

EXPLANATORY MEMORANDUM TO

THE NON-CONTENTIOUS PROBATE (AMENDMENT) RULES 2019

2019 No. 1057 (L. 5)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The instrument amends the Non-Contentious Probate Rules 1987 (SI 1987/2024) (“the NCPR”) which govern practice and procedure in the Probate Registry.
- 2.2 The principal amendment amends rules 4 and 4A of the NCPR to extend access to the online probate service for solicitors and other probate practitioners. At present access for solicitors and practitioners is by invitation only, the amendment will provide open access to the service.
- 2.3 A consequential amendment has been made to Rule 2 of the NCPR to reflect the new heading of rule 4A of the NCPR, and amendments of a modest and technical nature have also been made to Rules ZA and 5A of the NCPR to correct drafting errors in the NCPR identified by the Joint Committee on Statutory Instruments in their Fortieth Report of Session 2017–19, which the Ministry of Justice committed to rectify at the next available opportunity.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Section 25 of the Supreme Court 1981 gives the High Court jurisdiction over contentious and non-contentious probate cases. The NCPR are made by the President

of the Family Division, with the concurrence of the Lord Chancellor, under the terms of Section 127 of the Supreme Court Act 1981.

7. Policy background

What is being done and why?

- 7.1 HM Courts and Tribunals Service is modernising services and providing access to online services as a means of issuing and defending proceedings in courts and tribunals. An online probate service commenced in 2017 following amendments to the Rules made by S.I.2017/1034, and was extended in 2018 by S.I.2018/1137 to allow all applications made other than through a solicitor or probate practitioner to be made online if the applicant wished to do so. The online service enables applications to be made electronically as well as by post or in person at a Registry. The new service is much more accessible to professional and lay users and has proved to be popular in terms of usage and user feedback. Between July 2018 and June 2019 20,000 digital applications had been made, with user satisfaction rate running at 93%.
- 7.2 The existing Rules only permit solicitors and probate practitioners to use the online system by invitation, to control numbers of users. As the technology has been improved the service is now able to expand it so that it is available to all solicitors and probate practitioners who wish to use it.
- 7.3 The opportunity has been taken to correct some drafting and consistency issues identified in the existing rules by the Joint Committee on Statutory Instruments.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 As the modernisation of the probate process continues and further reforms to the rules are anticipated, the department does not propose to consolidate the NCPR as amended by the instrument at this stage.

10. Consultation outcome

- 10.1 There has not been any formal consultation on the changes proposed. The introduction of online services and the replacement of the oath by a statement of truth were, however, proposed by the President of the Family Division's Working Group on the NCPR in its 2013 consultation paper and recommended to it by the then Lord Chancellor in 2014.

11. Guidance

- 11.1 Amendments to the NCPR are drawn to the attention of solicitors and probate practitioners by correspondence addressed to members of the judiciary, to other relevant representative bodies (for example the Law Society, Bar Council) and to the editors of relevant legal publications; as well as by publicity within HM Courts and Tribunal Service.

12. Impact

- 12.1 The impact on business is expected to be limited and is described in the following paragraphs.
- 12.2 The introduction of online services and remote hearings is expected to have a small impact on business. Remote hearings will reduce travel costs incurred by parties involved in applications for probate that presently involve a hearing (there are about 70-100 cases annually). Remote hearings should also cut down on time spent waiting in court premises for hearings to begin. This time can be more efficiently spent.
- 12.3 The removal of the requirement for an oath in support of the application may have a small impact on businesses as the removal of the fee for the oath by applicants will cause solicitors to lose the small fee that is charged for administering the oath (£5 per oath and £2 for each exhibit). However, most probate oaths are thought to be sworn at court premises where a fee is not charged and, even where the oath is administered by a solicitor, this fee is understood generally to be retained by the individual administering the oath rather than the business. This benefit will be lost.
- 12.4 The impact on the public sector is to contribute to reducing the cost of administering the probate process. The changes made by the amending instrument are part of a £1 billion investment to modernise the courts and tribunals system.
- 12.5 An Impact Assessment has not been prepared for this instrument because the reform is relatively minor and affects only a specialist group of businesses.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses engaged in making probate applications, and will have a beneficial impact by increasing access to online applications.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is through the NCPR being kept under continuous review by the President of the Family Division and the Lord Chancellor.

15. Contact

- 15.1 Peter Farr, Head of Civil Law at the Ministry of Justice, email: peter.farr@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 David Parkin, Deputy Director for Civil Justice and Law at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Paul Maynard MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.