
STATUTORY INSTRUMENTS

1991 No. 1876 (L.26)

SUPREME COURT OF ENGLAND AND WALES

The Non-Contentious Probate (Amendment) Rules 1991

Made - - - - *17th August 1991*
Laid before Parliament *30th August 1991*
Coming into force - - *14th October 1991*

The President of the Family Division, in the exercise of the powers conferred on him by section 127 of the Supreme Court Act 1981(1), with the concurrence of the Lord Chancellor, hereby makes the following Rules:—

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Non-Contentious Probate (Amendment) Rules 1991 and shall come into force on 14th October 1991.

(2) In these Rules, unless a contrary intention appears, a provision referred to by number alone means the provision so numbered in the Non-Contentious Probate Rules 1987(2).

CONSEQUENTIAL AMENDMENTS

Amendments consequential upon the Children Act 1989(3)

2. In rule 2(1), the definitions of “statutory guardian” and “testamentary guardian” shall be omitted.

3. In rule 32(1), for the words from “the parents of the minor jointly” to “competent jurisdiction” there shall be substituted the words—

- “(a) a parent of the minor who has, or is deemed to have, parental responsibility for him in accordance with—
- (i) section 2(1), 2(2) or 4 of the Children Act 1989,
 - (ii) paragraph 4 or 6 of Schedule 14 to that Act, or
 - (iii) an adoption order within the meaning of section 12(1) of the Adoption Act 1976(4), or

(1) 1981 c. 54.

(2) S.I.1987/2024.

(3) 1989 c. 41.

(4) 1976 c. 36; section 12 was amended by the Children Act 1989, paragraph 3 of Schedule 10.

(b) a guardian of the minor who is appointed, or deemed to have been appointed, in accordance with section 5 of the Children Act 1989 or in accordance with paragraph 12, 13 or 14 of Schedule 14 to that Act”.

4. The following shall be substituted for rule 32(2):

“(2) A district judge or registrar may by order appoint a person to obtain administration for the use and benefit of the minor, limited as aforesaid, in default of, or jointly with, or to the exclusion of, any person mentioned in paragraph (1) of this rule; and the person intended shall file an affidavit in support of his application to be appointed.”.

5. In rule 34(2) for the words “assigned as guardian” there shall be substituted the word “appointed”.

Amendments consequential upon section 74 of the Courts and Legal Services Act 1990 (District judges)(5)

6. In rule 2(1)–

(a) after the definition of “the Crown” there shall be inserted the following definition:

““district judge” means a district judge of the Principal Registry;”;

(b) after the definition of “gross value” there shall be inserted the following definition:

““judge” means a judge of the High Court;”;

(c) for the definition of “registrar” there shall be substituted the following definition:

““registrar” means the district probate registrar of the district probate registry–

(i) to which an application for a grant is made or is proposed to be made,

(ii) in rules 26, 40, 41 and 61(2), from which the grant issued, and

(iii) in rules 46, 47 and 48, from which the citation has issued or is proposed to be issued;”;

(d) for the definition of “the Senior Registrar” there shall be substituted the following definition:

““the senior district judge” means the Senior District Judge of the Family Division or, in his absence, the senior of the district judges in attendance at the Principal Registry;”.

7.—(1) In the following provisions before the word “registrar”, wherever it appears, there shall be inserted the words “district judge or”:

rule 2(2);

rule 5(3)(c), (4), (5) and (7);

rule 6(1) and (2) and the heading to that rule;

rule 8(1) and (2);

rule 10(2);

rule 11(1);

rule 12(1), (2) and (3);

rule 13;

rule 14(1), (2), (3) and (4);

rule 16;

rule 17(2);
rules 18 and 19;
rule 20(c) and (e);
rule 25(2) and (3);
rule 26(1) and (2);
rule 27(3), (5), (6) and (8);
rule 30(1)(b) and (c) and (2);
rule 31(1) and (2);
rule 32(1) and (3);
rule 34(2);
rule 35(1), (2), (3) and (4);
rule 36(3);
rule 37(2) and (3);
rule 38;
rule 39(3), (4) or (6);
rule 40;
rule 41(1);
rule 44(1), (4), and (7);
rule 46(1), (2), (4) and (5);
rule 47(4), (5) and (7);
rule 48(2);
rule 50(1) and (2);
rules 51, 52, 53, 54 and 55;
rules 58 and 59;
rules 61 and 62;
rules 65 and 66(2); and
rules 67 and 68.

(2) In rules 7 and 63, the words “district probate”, wherever they occur, shall be omitted.

(3) In rules 7(1) and (3), 37(4), 44(13) and (14), 45(3), 46(3), 60, 64 and 66(1), for the words “registrar of the Principal Registry” there shall be substituted the words “district judge”.

(4) In rules 36(2), 45(1) and (2), 56(1), and 57(1) and in Form 6 in the First Schedule, for the words “Senior Registrar” there shall be substituted the words “senior district judge”.

(5) In rules 15 and 36(4)(b), before the word “registrar’s” there shall be inserted the words “district judge’s or”.

(6) In the heading to rule 65, before the word “registrars” there shall be inserted the words “district judges or”.

(7) In Rule 66(1), for the words “registrar of the Principal Registry” there shall be substituted the words “district judge” and for the words “or registrar may direct” there shall be substituted the words “or district judge may direct”.

(8) In Form 4 in the First Schedule for the words “directions by a registrar of the Principal Registry or” there shall be substituted the words “directions by a district judge of the Principal Registry or a registrar of”.

SUBSTANTIVE AMENDMENTS

Grants where two or more persons entitled in same degree

8.—(1) The following shall be substituted for rule 27(1):

“**27.—(1)** Subject to paragraphs (1A), (2) and (3) below, where, on an application for probate, power to apply for a like grant is to be reserved to such other of the executors as have not renounced probate, notice of the application shall be given to the executor or executors to whom power is to be reserved; and, unless the district judge or registrar otherwise directs, the oath shall state that such notice has been given.

(1A) Where power is to be reserved to executors who are appointed by reference to their being partners in a firm, and not by their names, notice need not be given to them under paragraph (1) above if probate is applied for by another partner in that firm.”.

(2) In rule 27(7), after the words “under this rule in” there shall be inserted the words “the Principal Registry or”.

Grants in respect of settled land

9. The following shall be substituted for rule 29:

“**29.—(1)** In this rule “settled land” means land vested in the deceased which was settled prior to his death and not by his will, and which remained settled land notwithstanding his death.

(2) The person or persons entitled to a grant of administration limited to settled land shall be determined in accordance with the following order of priority:

- (i) the special executors in regard to settled land constituted by section 22 of the Administration of Estates Act 1925(6);
- (ii) the trustees of the settlement at the time of the application for the grant; and
- (iii) the personal representatives of the deceased.

(3) Where there is settled land and a grant is made in respect of the free estate only, the grant shall expressly exclude the settled land.”.

Grants where deceased died domiciled outside England and Wales

10. In rule 30(1), for the words “a registrar may order that a grant” there shall be substituted the words “a district judge or registrar may order that a grant, limited in such way as the district judge or registrar may direct,”.

Standing searches

11.—(1) The following shall be substituted for rule 43(1):

“**43.—(1)** Any person who wishes to be notified of the issue of a grant may enter a standing search for the grant by lodging at, or sending by post to any registry or sub-registry, a notice in Form 2.”.

(2) In rule 43(3)(a), for the words “the Principal Registry” there shall be substituted the words “the registry or sub-registry at which the standing search was entered”.

(3) In Form 2 in the First Schedule, for the words “The Principal Registry” there shall be substituted the words “The Principal [orDistrict Probate] Registry”.

Caveats

12.—(1) The following shall be inserted at the end of rule 44(8):
“or until it is withdrawn under paragraph (11) below”.

(2) In rule 44(10), the words “and making an entry in the appropriate book” shall be omitted.

(3) In rule 44(13), for the words “Registrar of the Principal Registry” there shall be substituted the words “district judge or, where application to discontinue a caveat is made by consent, a registrar”.

Taxation of costs

13. The following shall be substituted for rule 60:

“**60.** Every bill of costs, other than a bill delivered by a solicitor to his client which falls to be taxed under the Solicitors Act 1974(7), shall be referred for taxation—

- (a) where the order for taxation was made by a district judge, to a district judge, or to a taxing officer of the Principal Registry authorised to tax costs in accordance with Order 62, rule 19 of the Rules of the Supreme Court 1965(8);
- (b) where the order for taxation was made by a registrar, to that registrar.”.

Power to require applications to be made by summons

14. At the beginning of rule 61(1) there shall be inserted the words “Subject to rule 7(2),”.

8th August 1991

Stephen Brown, P.

I concur,

17th August 1991

Mackay of Clashfern, C.

(7) 1974 c. 47.

(8) S.I. 1965/1776; there are no relevant amending instruments

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 amend the Non-Contentious Probate Rules 1987, which regulate the conduct of non-contentious probate business in the High Court.

The purpose of the amendments is to—

- (a) make amendments consequential upon the Children Act 1989 (rules 2 to 5);
- (b) make amendments consequential upon section 74 of the Courts and Legal Services Act 1990 (District judges) (rules 6 and 7);
- (c) make minor amendments to the procedure where two or more persons are entitled in the same degree to a grant of administration (rule 8);
- (d) to simplify the procedure for grants of administration in respect of settled land (rule 9);
- (e) to refer to the possibility of placing limitations on grants of administration where the deceased died domiciled outside England and Wales (rule 10);
- (f) to permit standing searches to be entered at District Probate Registries and sub-registries (rule 11);
- (g) to make minor amendments to the procedure for caveats (rule 12);
- (h) to make new provision for the taxation of costs (rule 13); and
- (i) to clarify the situation where a District Probate Registrar considers that the directions of a High Court Judge should be obtained (rule 14).