

(e) In the definition of "Statutory guardian", for the words "section 4 of the Guardianship of Infants Act 1925" there shall be substituted the words "section 3 of the Guardianship of Minors Act 1971"^(a).

(f) In the definition of "Testamentary guardian", for the words "section 5 of the Guardianship of Infants Act 1925" there shall be substituted the words "section 4 of the Guardianship of Minors Act 1971".

3. In paragraph (7) of rule 4 (which relates to personal applications), for the word "bond" there shall be substituted the word "guarantee" and for the word "obligors" there shall be substituted the word "sureties".

4. In rule 5 (which relates to the duty of the registrar on receiving an application for a grant) there shall be added the following paragraph:—

"(4) The registrar shall not require a guarantee under section 167 of the Act as a condition of granting administration to any person without giving that person or, where the application for the grant is made through a solicitor, the solicitor an opportunity of being heard with respect to the requirement."

5. In rule 6 (which relates to the oath in support of a grant), paragraphs (4) and (5) shall be omitted and there shall be substituted the following paragraph:—

"(4) Unless otherwise directed by a registrar, the oath shall state where the deceased died domiciled."

6. Rule 21 (which relates to the order of priority for a grant on intestacy) shall be amended as follows:—

(a) After paragraph (5) there shall be inserted the following new paragraph:—

"(5A) The provisions of the Adoption Act 1958^(b) shall apply in determining the entitlement to a grant as they apply to the devolution of property on intestacy."

(b) In paragraph (6), for the words "legitimated and adopted" there shall be substituted the words "and legitimated".

7. In paragraph (1) of rule 34 (which relates to grants to trust corporations and other corporate bodies), for the words "principal probate registrar" there shall be substituted the words "Senior Registrar."

8. For rule 38 (which relates to administration bonds) there shall be substituted the following rule:—

"Guarantee"

38.—(1) The registrar shall not require a guarantee under section 167 of the Act as a condition of granting administration except where it is proposed to grant it—

(a) by virtue of rule 19(v) or rule 21(4) to a creditor or the personal representative of a creditor or to a person who has no immediate beneficial interest in the estate of the deceased but may have such an interest in the event of an accretion to the estate;

(b) under rule 27 to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate died intestate, be entitled to his estate;

(a) 1971 c. 3.

(b) 1958 c. 5.

- (c) under rule 30 to the attorney of a person entitled to a grant;
- (d) under rule 31 for the use and benefit of a minor;
- (e) under rule 33 for the use and benefit of a person who is by reason of mental or physical incapacity incapable of managing his affairs;
- (f) to an applicant who appears to the registrar to be resident elsewhere than in the United Kingdom;

or except where the registrar considers that there are special circumstances making it desirable to require a guarantee.

(2) Notwithstanding that it is proposed to grant administration as aforesaid, a guarantee shall not be required, except in special circumstances, on an application for administration where the applicant or one of the applicants is—

- (a) a trust corporation;
- (b) a solicitor holding a current practising certificate under the Solicitors Acts 1957 to 1965(a);
- (c) a servant of the Crown acting in his official capacity;
- (d) a nominee of a public department or of a local authority within the meaning of the Local Government Act 1933(b).

(3) Every guarantee entered into by a surety for the purposes of section 167 of the Act shall be in Form 1.

(4) Except where the surety is a corporation, the signature of the surety on every such guarantee shall be attested by an authorised officer, commissioner for oaths or other person authorised by law to administer an oath.

(5) Unless the registrar otherwise directs—

- (a) if it is decided to require a guarantee, it shall be given by two sureties, except where the gross value of the estate does not exceed £500 or a corporation is a proposed surety, and in those cases one will suffice;
- (b) no person shall be accepted as a surety unless he is resident in the United Kingdom;
- (c) no officer of a registry or sub-registry shall become a surety;
- (d) the limit of the liability of the surety or sureties under a guarantee given for the purposes of section 167 of the Act shall be the gross amount of the estate as sworn on the application for the grant;
- (e) every surety, other than a corporation, shall justify.

(6) Where the proposed surety is a corporation there shall be filed an affidavit by the proper officer of the corporation to the effect that it has power to act as surety and has executed the guarantee in the manner prescribed by its constitution, and containing sufficient information as to the financial position of the corporation to satisfy the registrar that its assets are sufficient to satisfy all claims which may be made against it under any guarantee which it has given or is likely to give for the purposes of section 167 of the Act:

Provided that the Senior Registrar may, instead of requiring an affidavit in every case, accept an affidavit made not less often than once in every

(a) 1957 c. 27; 1959 c. 42; 1965 c. 31.

(b) 1933 c. 51.

year together with an undertaking by the corporation to notify the Senior Registrar forthwith in the event of any alteration in its constitution affecting its power to become surety under that section."

9. Rule 39 (particulars of estate to be filed and sureties to justify in certain cases) is hereby revoked.

10. Rule 40 (which relates to the resealing of Scottish confirmations and Northern Irish grants, etc.) is hereby revoked.

11. In paragraph (2) of rule 41 (which relates to resealing under the Colonial Probates Acts 1892 and 1927(a)), sub-paragraph (c) and the proviso are hereby revoked, and after paragraph (2) there shall be inserted the following paragraph :—

"(2A) On an application for the resealing of a grant of administration—

- (a) the registrar shall not require sureties under section 11 of the Administration of Estates Act 1971(b) as a condition of resealing the grant except where it appears to him that the grant is made to a person or for a purpose mentioned in paragraphs (a) to (f) of rule 38(1) or except where he considers that there are special circumstances making it desirable to require sureties ;
- (b) rules 5(4) and 38(2), (4), (5) and (6) shall apply with any necessary modifications ; and
- (c) a guarantee entered into by a surety for the purposes of the said section 11 shall be in Form 2."

12. After rule 41 there shall be inserted the following rule :—

"Application for leave to sue on guarantee

41A. An application for leave under section 167(3) of the Act or under section 11(5) of the Administration of Estates Act 1971 to sue a surety on a guarantee given for the purposes of either of those sections shall, unless the registrar otherwise directs under rule 60, be made by summons to a registrar of the principal registry, and notice of the application shall in any event be served on the administrator, the surety and any co-surety."

13. Rule 44 (which relates to the entry of caveats) shall be amended as follows :—

- (a) In paragraph (5), for the words "principal probate registrar" there shall be substituted the words "Senior Registrar."
- (b) In paragraph (14), the words "a Scottish confirmation and" shall be deleted.

14. In paragraph (2) of rule 47 (which relates to citation to propound a will), for the words "on motion" there shall be substituted the words "by summons to a registrar of the principal registry".

15. In paragraph (1) of rule 49 (which relates to an application for an order to bring in a will or to attend for examination), for the words "may be made" to the end of the paragraph there shall be substituted the words "may, unless a probate action has been commenced, be made to a registrar of the principal registry by summons, which shall be served on every such person as aforesaid."

(a) 1892 c. 6; 1927 c. 43.

(b) 1971 c. 25.

16. In paragraph (1) of rule 56 (which relates to notice of election by a surviving spouse to redeem a life interest), for the words "principal probate registrar" there shall be substituted the words "Senior Registrar".

17. In the First Schedule (which relates to Forms), for Forms 1 and 2 there shall be substituted the Forms so numbered in the Schedule to these Rules.

18. The following amendments shall be made to Forms 3, 4, 5, 6 and 7 in the First Schedule :—

- (a) In Form 3, for the words "Great Britain" there shall be substituted the words "the United Kingdom".
- (b) In marginal note (3) to Form 4, for the words "Name(s) of party or parties" there shall be substituted the words "Name of party".
- (c) In Forms 4, 5, 6 and 7, for the words "Probate, Divorce and Admiralty Division" there shall be substituted the words "Family Division"; and from the words "Principal Probate Registry" and "Probate Registry" wherever they appear, the word "Probate" shall be deleted.
- (d) At the foot of Form 7, for the words "Principal Probate Registrar" there shall be substituted the words "Principal Registrar of the Family Division".

Dated 6th December 1971.

George Baker, P.

We concur.

Dated 6th December 1971.

Hailsham of St. Marylebone, C.

Dated 6th December 1971.

Widgery, C. J.

SCHEDULE
FORM 1
SURETY'S GUARANTEE
In the High Court of Justice
Family Division

The (1)Registry
In the Estate of (2)deceased
Whereas (2) of (3)
died on the day of 19
and [and](4)
(hereinafter called "the administrator(s)") is/are(5) the intended administrator(s)
of his estate.

(1) Insert "Principal" or "... District Probate" (stating name).
(2) Full name of deceased.
(3) Address of deceased.
(4) Full name(s) and address(es) and description(s) of proposed administrator(s).
(5) Delete whichever is inapplicable.

Now Therefore:

1. I/We(5) of
[and of](6)

(6) Full name(s), address(es) and description(s) of suret(y)ies).
(7) Delete if only one surety.
(8) An action on the guarantee may only be brought with the leave of the court.

hereby [jointly and severally](7) guarantee that I/we(5) will, when lawfully required to do so(8) make good any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of the breach by the administrator(s) of his/her/their(5) duty—

- (a) to collect and get in the estate of the deceased and administer it according to law;
(b) when required to do so by the court, to exhibit on oath in the court a full inventory of the estate and, when so required, to render an account of the estate; or
(c) when so required by the court, to deliver up the grant to the court.

2. The giving of time to the administrator(s) or any other forbearance or indulgence shall not in any way affect my/our(5) liability under this guarantee.

3. The liability under this guarantee shall be continuing and shall be for the whole amount of the loss mentioned in paragraph 1 above, but [my] [our aggregate] total liability shall not in any event exceed the sum of £

(9) Insert gross value of estate (unless a Registrar has directed otherwise).

Dated this day of 19
Signed, sealed and delivered by the above named

in the presence of
a Commissioner for Oaths.
[or other person authorised by law to administer an oath](10)

(10) Attestation is not required in the case of a corporation.

[The Common Seal of
was hereunto affixed in the presence of]

FORM 2

SURETY'S GUARANTEE
ON APPLICATION FOR RESEALING UNDER
COLONIAL PROBATES ACTS 1892 AND 1927

In the High Court of Justice
Family Division
The Principal Registry

(¹) Full name of deceased. In the Estate of (1) deceased
(²) Address of deceased. Whereas (1) of (2)
died on the day of 19
and letters of administration of his estate were on the
(³) Description of court by which grant was issued. day of 19 granted by the (3)
to

[and

(⁴) Full name(s) and address(es) and description(s) of administrator(s). (4) and are about to be sealed in England and Wales under the Colonial Probates Acts 1892 and 1927.

Now Therefore:

(⁵) Delete whichever is inapplicable. 1. I/We(⁵) of [and
(⁶) Full name(s), address(es) and description(s) of suret(y)(ies). of (6)

(⁷) Delete if only one surety. hereby [jointly and severally](⁷) guarantee that I/we(⁵) will, when lawfully
(⁸) An action on the guarantee may only be brought with the leave of the court. required to do so(⁸), make good any loss which any person interested in the administration of the estate of the deceased in England and Wales may suffer in consequence of the breach by the administrator(s) of his/her/their(⁵) duty—

(a) to collect and get in the estate of the deceased which is situated in England and Wales and administer it according to law;

(b) when required to do so by the court, to exhibit on oath in the court a full inventory of the estate which is situated in England and Wales and, when so required, to render an account of that estate.

2. The giving of time to the administrator(s) or any other forbearance or indulgence shall not in any way affect my/our(⁵) liability under this guarantee.

3. The liability under this guarantee shall be continuing and shall be for the whole amount of the loss mentioned in paragraph 1 above, but [my] [our aggregate] total liability shall not in any event exceed the sum of £ .(⁹)

(⁹) Insert gross value of estate in England and Wales (unless a Registrar has directed otherwise).

Dated this day of 19 .

Signed, sealed and delivered by the above named

in the presence of

a Commissioner for Oaths.

[or other person authorised by law to administer an oath](¹⁰)

(¹⁰) Attestation is not required in the case of a corporation.

[The Common Seal of
was hereunto affixed in the presence of

].

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules make amendments to the Non-Contentious Probate Rules 1954 most of which are required on the coming into force on 1st January 1972 of the Administration of Estates Act 1971. That Act abolishes the resealing of grants of probate and letters of administration as between the courts of the United Kingdom, and does away with the need for administration bonds under the law of England and Wales, although in certain cases specified in the Rules a guarantee may be required.

In addition, amendments are made to rules 47 and 49 which provide that certain applications at present made to a judge may in future be made to a registrar of the principal registry. A number of minor drafting amendments are consequential on the redistribution of business in the High Court and the creation of the Family Division under section 1 of the Administration of Justice Act 1970 which came into operation on the 1st October 1971.

These Rules come into force on 1st January 1972.