
 STATUTORY INSTRUMENTS

1985 No. 1232

SUPREME COURT OF ENGLAND AND WALES

The Non-Contentious Probate (Amendment) Rules 1985

<i>Made - - - -</i>	29th July 1985
<i>Laid before Parliament</i>	12th August 1985
<i>Coming into Operation</i>	1st October 1985

The President of the Family Division, in exercise of the powers conferred upon him by section 127 of the Supreme Court Act 1981 (a), and section 2(5) of the Colonial Probates Act 1892 (b), and with the concurrence of the Lord Chancellor, hereby makes the following Rules:—

1.—(1) These Rules may be cited as the Non-Contentious Probate (Amendment) Rules 1985 and shall come into operation on 1st October 1985.

(2) The amendments set out in these Rules shall be made to the Non-Contentious Probate Rules 1954 (c), and references in these Rules to a rule by number are references to the rule so numbered in those Rules.

2. In Rule 2(2) (Interpretation), for the definition of “Registrar”, substitute:

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

- (i) in relation to an application for a grant made or proposed to be made at a district probate registry,
- (ii) in rules 24, 42 and 60(2) in relation to a grant issued from a district probate registry and
- (iii) in relation to rules 45, 46 and 47,

the registrar of that district probate registry.”

3. After rule 2, insert:

“Application of other rules

2A. Subject to the provisions of these Rules and to any enactment, the Rules of the Supreme Court 1965 shall apply, with the necessary modifications, to non-contentious probate matters, save that nothing in Order 3 shall prevent time from running in the Long Vacation.”

4. After rule 5 (Duty of registrar on receiving application for grant), insert:

“Grants by district probate registrars

5A. (1) No grant shall be made by a district probate registrar

- (a) in any case in which there is contention, until the contention is disposed of or

(a) 1981 c.54.

(b) 1892 c.6.

(c) S.I. 1954/796, as amended by S.I. 1967/748, 1968/1675, 1969/1689, 1971/1977, 1974/597, 1976/1362 and 1982/446; there are other amendments which are not relevant to these Rules.

(b) in any case in which it appears to him that a grant ought not to be made without the directions of a judge or a registrar of the principal registry.

(2) In any case in which paragraph (1)(b) applies, the district probate registrar shall send a statement of the matter in question to the principal registry for directions.

(3) A registrar of the principal registry may either confirm that the matter be referred to a judge and give directions accordingly or may direct the district probate registrar to proceed with the matter in accordance with such instructions as are deemed necessary, which may include a direction to take no further action in relation to the matter.”

5. Immediately after rule 21 (Order of priority for grant in case of intestacy), insert the following new rule 21A:

“Order for priority for grant in pre 1926 cases

21A. Where the deceased died before 1 January 1926, the person or persons entitled to a grant shall, subject to the provisions of any enactment, be determined in accordance with the principles and rules under which the court would have acted at the date of death.”

6. In rule 25 (Grants where two or more persons entitled in same degree),

(a) omit the words “of the principal registry” in paragraph (2),

(b) insert the following paragraph after the existing paragraph (3):

“(4) The issue of a summons under this rule in a district probate registry shall be notified forthwith to the principal registry.” and

(c) renumber the existing paragraph (4) as “(5)”.

7. In rule 34 (Grants to trust corporations and other corporate bodies), for the proviso in paragraph (1), substitute the following proviso:

“Provided that it shall not be necessary to lodge a certified copy of the resolution where the trust corporation

(a) has filed with the Senior Registrar a certified copy thereof identifying the authorised person or persons by the position held and it is deposed in the oath that the resolution is still in force or

(b) is a person holding an official position if the person through whom the application is made is included in a list filed with the Senior Registrar of persons authorised to make such applications.”

8. In rule 38 (Guarantee), delete in paragraph (5)(a) the figure of “£500” and substitute the figure of “£5,000”.

9. In rule 41 (Resealing under Colonial Probates Acts 1892 and 1927),

(a) in paragraph (1), substitute for the word “shall” the word “may” and delete the words “in the principal registry”,

(b) in paragraphs (2)(b), (3) and (4) omit the words “of the principal registry” and

(c) in paragraph (5), omit the word “principal”.

10. In rule 41A (Application for leave to sue on guarantee), omit the words “of the principal registry”.

- 11.** In rule 44 (Caveats),
- (a) in paragraph (10), insert after the word “directions” the words “which may include a direction for a caveat to cease to have effect” and omit the words “of the principal registry”,
 - (b) in paragraph (11), delete the words “and that he has not received a summons for directions under the last foregoing paragraph,” and insert after the words “cease to have effect” the words “provided that there is no pending summons issued under the last foregoing paragraph” and
 - (c) in paragraph (11A), delete “principal probate registrar” and substitute “Senior Registrar”.
- 12.** In rule 45 (Citations),
- (a) substitute the following for paragraph (1):
“(1) Any citation may issue from the principal registry or a district probate registry and shall be settled by a registrar before being issued.”
and
 - (b) substitute in paragraph (6) for the words “in the principal registry” the words “in the registry from which the citation issued” and omit the words “and making an entry in the appropriate book.”.
- 13.** In rule 49 (Application for order to bring in will or attend for examination),
- (a) in paragraph (1), omit the words “of the principal registry” and
 - (b) in paragraph (2), omit the words “of the principal registry” and insert after the word “effect” the words “in the registry from which the subpoena issued.”
- 14.** In rule 57 (Information as to grants in district probate registries to be sent to principal registry), add at the end of paragraph (6) the words “and “grant” includes the resealing of a grant under the Colonial Probates Acts 1892 and 1927.”
- 15.** In rule 60 (Power to require application to be made by summons or motion),
- (a) substitute for paragraph (2):—
“(2) An application for an inventory and account shall be made by summons to a registrar.”,
 - (b) insert a new paragraph (3):—
“(3) A summons for hearing by a registrar shall be issued out of the registry in which it is to be heard” and
 - (c) renumber the existing paragraph (3) as “(4)”.
- 16.** After rule 60, insert
- “Transfer of applications to Principal Registry*
- 60A. A district probate registrar to whom any application is made under these rules may order the transfer of the application to the principal registry.

Powers to make orders for costs

60B. On any application made to him by way of summons, the district probate registrar shall have full power to determine by whom and to what extent the costs are to be paid.”

17. In rule 63 (Service of notice of motion and summons),

(a) insert in paragraph (1) after the words “registrar of the principal registry” the words “or where the application is to be made to a district probate registrar, that registrar” and

(b) delete in paragraph 2(b) the words “of the principal registry”.

18. Rules 65 and 66 are revoked.

19. The First Schedule shall be amended as follows:—

(a) in Form 2, delete from the heading the words “The Principal Registry” and substitute “The (a) Registry”, add a new footnote as follows “(a) Insert ‘Principal’ or ‘. . . District Probate’ (stating name)” and re-letter the existing footnotes accordingly,

(b) in Form 5, delete in paragraph (ii) the words “the said registry” and substitute “the Principal Registry or a District Probate Registry”.

(c) in Forms 6 and 7, delete from the heading the words “The Principal Registry”, substitute “The (a) Registry” and add a footnote as follows, “(a) Insert ‘Principal’ or ‘. . . District Probate’ (stating name)”.

Dated 8th July 1985.

J. L. Arnold, P.

I concur,

Hailsham of St. Marylebone, C.

Dated 29th July 1985.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules amend the Non-Contentious Probate Rules 1954, to confer additional jurisdiction on District Probate Registrars and to make the necessary consequential amendments to rules 25, 41, 41A, 44, 45, 49, 57, 60, 63, and Forms 2, 5, 6 and 7. Rule 2 re-defines "Registrar", rule 3 inserts a new rule 2A which invokes the Rules of the Supreme Court 1965, rule 4 inserts a new rule 5A which deals with the practice on the making of applications for grants in District Probate Registries, rule 5 inserts a new rule 21A to provide for an order of priority in pre 1926 cases, rule 7 amends rule 34 and removes the requirement for a trust corporation to lodge a certified copy resolution with every grant application if it has already filed one with the Senior Registrar, rule 8 amends rule 38 to increase to £5,000 the amount up to which one personal surety is normally sufficient, rule 15 amends rule 60 to require an application for an inventory and account to be made by summons, and rule 16 inserts a new rule 60A to enable the transfer of applications from a district probate registry to the Principal Registry and a new rule 60B to confer on District Probate Registrars the power to make orders for costs.

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