable on the death of a patient in cases where a receiver has been appointed.

Remission and postponement

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

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

PART XIII

COSTS

Costs generally

84.—(1) All costs incurred in relation to proceedings under these Rules and not provided by way of remuneration under rule 43, shall be in the discretion of the court and it may order or direct them

to be paid by the patient or charged on or paid out of his estate by any other person attending or taking part in the proceedings.

(2) Every order made or direction given under paragraph (1) shall be enforceable in the same manner as an order as to costs made by the High Court.

(3) An order or direction that costs incurred during the lifetime of a patient be paid out of or charged on his estate may be made within six years after his death.

Applications under sections 36(9) and 54 of the Trustee Act 1925

85. The court may make any such order with respect of the costs of an application under section 36(9) or 54 of the Trustee Act 1925 as the High Court could make under section 60 of that Act in relation to any matter referred to in that section.

Civil Procedure rules to apply

86.—(1) Subject to the provisions of these Rules, Parts 43, 44, 47 and 48 of the Civil Procedure Rules 1998⁽¹¹⁾ (“the 1998 Rules”) shall apply, with the modification in paragraph (2) and such other modifications as may be necessary, to costs incurred in relation to proceedings under these Rules as they apply to costs incurred in relation to proceedings in the High Court.

(2) The modifications referred to in paragraph (1) are—

(a) in rule 43.2(1)(c) of the 1998 Rules, costs officer shall include—

(i) a judge;

(ii) the Master;

(b) in rule 43.2(1)(d) of the 1998 Rules, authorised court officer shall include an officer of the court;

(c) rule 44.3(2) of the 1998 Rules (costs follow the event) does not apply;

(d) rules 44.9 to 44.12 of the 1998 Rules (costs on small claims and fast tracks and on track allocation or reallocation) do not apply;

(e) rules 48.1 to 48.3 (costs payable by or to particular persons) and 48.7 to 48.10 (costs relating to solicitors and other legal representatives) of the 1998 Rules do not apply.

Costs of unnecessary employment of solicitor, etc not to be allowed

87.—(1) No receiver for a patient, other than the Official Solicitor, shall, unless authorised by the court, be entitled at the expense of the patient’s estate to employ a solicitor or other professional person to do any work not usually requiring professional assistance. Where two or more persons having the same interest in relation to the matter to be determined attend any hearing by separate legal representatives, they shall not be allowed more than one set of costs of that hearing unless the court certifies that the circumstances justify separate representation.

Costs of Official Solicitor

88. Any costs incurred by the Official Solicitor in relation to proceedings under these Rules or in carrying out any directions given by the court, and not provided for by remuneration under rule 43, shall be paid by such person on or out of such funds as the court may direct.

⁽¹¹⁾ S.I. 1998/3132 as amended by S.I. 1999/1008, 2000/221, 2000/940, 2000/1317 and 2000/2092.

Ascertainment of costs not relating to the proceedings

89. Where in any proceedings relating to a patient a claim is made against his estate in respect of any costs alleged to have been incurred by him or on his behalf or otherwise than in relation to proceedings, the court may refer the claim to a costs judge of the Supreme Court so that the amount due to the claimant may be ascertained by him or under his direction.

PART XIX

APPROVAL OF DEEDS

Approval of deeds

90. The seal of the court on any deed or other document shall be evidence that its terms have been approved by the court.

PART XX

TRANSITIONAL PROVISIONS

Transitional provisions

91.—(1) Where any matter is pending before the Public Trustee before the coming into force of these Rules, which, by virtue of these Rules relates to a function exercised by the court, the court shall decide the matter in accordance with these Rules.

(2) Where any review or appeal is pending before the court or the Public Trustee before the coming into force of these Rules, it shall be dealt with in accordance with the provisions of these Rules.

PART XXI

REVOCATION

Revocation of previous rules

92. The Court of Protection Rules 1994(12), the Court of Protection (Amendment) Rules 1999(13) and the Court of Protection (Amendment) Rules 2000(14) are hereby revoked.

Dated 1st March 2001

Irvine of Lairg, C

(12) S.I. 1994/3046.

(13) S.I. 1999/2504.

(14) S.I. 2000/2025.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

We consent

Dated 6th March 2001

Jim Dowd
Greg Pope
Two of the Lords Commissioners of Her
Majesty's Treasury

APPENDIX

Rule 76

COURT OF PROTECTION FEES

Column 1	Column 2
Commencement fee (rule 77)	£230.00
1. On the first application for the appointment of a receiver.	
Administration fee (rule 78)	£205.00
2. Annually from the appointment of a receiver.	
Transaction fee (rule 79)	£50.00 or, in a “special case” ¼% of the pecuniary consideration as referred to in rule 79 if greater than £50.00
3. —	
(1) On any order (or, as the case may be, on any approval given by the court under an order) or, as the case may be, on any application for such an order or approval, made by the court in the exercise of powers conferred by:—	
(i) the following paragraphs of section 96(1) of the Act:—	
(d) (settlement or gift of property)	
(h) (carrying out of contract) or	
(ii) section 1(3) of the Variation of Trusts Act 1958 (variation of trusts for the benefit of patient) provided that no fee under subparagraph (i) or (ii) shall be taken if the property is worth less than £50.00 and no such fee shall exceed £500.00	
(iii) section 100 of the Act vesting of stock in curator appointed outside England and Wales)	£50.00
(iv) section 96(1)(k) of the Act (exercise of powers)	£110.00
(v) section 54 of the Trustee Act 1925 (concurrent jurisdiction with High Court over trusts)	£110.00
(vi) section 20 of the Trusts of Land and Appointment of Trustees Act 1996 (authorisation of person to act as trustee).	£110.00
(2) On an application for an order or direction to be made by the court in exercise of the powers conferred by section 36(9) of Trustee Act 1925 (appointment of trustees).	£110.00

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Column 1	Column 2
(3) On an application for an order or authority to be made by the court under section 96(1)(e) of the Act (execution of will).	£475.00
(4) On the application for the appointment of a new receiver.	£175.00
(5) On an application for an order or direction under section 96(1)(b) of the Act ordering or authorising the sale of any land.	£145.00
<i>Detailed assessment of costs (rule 80)</i>	£160.00
4. —	
(1) On the filing of a request for a detailed assessment of costs.	
(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.	£50.00
<i>Receivership fees (rule 81)</i>	£250.00
5. On the appointment of an officer of the court as receiver.	
6. Receivership administration fee: annually from the anniversary of the appointment of an officer of the court as receiver.	£1,750.00
<i>Winding up fee (rule 82)</i>	£1,015.00
7. On the death of a patient:	
(a) where an officer of the court has been appointed receiver	
(b) (b) otherwise.	£125.00

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM C: NOTICE OF APPEAL

COURT OF PROTECTION

20 No

Rule 55

IN THE MATTER OF.....

.....A PATIENT

I.....

Of.....

Wish to appeal to a Judge against the order/decision* of the court made in this matter on the.....day of.....

20..... that:

.....
.....
.....
.....

NOTES
If you are appealing against only part of the order/decision write down which part

* Delete whichever does not apply

I intend to ask that the order/decision* may be:

- a. discharged*
- b. varied in the following way:*

.....
.....
.....

Give details of new order/decision you are asking to be made

YOU WILL BE SENT NOTICE OF THE TIME, DATE AND PLACE OF THE HEARING OF THIS APPEAL

Signed.....Appellant

Date.....

.....Solicitors for the

Appellant of:.....

.....
.....

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM B: WITNESS SUMMONS
COURT OF PROTECTION

20 No

Rule 48

IN THE MATTER OF.....

.....A PATIENT

To.....

Of.....

You are ordered to attend before

.....

at.....

.....

on the.....day of.....20.....

at.....o'clock, to:

- a. give evidence in this matter
- b. bring with you and produce at the hearing the documents listed below:

.....

.....

.....

.....

.....

.....

.....

Date.....

THIS SUMMONS WAS ISSUED AT THE REQUEST OF

.....

.....SOLICITORS FOR

THE.....

Of.....

.....

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

FORM A: GENERAL FORM OF APPLICATION

COURT OF PROTECTION

20 No:

IN THE MATTER OF
.....A PATIENT

I.....
Of.....

.....
.....

Apply to the Court of Protection for an order that:

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

and for any directions which are necessary as a result of my application

Applicant's signature.....

Date.....

OR Solicitors for the applicant.....

Of.....

TO BE COMPLETED BY THE COURT

THE COURT WILL CONSIDER THIS APPLICATION ON THE.....DAY
OF.....20.....AT.....O'CLOCK

NOTES
Where the application is one to which rules 15, 17 or 18 applies give details of your authority to make the application e.g. Receiver, Trustee, etc.

Give details of the order you are asking the Court to make

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules replace the Court of Protection Rules 1994 (as amended). They regulate the procedure in respect of applications made under the Mental Health Act 1983.

The principal changes made by the Rules are:—

- (a) The provision that such applications are to be made to the Court of Protection (“the Court”) whereas the previous rules provided for a division of functions between the Court and the Public Trustee;
- (b) The requirement for the Court to review a Patient’s case from time to time where a medical certificate provided to it has expressed an opinion that there is a possibility of the Patient’s mental recovery (rule 35(2));
- (c) The requirement that the current administration fee, which is payable on the first and every subsequent anniversary of the appointment of a Receiver until the termination of the proceedings, shall also be payable at such other times during the proceedings or at their termination as the Court may direct and that where the period for which the fee is payable is less than one year the fee payable shall be the proportion of the full fee as that period bears to one year (rule 78); and
- (d) The requirement that the current receivership fees, which were formerly payable on the appointment of the Public Trustee as Receiver for a Patient and at such times as the Public Trustee considered convenient, will now be payable on the appointment of an officer of the Court as Receiver for a Patient, on the first and every subsequent anniversary of his appointment and at such other times during the proceedings or at their termination as the Court may direct and where the period for which the fee is payable is less than one year the fee payable shall be the proportion of the full fee as that period bears to one year (rule 81).

The Rules continue to contain provisions which:—

- (a) provide that any function under them expressed to be exercisable by the Court may be exercised by a judge, the Master of the Court or, in certain cases, by an officer of the Court (rule 3);
- (b) Specify the information to be provided on a first application for the appointment of a Receiver and require that an application to the Court in respect of the exercise of any of its other jurisdiction to be made by letter or, if the Court so directs, in specified form (rule 7);
- (c) Provide for the Court to make a short order or direction without appointing a Receiver in certain cases (rule 8);
- (d) Enable the Court to direct an officer of the Court or the Official Solicitor to make an application for the appointment or discharge of a Receiver, or for a direction relating to the exercise of any other function relating to a Patient’s property and affairs, where it appears to the Court that there is no other suitable person willing to make the application (rule 11);
- (e) Enable the Court, where it considers that the interests of the Patient are not adequately represented in any proceedings, to direct the Official Solicitor to act as solicitor for the Patient in any of those proceedings (rule 13);
- (f) Specify those persons who can apply to the Court for an order for the settlement or gift of a Patient’s property or for the execution of a Patient’s Will (rule 18);

- (g) Provide for the service of notice of the hearing of an application to the Court (rules 19 to 23) and for the notification of an application for the appointment of a Receiver and of an intention to make such an application (rules 24 and 25);
- (h) Specify the evidence to be filed on a first application for the appointment of a Receiver or for a short order or direction (rule 34);
- (i) Regulate hearings before the Court (rule 37 to 41);
- (j) Provide for the appointment of interim Receivers and for the remuneration of a Receiver (rules 42 and 43);
- (k) Provide for the issuing of witness summonses (rule 48);
- (l) Enable the Court, if it is dissatisfied with the conduct of any proceedings or the carrying out of an order (whether or not because of undue delay) to require a person to appear before it to explain the delay or other cause of its dissatisfaction (rule 49);
- (m) Provide for reviews of, and appeals from, decisions of the Court (rules 54 and 55);
- (n) Provide for the giving of security by a Receiver (other than where the Receiver is an officer of the Court or the Official Solicitor) (rules 56 to 60);
- (o) Require a Receiver to deliver accounts to the Court annually, on the death or recovery of the Patient and at any other time that the Court directs and to answer any requisitions raised by the Court on such accounts (rules 61 and 65);
- (p) Enable the Court to make inquiries as to the desirability of the appointment of a person as a Receiver (rule 67) and as to testamentary documents which may have been executed by a Patient (rule 70);
- (q) Require a commencement fee to be paid on the first application for the appointment of a Receiver (rule 77) and a transaction fee to be paid in respect of an order or direction made by the Court under certain statutory provisions (rule 79);
- (r) Require a fee to be paid in respect of a detailed assessment of costs (and on an appeal against a decision made in such an assessment) (rule 82);
- (s) Relate to the Court's discretion as to costs in proceedings before it (rule 85) and to the disallowance of certain unnecessary costs (rule 87)

The fees specified in the Rules remain the same as in the previous rules (Rule 76 and Appendix)