



# Senior Courts Act 1981

## 1981 CHAPTER 54

### PART V

#### PROBATE CAUSES AND MATTERS

*Procedure in probate registries in relation to grants of representation*

#### 105 Applications.

Applications for grants of probate or administration and for the revocation of grants may be made to—

- (a) the Principal Registry of the Family Division (in this Part referred to as “the Principal Registry”); or
- (b) a district probate registry.

#### 106 Grants by district probate registrars.

- (1) Any grant made by a district probate registrar shall be made in the name of the High Court under the seal used in the registry.

<sup>F1</sup>(2) .....

#### Textual Amendments

**F1** S. 106(2)–(4) repealed by [Administration of Justice Act 1985 \(c. 61, SIF 37\)](#), ss. 51(2), 67(2), [Sch. 8 Pt. III](#)

#### 107 No grant where conflicting applications.

Subject to probate rules, no grant in respect of the estate, or part of the estate, of a deceased person shall be made out of the Principal Registry or any district probate registry on any application if, at any time before the making of a grant, it appears to the

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registrar concerned that some other application has been made in respect of that estate or, as the case may be, that part of it and has not been either refused or withdrawn.

### 108 Caveats.

- (1) A caveat against a grant of probate or administration may be entered in the Principal Registry or in any district probate registry.
- (2) On a caveat being entered in a district probate registry, the district probate registrar shall immediately send a copy of it to the Principal Registry to be entered among the caveats in that Registry.

### 109 Refusal of grant where capital transfer tax unpaid.

[<sup>F2</sup>(1) No grant shall be made, and no grant made outside the United Kingdom shall be resealed, except—

- (a) on the production of information or documents under regulations under section 256(1)(aa) of the Inheritance Tax Act 1984 (excepted estates); or
- (b) on the production of an account prepared in pursuance of that Act showing by means of such receipt or certification as may be prescribed by the Commissioners either—
  - (i) that the inheritance tax payable on the delivery of the account has been paid; or
  - (ii) that no such tax is so payable.]

(2) Arrangements may be made between the President of the Family Division and the Commissioners providing for the purposes of [<sup>F3</sup>subsection (1)(b)] in such cases as may be specified in the arrangements that the receipt of certification of an account may be dispensed with or that some other document may be substituted for the account required by [<sup>F4</sup>the Capital Transfer Tax Act 1984].

[<sup>F5</sup>(2A) In this section and the following section, “the Commissioners” means the Commissioners of Inland Revenue]

(3) [<sup>F6</sup>.....]

#### Textual Amendments

- F2** S. 109(1) substituted (1.11.2004) by Finance Act 2004 (c. 12), s. 294(1)(a)(4); S.I. 2004/2571, art. 2
- F3** Words in s. 109(2) substituted (1.11.2004) by Finance Act 2004 (c. 12), s. 294(1)(b)(4); S.I. 2004/2571, art. 2
- F4** Words substituted by Capital Transfer Tax Act 1984 (c. 51, SIF 65), s. 276, Sch. 8 para. 20(a)
- F5** S. 109(2A) inserted (1.11.2004) by Finance Act 2004 (c. 12), s. 294(1)(c)(4); S.I. 2004/2571, art. 2
- F6** S. 109(3) repealed (1.11.2004) by Finance Act 2004 (c. 12), ss. 294(1)(d)(4), 326, Sch. 42 Pt. 4 Note 1; S.I. 2004/2571, art. 2

### 110 Documents to be delivered to Commissioners of Inland Revenue.

Subject to any arrangements which may from time to time be made between the President of the Family Division and the Commissioners, the Principal Registry and every district probate registry shall, within such period after a grant as the President

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may direct, deliver to the Commissioners or their proper officer the following documents—

- (a) in the case of a grant of probate or of administration with the will annexed, a copy of the will;
- (b) in every case, such certificate or note of the grant as the Commissioners may require.

#### **111 Records of grants.**

- (1) There shall continue to be kept records of all grants which are made in the Principal Registry or in any district probate registry.
- (2) Those records shall be in such form, and shall contain such particulars, as the President of the Family Division may direct.

#### *Powers of court in relation to personal representatives*

#### **112 Summons to executor to prove or renounce.**

The High Court may summon any person named as executor in a will to prove, or renounce probate of, the will, and to do such other things concerning the will as the court had power to order such a person to do immediately before the commencement of this Act.

#### **113 Power of court to sever grant.**

- (1) Subject to subsection (2), the High Court may grant probate or administration in respect of any part of the estate of a deceased person, limited in any way the court thinks fit.
- (2) Where the estate of a deceased person is known to be insolvent, the grant of representation to it shall not be severed under subsection (1) except as regards a trust estate in which he had no beneficial interest.

#### **114 Number of personal representatives.**

- (1) Probate or administration shall not be granted by the High Court to more than four persons in respect of the same part of the estate of a deceased person.
- (2) Where under a will or intestacy any beneficiary is a minor or a life interest arises, any grant of administration by the High Court shall be made either to a trust corporation (with or without an individual) or to not less than two individuals, unless it appears to the court to be expedient in all the circumstances to appoint an individual as sole administrator.
- (3) For the purpose of determining whether a minority or life interest arises in any particular case, the court may act on such evidence as may be prescribed.
- (4) If at any time during the minority of a beneficiary or the subsistence of a life interest under a will or intestacy there is only one personal representative (not being a trust corporation), the High Court may, on the application of any person interested or the guardian or receiver of any such person, and in accordance with probate rules, appoint

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one or more additional personal representatives to act while the minority or life interest subsists and until the estate is fully administered.

- (5) An appointment of an additional personal representative under subsection (4) to act with an executor shall not have the effect of including him in any chain of representation.

## 115 Grants to trust corporations.

- (1) The High Court may—
- (a) where a trust corporation is named in a will as executor, grant probate to the corporation either solely or jointly with any other person named in the will as executor, as the case may require; or
  - (b) grant administration to a trust corporation, either solely or jointly with another person;

and the corporation may act accordingly as executor or administrator, as the case may be.

- (2) Probate or administration shall not be granted to any person as nominee of a trust corporation.
- (3) Any officer authorised for the purpose by a trust corporation or its directors or governing body may, on behalf of the corporation, swear affidavits, give security and do any other act which the court may require with a view to the grant to the corporation of probate or administration; and the acts of an officer so authorised shall be binding on the corporation.

- [<sup>F7</sup>(4) Subsections (1) to (3) shall also apply in relation to any body which is exempt from the provisions of section 23(1) of the Solicitors Act 1974 (unqualified persons not to prepare papers for probate etc.) by virtue of any of paragraphs (e) to (h) of subsection (2) of that section.]

### Textual Amendments

**F7** S. 115(4) added (*prosp.*) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 54(2), 59(1)

## 116 Power of court to pass over prior claims to grant.

- (1) If by reason of any special circumstances it appears to the High Court to be necessary or expedient to appoint as administrator some person other than the person who, but for this section, would in accordance with probate rules have been entitled to the grant, the court may in its discretion appoint as administrator such person as it thinks expedient.
- (2) Any grant of administration under this section may be limited in any way the court thinks fit.

## 117 Administration pending suit.

- (1) Where any legal proceedings concerning the validity of the will of a deceased person, or for obtaining, recalling or revoking any grant, are pending, the High Court may grant administration of the estate of the deceased person in question to an administrator pending suit, who shall, subject to subsection (2), have all the rights, duties and powers of a general administrator.

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- (2) An administrator pending suit shall be subject to the immediate control of the court and act under its direction; and, except in such circumstances as may be prescribed, no distribution of the estate, or any part of the estate, of the deceased person in question shall be made by such an administrator without the leave of the court.
- (3) The court may, out of the estate of the deceased, assign an administrator pending suit such reasonable remuneration as it thinks fit.

#### **118 Effect of appointment of minor as executor.**

Where a testator by his will appoints a minor to be an executor, the appointment shall not operate to vest in the minor the estate, or any part of the estate, of the testator, or to constitute him a personal representative for any purpose, unless and until probate is granted to him in accordance with probate rules.

#### **119 Administration with will annexed.**

- (1) Administration with the will annexed shall be granted, subject to and in accordance with probate rules, in every class of case in which the High Court had power to make such a grant immediately before the commencement of this Act.
- (2) Where administration with the will annexed is granted, the will of the deceased shall be performed and observed in the same manner as if probate of it had been granted to an executor.

#### **120 Power to require administrators to produce sureties.**

- (1) As a condition of granting administration to any person the High Court may, subject to the following provisions of this section and subject to and in accordance with probate rules, require one or more sureties to guarantee that they will make good, within any limit imposed by the court on the total liability of the surety or sureties, any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of a breach by the administrator of his duties as such.
- (2) A guarantee given in pursuance of any such requirement shall enure for the benefit of every person interested in the administration of the estate of the deceased as if contained in a contract under seal made by the surety or sureties with every such person and, where there are two or more sureties, as if they had bound themselves jointly and severally.
- (3) No action shall be brought on any such guarantee without the leave of the High Court.
- (4) Stamp duty shall not be chargeable on any such guarantee.
- (5) This section does not apply where administration is granted to the Treasury Solicitor, the Official Solicitor, the Public Trustee, the Solicitor for the affairs of the Duchy of Lancaster or the Duchy of Cornwall or the Crown Solicitor for Northern Ireland, or to the consular officer of a foreign state to which section 1 of the <sup>M1</sup>Consular Conventions Act 1949 applies, or in such other cases as may be prescribed.

#### **Marginal Citations**

M1 1949 c. 29.

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*Revocation of grants and cancellation of resealing at instance of court*

**121 Revocation of grants and cancellation of resealing at instance of court.**

- (1) Where it appears to the High Court that a grant either ought not to have been made or contains an error, the court may call in the grant and, if satisfied that it would be revoked at the instance of a party interested, may revoke it.
- (2) A grant may be revoked under subsection (1) without being called in, if it cannot be called in.
- (3) Where it appears to the High Court that a grant resealed under the Colonial Probates Acts 1892 and 1927 ought not to have been resealed, the court may call in the relevant document and, if satisfied that the resealing would be cancelled at the instance of a party interested, may cancel the resealing.

In this and the following subsection “the relevant document” means the original grant or, where some other document was sealed by the court under those Acts, that document.

- (4) A resealing may be cancelled under subsection (3) without the relevant document being called in, if it cannot be called in.

*Ancillary powers of court*

**122 Examination of person with knowledge of testamentary document.**

- (1) Where it appears that there are reasonable grounds for believing that any person has knowledge of any document which is or purports to be a testamentary document, the High Court may, whether or not any legal proceedings are pending, order him to attend for the purpose of being examined in open court.
- (2) The court may—
  - (a) require any person who is before it in compliance with an order under subsection (1) to answer any question relating to the document concerned; and
  - (b) if appropriate, order him to bring in the document in such manner as the court may direct.
- (3) Any person who, having been required by the court to do so under this section, fails to attend for examination, answer any question or bring in any document shall be guilty of contempt of court.

**123 Subpoena to bring in testamentary document.**

Where it appears that any person has in his possession, custody or power any document which is or purports to be a testamentary document, the High Court may, whether or not any legal proceedings are pending, issue a subpoena requiring him to bring in the document in such manner as the court may in the subpoena direct.

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### *Provisions as to documents*

#### **124 Place for deposit of original wills and other documents.**

All original wills and other documents which are under the control of the High Court in the Principal Registry or in any district probate registry shall be deposited and preserved in such places as the Lord Chancellor may direct; and any wills or other documents so deposited shall, subject to the control of the High Court and to probate rules, be open to inspection.

#### **125 Copies of wills and grants.**

An office copy, or a sealed and certified copy, of any will or part of a will open to inspection under section 124 or of any grant may, on payment of [<sup>F8</sup>the fee prescribed by an order under section 92 of the Courts Act 2003 (fees)], be obtained—

- (a) from the registry in which in accordance with section 124 the will or documents relating to the grant are preserved; or
- (b) where in accordance with that section the will or such documents are preserved in some place other than a registry, from the Principal Registry; or
- (c) subject to the approval of the Senior Registrar of the Family Division, from the Principal Registry in any case where the will was proved in or the grant was issued from a district probate registry.

#### **Textual Amendments**

- F8** Words in s. 125 substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), ss. 109(1), 110, [Sch. 8 para. 262](#); [S.I. 2005/910](#), [art. 3\(y\)](#)

#### **126 Depositories for wills of living persons.**

- (1) There shall be provided, under the control and direction of the High Court, safe and convenient depositories for the custody of the wills of living persons; and any person may deposit his will in such a depository on payment of [<sup>F9</sup>the fee prescribed by an order under section 92 of the Courts Act 2003 (fees)] and subject to such conditions as may be prescribed by regulations made by the President of the Family Division with the concurrence of the Lord Chancellor.
- (2) Any regulations made under this section shall be made by statutory instrument which shall be laid before Parliament after being made; and the <sup>M2</sup>Statutory Instruments Act 1946 shall apply to a statutory instrument containing regulations under this section in like manner as if they had been made by a Minister of the Crown.

#### **Textual Amendments**

- F9** Words in s. 126(1) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), ss. 109(1), 110, [Sch. 8 para. 262](#); [S.I. 2005/910](#), [art. 3\(y\)](#)

#### **Marginal Citations**

- M2** [1946 c. 36](#).

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### *Probate rules*

#### **127 Probate rules.**

- (1) The President of the Family Division may, with the concurrence of the Lord Chancellor, make rules of court (in this Part referred to as “probate rules”) for regulating and prescribing the practice and procedure of the High Court with respect to non-contentious or common form probate business.
- (2) Without prejudice to the generality of subsection (1), probate rules may make provision for regulating the classes of persons entitled to grants of probate or administration in particular circumstances and the relative priorities of their claims thereto.
- (3) Probate rules shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and the <sup>M3</sup>Statutory Instruments Act 1946 shall apply to a statutory instrument containing probate rules in like manner as if they had been made by a Minister of the Crown.

#### **Marginal Citations**

**M3** 1946 c. 36.

### *Interpretation of Part V and other probate provisions*

#### **128 Interpretation of Part V and other probate provisions.**

In this part, and in the other provisions of this Act relating to probate causes and matters, unless the context otherwise requires—

“administration” includes all letters of administration of the effects of deceased persons, whether with or without a will annexed, and whether granted for general, special or limited purposes;

“estate” means real and personal estate, and “real estate” includes—

- (a) chattels real and land in possession, remainder or reversion and every interest in or over land to which the deceased person was entitled at the time of his death, and
- (b) real estate held on trust or by way of mortgage or security, but not <sup>F10</sup> . . . money secured or charged on land;

“grant” means a grant of probate or administration;

“non-contentious or common form probate business” means the business of obtaining probate and administration where there is no contention as to the right thereto, including—

- (a) the passing of probates and administrations through the High Court in contentious cases where the contest has been terminated,
- (b) all business of a non-contentious nature in matters of testacy and intestacy not being proceedings in any action, and
- (c) the business of lodging caveats against the grant of probate or administration;

“Principal Registry” means the Principal Registry of the Family Division;

“probate rules” means rules of court made under section 127;



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“trust corporation” means the Public Trustee or a corporation either appointed by the court in any particular case to be a trustee or authorised by rules made under section 4(3) of the <sup>M4</sup>Public Trustee Act 1906 to act as a custodian trustee;

“will” includes a nuncupative will and any testamentary document of which probate may be granted.

#### Textual Amendments

- F10** S. 128: words in para. (b) in the definition of “real estate” repealed (1.1.1997) by 1996 c. 47, s. 25(2), Sch.4 (with ss. 24(2), 25(4)); S.I. 1996/2974, art.2

#### Modifications etc. (not altering text)

- C1** S. 128: definition of "non-contentious or common form probate business" applied (1.7.1991) by Courts and Legal Services Act 1991 (c. 41, SIF 76:1), s. 56(5); S.I. 1991/1364, art. 2, Sch
- C2** S. 128: definition of "trust corporation" amended (retrospectively) by Charities Act 1960 (c. 58), s. 21A(e) (as inserted and modified (1.9.1992) by Charities Act 1992 (c. 41), s. 14(1)(2); S.I. 1992/1900, art. 2(1), Sch. 1)
- S. 128: definition of "trust corporation" extended (retrospectively) by 1993 c. 10, ss. 35(1)(e)(2)
- C3** S. 128 extended (retrospectively) by Charities Act 2011 (c. 25), Sch. 7 para. 3(1)(2)(e)(3) (with s. 20(2), Sch. 7 para. 3(4), Sch. 8)

#### Marginal Citations

- M4** 1906 c. 55.

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