

2001 No. 2977

MENTAL HEALTH, ENGLAND AND WALES

The Court of Protection (Amendment) Rules 2001

<i>Made</i> - - - - -	<i>25th August 2001</i>
<i>Laid before Parliament</i>	<i>30th August 2001</i>
<i>Coming into force</i> - -	<i>1st October 2001</i>

The Lord Chancellor, in exercise of the powers conferred upon him by sections 106, 107 and 108 of the Mental Health Act 1983(a), makes the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Court of Protection (Amendment) Rules 2001 and shall come into force on 1st October 2001.

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

Amendments to Court of Protection Rules 2001

2. In rule 2(1)—
 - (a) after the definition of “medical certificate” the following definition shall be inserted—

““nominated officer” means an officer nominated by the Lord Chancellor under section 93(4) of the Act to act for the purposes of Part VII of the Act;”;
 - (b) in the definition of “stock”, for “in any fund” there shall be substituted “and also any fund”.
3. In rule 8(1)(a), for “£10,000” there shall be substituted “£16,000”.
4. In rule 12(1), for “(c), (d) and (e)” there shall be substituted “(c), (d), (e) and (f)”.
5. For rule 24(1) there shall be substituted—

“(1) In the following paragraphs of this rule, “relevant application” means an application for any order, direction or certificate exercising the court’s jurisdiction in respect of a patient, including an application for the appointment of a receiver.

(1A) Subject to paragraph (1B), where a relevant application is made, the applicant, or such other person as the court may direct, shall give notice to the patient in accordance with paragraphs (1D) to (1F).

(a) 1983 c. 20.
(b) S.I. 2001/824.

(1B) Subject to paragraph (1C), paragraph (1A) shall not apply where a relevant application (“the previous relevant application”) has already been made in respect of the same patient, unless there has been any finding by the court since the previous relevant application was made that the patient is capable of managing and administering his property and affairs.

(1C) Paragraph (1A) shall in any case apply where the relevant application referred to in that paragraph is a first application for the appointment of a receiver.

(1D) Notice under paragraph (1A) shall consist of notice—

- (a) that an application has been made;
- (b) of the effect, if made, of—
 - (i) the appointment of a receiver, in the case of a first application for appointment of a receiver; or
 - (ii) such other order, direction or certificate as may have been applied for;
- (c) of the identity of the applicant and, if different, that of any proposed receiver;
- (d) of any hearing fixed by the court; and
- (e) of such other information as the court may direct.

(1E) Notice under paragraph (1A) shall be given to the patient personally.

(1F) Where the court has fixed a hearing, the time limits set out in rule 19(5) shall apply to the giving of notice under paragraph (1A).”.

6.—(1) For rule 26(1) there shall be substituted—

“(1) A certificate of service shall be filed as soon as practicable after service of a document has been effected in accordance with these Rules—

- (a) in the case of notice given under rule 24(1A), unless the court directs otherwise;
- (b) otherwise, if the court so directs.

(1A) A certificate of service under paragraph (1) shall show where, when, how and by whom service was effected and, in relation to a notice given under rule 24(1A), shall also contain a certificate as to whether or not the patient appeared, to the person giving it, to understand the notice.”.

(2) In rule 26(2), for “paragraph (1)” there shall be substituted “paragraphs (1) and (1A)” and for “that paragraph” there shall be substituted “those paragraphs”.

(3) After rule 26(2) there shall be inserted—

“(3) References in paragraphs (1) and (1A) to notice given under rule 24(1A) shall be taken not to include such notice when it is given to a parent, guardian or person with parental responsibility in accordance with rule 24(2).”.

7. In rule 27(2)(a), for the words “of, or above, the rank of higher executive officer” there shall be substituted “so authorised by the Master”.

8. In rule 44, after “the court” and before “when appointing them receivers” there shall be inserted “may”.

9. In rule 46(1)(b), before “rule 8” there shall be inserted “is made”.

10. In rule 54(4), after “application for review may” there shall be inserted “, within fourteen days of the date on which the order was made or decision given,”.

11. In rule 65(4), after “deal with” there shall be inserted “it”.

12. In rule 71—

- (a) “or he” shall be deleted; and
- (b) for “of these rules” there shall be substituted “or these Rules”.

13. In rule 73(2), after “Where an order” there shall be inserted “is”.

14. In rule 74(4), for “to him” there shall be substituted “to it”.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make amendments to the Court of Protection Rules 2001 (S.I. 2001/824).

Rule 8(1)(a) of the 2001 Rules is amended so that the court may make a short order or direction if it appears that the property of the patient does not exceed £16,000 in value, rather than £10,000 (*rule 3*).

Rule 24 of the 2001 Rules is amended so that, unless the court directs otherwise, notice must be given to the patient where an application for any order, direction or certificate is made unless an application has already been made in respect of the same patient, but so that, in any case, notice must be given of a first application to appoint a receiver (*rule 5*). Where such notice is given, a certificate must be filed with the court to that effect (unless the court directs otherwise), which must include a certificate as to whether or not the patient understood the notice (*rule 6*).

There are a number of other minor amendments.

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