

1967 No. 748 (L. 4)

SUPREME COURT OF JUDICATURE, ENGLAND

PROCEDURE

The Non-Contentious Probate (Amendment) Rules 1967

<i>Made</i> - - - -	12th May 1967
<i>Laid Before Parliament</i>	19th May 1967
<i>Coming into Operation</i>	3rd July 1967

I, the Right Honourable Sir Jocelyn Simon, President of the Probate, Divorce and Admiralty Division of the High Court of Justice, in exercise of the powers conferred upon me by section 100 of the Supreme Court of Judicature (Consolidation) Act 1925(a), and with the concurrence of the Lord Chancellor and the Lord Chief Justice, do hereby make the following Rules:—

1. These Rules may be cited as the Non-Contentious Probate (Amendment) Rules 1967 and shall come into operation on 3rd July 1967.

2. The following amendments shall be made to the Non-Contentious Probate Rules 1954(b) as amended(c):—

(1) In paragraph (2) of rule 2 (which provides for the interpretation of the Rules), for the definition of “registrar”, there shall be substituted the following definition:—

“ ‘Registrar’ means a registrar of the principal registry and includes—

- (i) (except in rules 45 and 46) in relation to an application for a grant made or proposed to be made at a district probate registry, and
- (ii) in rules 24 and 42, in relation to a grant issued from a district probate registry,

the registrar of the registry in question”.

(2) In paragraph (4) of rule 9 (which relates to engrossments for the purposes of record), the word “facsimile” shall be omitted and, for the word “reproduced”, there shall be substituted the word “underlined”.

(3) In paragraph (3) of rule 10 (which relates to evidence as to due execution of a will), the proviso shall be omitted.

(4) For rule 22 (which relates to the rights of an assignee to a grant), there shall be substituted the following rule:—

“22.—(1) Where all the persons entitled to the estate of the deceased (whether under a will or on intestacy) have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall replace, in the order of priority for a grant of administration, the assignor or, if there are two or more assignors, the assignor with the highest priority.

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(a) 1925 c. 49.

(b) S.I. 1954/796 (1954 II, p. 2202).

(c) The only relevant amending instrument is S.I. 1962/2653 (1962 III, p. 3619).

(2) Where there are two or more assignees, administration may be granted with the consent of the others to any one or more (not exceeding four) of them.

(3) In any case where administration is applied for by an assignee, a copy of the instrument of assignment shall be lodged in the registry”.

(5) In rule 23 (which relates to the joinder of administrators), for the words “by summons to a registrar of the principal registry” where they occur in paragraphs (1) and (2), there shall be substituted the words “to a registrar and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the registrar may require”, and paragraph (3) shall be omitted.

(6) In rule 24 (which relates to additional personal representatives), for the words in paragraph (1) “by summons to a registrar of the principal registry”, there shall be substituted the words “to a registrar”, and paragraph (2) shall be omitted.

(7) In rule 25 (which relates to grants where two or more persons are entitled in the same degree), the following paragraph shall be added after paragraph (3):—

“(4) If the issue of a summons under this rule is known to a registrar, he shall not allow any grant to be sealed until such summons is finally disposed of”.

(8) For rule 27 (which relates to persons having *spes successionis*), there shall be substituted the following rule:—

“27. When the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his right to a grant and has consented to administration being granted to the person or persons who would be entitled to his estate if he himself had died intestate, administration may be granted to such person or one or more (not exceeding four) of such persons;

Provided that a surviving spouse shall not be regarded as a person in whom the estate has vested absolutely unless he would be entitled to the whole of the estate, whatever its value may be”.

(9) In rule 28 (which relates to grants in respect of settled land), paragraph (3)(ii) shall be omitted.

(10) In rule 29 (which relates to grants where the deceased died domiciled outside England), for the words “an application may be made to a registrar of the principal registry for an order for a grant”, there shall be substituted the words “a registrar may order that a grant do issue”, and for the word “application” in the proviso there shall be substituted the word “order”.

(11) In rule 30 (which relates to grants to attorneys), the figure “(1)” shall be inserted at the beginning of the rule and the following paragraph shall be added at the end of the rule:—

“(2) Where a registrar is satisfied by affidavit that it is desirable for a grant to be made to the lawfully constituted attorney of a person entitled to a grant of administration and resident in England, he may direct that administration be granted to such attorney for the use and benefit of such person, limited until such person shall obtain a grant or in such other way as the registrar may direct”.

(12) In rule 31 (which relates to grants on behalf of infants), at the beginning of paragraph (1)(a) there shall be inserted the words “to both parents of the infant jointly or”, and the words “of the principal registry” shall be omitted where they occur in paragraphs (3), (5) and (6).

(13) In rule 33 (which relates to grants in cases of mental or physical incapacity), the following subparagraph shall be substituted for paragraph (1)(b):—

“(b) where there is no person so authorised, or in the case of physical incapacity—

- (i) if the person incapable is entitled as executor and has no interest in the residuary estate of the deceased, to the person entitled to such estate;
- (ii) if the person incapable is entitled otherwise than as executor or is an executor having an interest in the residuary estate of the deceased, to the person who would be entitled to a grant in respect of his estate if he had died intestate;

or to such other person as a registrar may by order direct.”;

and at the beginning of paragraph (2), and after the word “shall” in paragraph (4), there shall be inserted the words “unless a registrar otherwise directs”.

(14) In rule 35 (which relates to the renunciation of probate and administration), the words “of the principal registry” shall be omitted in paragraphs (2) and (3), and the following paragraph shall be added after paragraph (3):—

“(4) A direction or order under this rule may be made by either the registrar of a district probate registry where the renunciation is filed or a registrar of the principal registry”.

(15) In rule 38 (which relates to administration bonds), in paragraph (1) the words from “and, in the case” to the end of the paragraph shall be omitted; in paragraph (2), for the figure “£50” there shall be substituted the figure “£500”; and in paragraph (5), for the words “unless otherwise directed by order of a registrar of the principal registry”, there shall be substituted the words “unless a registrar otherwise directs”.

(16) In rule 39 (which relates to particulars of the estate to be filed), for the words “so requires” in paragraph (g), there shall be substituted the words “thinks fit”, and for the words from “a declaration on oath” to the end of the rule there shall be substituted the following words:—

“the registrar may require that a declaration on oath by the applicant for the grant, setting out particulars of the estate of the deceased, be filed in the registry and that every surety to the administration bond do justify”.

(17) In rule 42 (which relates to the amendment and revocation of grants), the words “of the principal registry” shall be omitted.

(18) In rule 44 (which relates to caveats), in paragraph (2) the words “district probate” shall be omitted; in paragraph (7), after the words “every warning”, there shall be inserted the words “or a copy thereof”; and for paragraph (12) there shall be substituted the following two paragraphs:—

“(11A) Upon the commencement of a probate action the principal probate registrar shall, in respect of each caveat then in force (other than a caveat entered by the plaintiff), give to the caveator notice of the commencement of the action and, upon the subsequent entry of a caveat at any time when the action is pending, shall likewise notify the caveator of the existence of the action.

(12) Unless a registrar of the principal registry by order made on summons otherwise directs—

- (a) any caveat in force at the commencement of proceedings by way of citation or motion shall, unless withdrawn pursuant to paragraph (8)

of this rule, remain in force until an application for a grant is made by the person shown to be entitled thereto by the decision of the court in such proceedings, and upon such application any caveat entered by a party who had notice of the proceedings shall cease to have effect;

- (b) any caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action;
- (c) the commencement of a probate action shall, whether or not any caveat has been entered, operate to prevent the sealing of a grant (other than a grant under section 163 of the Act) until application for a grant is made by the person shown to be entitled thereto by the decision of the court in such action, and upon such application any caveat entered by a party who had notice of the action, or by a caveator who was given notice under paragraph 11A of this rule, shall cease to have effect”.

(19) In rule 46 (which relates to citations to accept or refuse or to take grants), at the end of paragraphs (5)(c) and (7)(c) there shall be added the words “or for a grant to himself or to some other person specified in the summons”.

(20) In rules 50 and 51 (which relate respectively to limited grants and to discretionary grants and grants *ad colligenda bona*), for the words “shall, where the gross value of the estate wherever situated (excluding any trust estate) does not exceed £3,000, be made to a registrar of the principal registry, and shall in any other case be made by summons to a judge”, there shall be substituted the words “may be made to a registrar”.

(21) For rule 52 (which relates to applications for leave to swear to the death of any persons), there shall be substituted the following rule:—

“52. An application for leave to swear to the death of a person in whose estate a grant is sought may be made to a registrar and shall be supported by an affidavit setting out the grounds of the application and containing particulars of any policies of insurance effected on the life of the presumed deceased”.

(22) In paragraph (1) of rule 53 (which relates to grants in respect of nuncupative wills and of copies of wills), for the words “to the court on motion or to a registrar of the principal registry”, there shall be substituted the words “to a registrar”.

(23) Rule 55 (which relates to applications for orders where a case is pending in a district probate registry) shall be omitted.

(24) In rule 59 (which relates to the taxation of costs), for the words “Solicitors Act 1932”, there shall be substituted the words “Solicitors Act 1957”(a).

(25) For rule 60 (which relates to the powers of a registrar to require an application to be made by summons or on motion), there shall be substituted the following rule:—

“60.—(1) A registrar may require any application to be made by summons to a registrar or a judge or to the court on motion.

(2) A summons for hearing by a registrar shall be issued out of the principal registry and heard by a registrar of that registry.

(3) A summons to be heard by a judge shall be issued out of the principal registry”.

(26) In rule 62 (which relates to appeals from registrars), paragraph (1) shall be omitted; in paragraph (2) the words "of the principal registry" shall be omitted; and in paragraph (3), for the words "either of the two last foregoing paragraphs", there shall be substituted the words "the last foregoing paragraph".

(27) In rule 66 (which relates to time), for the words "Order 64" there shall be substituted the words "Order 3 and Order 65, rule 7" and for the words "that Order" there shall be substituted the words "the former Order".

(28) The following amendments shall be made to the forms in Schedule 1:—

(a) in marginal note (13) in Form 1 (which is the prescribed form of administration bond), the words "in the case of the intended administrator, the bond must, unless attested by an authorised officer of a registry, be attested by the person before whom the oath was sworn" shall be omitted;

(b) in marginal note (6) in Form 2 (which is the prescribed form of administration bond on an application for resealing under the Colonial Probates Acts), the words "where the application requires to be supported by an oath sworn by the applicant, the signature must, unless attested by an authorised officer of a registry, be attested by the person before whom the oath was sworn" shall be omitted.

Dated 10th May 1967.

*J. E. S. Simon, P.*

We concur

Dated 12th May 1967.

*Gardiner, C.*

Dated 12th May 1967.

*Parker of Waddington, C.J.*

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### EXPLANATORY NOTE

*(This Note is not part of the Rules.)*

These Rules amend the Non-Contentious Probate Rules 1954 by (a) extending the discretionary powers of district probate registrars to make orders and give directions; (b) removing the financial limits on the value of estates in respect of which certain orders may be made by registrars; and (c) making a number of miscellaneous amendments.

The additional powers conferred by the Rules on a district probate registrar extend to, among other matters, the following: refusal of probate of a will on the grounds of non-execution, without requiring the evidence of attesting witnesses (rule 10); the joinder of an administrator (rule 23); the addition of a personal representative (rule 24); the issue of a grant where the deceased was domiciled outside England (rule 29), or on behalf of an infant (rule 31), or where the person entitled is incapable (rule 33), or where there has been a renunciation (rule 35); the admission to proof of nuncupative wills, or testamentary documents of which the originals have been lost (rule 53).

The amendments to rules 50, 51 and 52 enable either a district probate registrar or a registrar of the principal probate registry to make certain special grants, or to give leave to swear to the death of any person, irrespective of the value of the estate.

The amendment to rule 60 empowers a registrar to direct that any application be made by summons or on motion, and provides that any summons to a registrar is to be heard by a registrar of the principal registry; the amendment to rule 62 abolishes the right of appeal from a district probate registrar to a registrar of the principal registry, and confers a right of appeal to a judge.

In addition, the amendment to rule 22 makes provision for the grant of administration to one or more assignees to whom the persons interested in an estate have assigned their whole interest; the amendment to rule 30 enables a grant to be made, where a registrar is satisfied that this is desirable, to the holder of a power of attorney notwithstanding that his principal is resident in England; the amendments to rule 31 enable a grant to be made jointly to both parents of an infant who would, but for his infancy, be entitled to a grant and empower a district probate registrar to make grants on behalf of infants; the amendment to rule 38 raises from £50 to £500 the limit on the value of an estate in respect of which only one surety is required to an administration bond; the amendment to rule 39 gives a registrar discretion to dispense with a declaration on oath by an applicant for a grant, setting out the particulars of the estate, or justification by any surety to an administration bond. The amendments to rule 44 enable a caveat to be entered by post at the principal registry and require the principal probate registrar to give to caveators notice of the commencement or existence of a probate action.

There are a number of other minor drafting and consequential amendments. The Rules come into force on 3rd July 1967.