STATUTORY INSTRUMENTS

1987 No. 2024

The Non-Contentious Probate Rules 1987

Citation and commencement

1. These Rules may be cited as the Non-Contentious Probate Rules 1987 and shall come into force on 1st January 1988.

Interpretation

2.—(1) In these Rules, unless the context otherwise requires—

"the Act" means the Supreme Court Act 1981;

"authorised officer" means any officer of a registry who is for the time being authorised by the President to administer any oath or to take any affidavit required for any purpose connected with his duties;

"the Crown" includes the Crown in right of the Duchy of Lancaster and the Duke of Cornwall for the time being;

"grant" means a grant of probate or administration and includes, where the context so admits, the resealing of such a grant under the Colonial Probates Acts 1892 and 1927(**1**);

"gross value" in relation to any estate means the value of the estate without deduction for debts, incumbrances, funeral expenses or inheritance tax (or other capital tax payable out of the estate);

"oath" means the oath required by rule 8 to be sworn by every applicant for a grant;

"personal applicant" means a person other than a trust corporation who seeks to obtain a grant without employing a solicitor, and "personal application" has a corresponding meaning;

"registrar" means a registrar of the Principal Registry and includes—

(a) in relation to an application for a grant made or proposed to be made at a district probate registry, and

(b) in rules 26, 41 and 61(2) in relation to a grant issued from a district probate registry, and

(c) in relation to rules 46, 47 and 48,

the registrar of that district probate registry;

"registry" means the Principal Registry or a district probate registry;

"the Senior Registrar" means the Senior Registrar of the Family Division or, in his absence, the senior of the registrars in attendance at the Principal Registry;

"statutory guardian" means a surviving parent of a minor who is the guardian of the minor by virtue of section 3 of the Guardianship of Minors Act 1971(**2**);

"testamentary guardian" means a person appointed by deed or will to be guardian of a minor under the power conferred by section 4 of the Guardianship of Minors Act 1971(**2**);

(**1**) 1892 c. 6, 1927 c. 43.
(**2**) 1971 c. 3.
(**2**) 1971 c. 3.

"the Treasury Solicitor" means the solicitor for the affairs of Her Majesty's Treasury and includes the solicitor for the affairs of the Duchy of Lancaster and the solicitor of the Duchy of Cornwall;

"trust corporation" means a corporation within the meaning of section 128 of the Act as extended by section 3 of the Law of Property (Amendment) Act 1926(**3**).

(2) A form referred to by number means the form so numbered in the First Schedule; and such forms shall be used wherever applicable, with such variation as a registrar may in any particular case direct or approve.

Application of other rules

3. Subject to the provisions of these Rules and to any enactment, the Rules of the Supreme Court 1965(**4**) 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.

Application for grants through solicitors

4.—(1) A person applying for a grant through a solicitor may apply at any registry or sub-registry.

(2) Every solicitor through whom an application for a grant is made shall give the address of his place of business within England and Wales.

Personal applications

5.—(1) A personal applicant may apply for a grant at any registry or sub-registry.

(2) Save as provided for by rule 39 a personal applicant may not apply through an agent, whether paid or unpaid, and may not be attended by any person acting or appearing to act as his adviser.

(3) No personal application shall be proceeded with if—

(a) it becomes necessary to bring the matter before the court by action or summons;

(b) an application has already been made by a solicitor on behalf of the applicant and has not been withdrawn; or

(c) the registrar so directs.

(4) After a will has been deposited in a registry by a personal applicant, it may not be delivered to the applicant or to any other person unless in special circumstances the registrar so directs.

(5) A personal applicant shall produce a certificate of the death of the deceased or such other evidence of the death as the registrar may approve.

(6) A personal applicant shall supply all information necessary to enable the papers leading to the grant to be prepared in the registry.

(7) Unless the registrar otherwise directs, every oath or affidavit required on a personal application shall be sworn or executed by all the deponents before an authorised officer.

(8) No legal advice shall be given to a personal applicant by an officer of a registry and every such officer shall be responsible only for embodying in proper form the applicant's instructions for the grant.

(**3**) 1926 c. 11.
(**4**) S.I.1965/1776.

Duty of registrar on receiving application for grant

6.—(1) A registrar shall not allow any grant to issue until all inquiries which he may see fit to make have been answered to his satisfaction.

(2) Except with the leave of a registrar, no grant of probate or of administration with the will annexed shall issue within seven days of the death of the deceased and no grant of administration shall issue within fourteen days thereof.

Grants by district probate registrars

7.—(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

(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.

Oath in support of grant

8.—(1) Every application for a grant other than one to which rule 39 applies shall be supported by an oath by the applicant in the form applicable to the circumstances of the case, and by such other papers as the registrar may require.

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

(3) Where the deceased died on or after 1st January 1926, the oath shall state whether or not, to the best of the applicant's knowledge, information and belief, there was land vested in the deceased which was settled previously to his death and not by his will and which remained settled land notwithstanding his death.

(4) On an application for a grant of administration the oath shall state in what manner all persons having a prior right to a grant have been cleared off and whether any minority or life interest arises under the will or intestacy.

Grant in additional name

9. Where it is sought to describe the deceased in a grant by some name in addition to his true name, the applicant shall depose to the true name of the deceased and shall specify some part of the estate which was held in the other name, or give any other reason for the inclusion of the other name in the grant.

Marking of wills

10.—(1) Subject to paragraph (2) below, every will in respect of which an application for a grant is made—

(a) shall be marked by the signatures of the applicant and the person before whom the oath is sworn; and

(b) shall be exhibited to any affidavit which may be required under these Rules as to the validity, terms, condition or date of execution of the will.

(2) The registrar may allow a facsimile copy of a will to be marked or exhibited in lieu of the original document.

Engrossments for purposes of record

11.—(1) Where the registrar considers that in any particular case a facsimile copy of the original will would not be satisfactory for purposes of record, he may require an engrossment suitable for facsimile reproduction to be lodged.

(2) Where a will—

(a) contains alterations which are not to be admitted to proof; or

(b) has been ordered to be rectified by virtue of section 20(1) of the Administration of Justice Act 1982(**5**),

there shall be lodged an engrossment of the will in the form in which it is to be proved.

(3) Any engrossment lodged under this rule shall reproduce the punctuation, spacing and division into paragraphs of the will and shall follow continuously from page to page on both sides of the paper.

Evidence as to due execution of will

12.—(1) Subject to paragraphs (2) and (3) below, where a will contains no attestation clause or the attestation clause is insufficient, or where it appears to the registrar that there is doubt about the due execution of the will, he shall before admitting it to proof require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present when the will was executed; and if the registrar, after considering the evidence, is satisfied that the will was not duly executed, he shall refuse probate and mark the will accordingly.

(2) If no affidavit can be obtained in accordance with paragraph (1) above, the registrar may accept evidence on affidavit from any person he may think fit to show that the signature on the will is in the handwriting of the deceased, or of any other matter which may raise a presumption in favour of due execution of the will, and may if he thinks fit require that notice of the application be given to any person who may be prejudiced by the will.

(3) A registrar may accept a will for proof without evidence as aforesaid if he is satisfied that the distribution of the estate is not thereby affected.

Execution of will of blind or illiterate testator

13. Before admitting to proof a will which appears to have been signed by a blind or illiterate testator or by another person by direction of the testator, or which for any other reason raises doubt as to the testator having had knowledge of the contents of the will at the time of its execution, the registrar shall satisfy himself that the testator had such knowledge.

Evidence as to terms, condition and date of execution of will

14.—(1) Subject to paragraph (2) below, where there appears in a will any obliteration, interlineation, or other alteration which is not authenticated in the manner prescribed by section 21 of the Wills Act 1837(**6**), or by the re-execution of the will or by the execution of a codicil, the registrar shall require evidence to show whether the alteration was present at the time the will was executed and shall give directions as to the form in which the will is to be proved.

(**5**) 1982 c. 53.
(**6**) 1837 c. 26.

(2) The provisions of paragraph (1) above shall not apply to any alteration which appears to the registrar to be of no practical importance.

(3) If a will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the will, the registrar shall require the document to be produced and may call for such evidence in regard to the incorporation of the document as he may think fit.

(4) Where there is a doubt as to the date on which a will was executed, the registrar may require such evidence as he thinks necessary to establish the date.

Attempted revocation of will

15. Any appearance of attempted revocation of a will by burning, tearing, or otherwise destroying and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for to the registrar's satisfaction.

Affidavit as to due execution, terms, etc., of will

16. A registrar may require an affidavit from any person he may think fit for the purpose of satisfying himself as to any of the matters referred to in rules 13, 14 and 15, and in any such affidavit sworn by an attesting witness or other person present at the time of the execution of a will the deponent shall depose to the manner in which the will was executed.

Wills proved otherwise than under section 9 of the Wills Act 1837

17.—(1) Rules 12 to 15 shall apply only to a will that is to be established by reference to section 9 of the Wills Act 1837 (signing and attestation of wills).

(2) A will that is to be established otherwise than as described in paragraph (1) of this rule may be so established upon the registrar being satisfied as to its terms and validity, and includes (without prejudice to the generality of the foregoing)—

(a) any will to which rule 18 applies; and

(b) any will which, by virtue of the Wills Act 1963(**7**), is to be treated as properly executed if executed according to the internal law of the territory or state referred to in section 1 of that Act.

Wills of persons on military service and seamen

18. Where the deceased died domiciled in England and Wales and it appears to the registrar that there is prima facie evidence that a will is one to which section 11 of the Wills Act 1837 applies, the will may be admitted to proof if the registrar is satisfied that it was signed by the testator or, if unsigned, that it is in the testator's handwriting.

Evidence of foreign law

19. Where evidence as to the law of any country or territory outside England and Wales is required on any application for a grant, the registrar may accept—

(a) an affidavit from any person whom, having regard to the particulars of his knowledge or experience given in the affidavit, he regards as suitably qualified to give expert evidence of the law in question; or

(b) a certificate by, or an act before, a notary practising in the country or territory concerned.

(**7**) 1963 c. 44.

Order of priority for grant where deceased left a will

20. Where the deceased died on or after 1 January 1926 the person or persons entitled to a grant in respect of a will shall be determined in accordance with the following order of priority, namely—

(a) the executor (but subject to rule 36(4)(d) below);

(b) any residuary legatee or devisee holding in trust for any other person;

(c) any other residuary legatee or devisee (including one for life) or where the residue is not wholly disposed of by the will, any person entitled to share in the undisposed of residue (including the Treasury Solicitor when claiming bona vacantia on behalf of the Crown), provided that—

(i) unless a registrar otherwise directs, a residuary legatee or devisee whose legacy or devise is vested in interest shall be preferred to one entitled on the happening of a contingency, and

(ii) where the residue is not in terms wholly disposed of, the registrar may, if he is satisfied that the testator has nevertheless disposed of the whole or substantially the whole of the known estate, allow a grant to be made to any legatee or devisee entitled to, or to share in, the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the will;

(d) the personal representative of any residuary legatee or devisee (but not one for life, or one holding in trust for any other person), or of any person entitled to share in any residue not disposed of by the will;

(e) any other legatee or devisee (including one for life or one holding in trust for any other person) or any creditor of the deceased, provided that, unless a registrar otherwise directs, a legatee or devisee whose legacy or devise is vested in interest shall be preferred to one entitled on the happening of a contingency;

(f) the personal representative of any other legatee or devisee (but not one for life or one holding in trust for any other person) or of any creditor of the deceased.

Grants to attesting witnesses, etc

21. Where a gift to any person fails by reason of section 15 of the Wills Act 1837(**8**), such person shall not have any right to a grant as a beneficiary named in the will, without prejudice to his right to a grant in any other capacity.

Order of priority for grant in case of intestacy

22.—(1) Where the deceased died on or after 1 January 1926, wholly intestate, the person or persons having a beneficial interest in the estate shall be entitled to a grant of administration in the following classes in order of priority, namely—

(a) the surviving husband or wife;

(b) the children of the deceased and the issue of any deceased child who died before the deceased;

(c) the father and mother of the deceased;

(d) brothers and sisters of the whole blood and the issue of any deceased brother or sister of the whole blood who died before the deceased;

(e) brothers and sisters of the half blood and the issue of any deceased brother or sister of the half blood who died before the deceased;

(**8**) 1837 c. 26.

(f) grandparents;

(g) uncles and aunts of the whole blood and the issue of any deceased uncle or aunt of the whole blood who died before the deceased;

(h) uncles and aunts of the half blood and the issue of any deceased uncle or aunt of the half blood who died before the deceased.

(2) In default of any person having a beneficial interest in the estate, the Treasury Solicitor shall be entitled to a grant if he claims bona vacantia on behalf of the Crown.

(3) If all persons entitled to a grant under the foregoing provisions of this rule have been cleared off, a grant may be made to a creditor of the deceased or to any person who, notwithstanding that he has no immediate beneficial interest in the estate, may have a beneficial interest in the event of an accretion thereto.

(4) Subject to paragraph (5) of rule 27, the personal representative of a person in any of the classes mentioned in paragraph (1) of this rule or the personal representative of a creditor of the deceased shall have the same right to a grant as the person whom he represents provided that the persons mentioned in sub-paragraphs (b) to (h) of paragraph (1) above shall be preferred to the personal representative of a spouse who has died without taking a beneficial interest in the whole estate of the deceased as ascertained at the time of the application for the grant.

Order of priority for grant in pre-1926 cases

23. Where the deceased died before 1st 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.

Right of assignee to a grant

24.—(1) Where all the persons entitled to the estate of the deceased (whether under a will or on intestacy) have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall replace, in the order of priority for a grant of administration, the assignor or, if there are two or more assignors, the assignor with the highest priority.

(2) Where there are two or more assignees, administration may be granted with the consent of the others to any one or more (not exceeding four) of them.

(3) In any case where administration is applied for by an assignee the original instrument of assignment shall be produced and a copy of the same lodged in the registry.

Joinder of administrator

25.—(1) A person entitled in priority to a grant of administration may, without leave, apply for a grant with a person entitled in a lower degree, provided that there is no other person entitled in a higher degree to the person to be joined, unless every other such person has renounced.

(2) Subject to paragraph (3) below, an application for leave to join with a person entitled in priority to a grant of administration a person having no right or no immediate right thereto shall be made to a registrar, and shall be supported by an affidavit by the person entitled in priority, the consent of the person proposed to be joined as administrator and such other evidence as the registrar may direct.

(3) Unless a registrar otherwise directs, there may without any such application be joined with a person entitled in priority to administration—

(a) any person who is nominated under paragraph (3) of rule 32 or paragraph (3) of rule 35;

(b) a trust corporation.

Additional personal representatives

26.—(1) An application under section 114(4) of the Act to add a personal representative shall be made to a registrar and shall be supported by an affidavit by the applicant, the consent of the person proposed to be added as personal representative and such other evidence as the registrar may require.

(2) On any such application the registrar may direct that a note shall be made on the original grant of the addition of a further personal representative, or he may impound or revoke the grant or make such other order as the circumstances of the case may require.

Grants where two or more persons entitled in same degree

27.—(1) Subject to paragraphs (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, the oath shall state that notice of the application has been given to the executor or executors to whom power is to be reserved.

(2) Where power is to be reserved to partners of a firm, notice for the purposes of paragraph (1) above may be given to the partners by sending it to the firm at its principal or last known place of business.

(3) A registrar may dispense with the giving of notice under paragraph (1) above if he is satisfied that the giving of such a notice is impracticable or would result in unreasonable delay or expense.

(4) A grant of administration may be made to any person entitled thereto without notice to other persons entitled in the same degree.

(5) Unless a registrar otherwise directs, administration shall be granted to a person of full age entitled thereto in preference to a guardian of a minor, and to a living person entitled thereto in preference to the personal representative of a deceased person.

(6) A dispute between persons entitled to a grant in the same degree shall be brought by summons before a registrar.

(7) The issue of a summons under this rule in a district probate registry shall be notified forthwith to the registry in which the index of pending grant applications is maintained.

(8) If the issue of a summons under this rule is known to the registrar, he shall not allow any grant to be sealed until such summons is finally disposed of.

Exceptions to rules as to priority

28.—(1) Any person to whom a grant may or is required to be made under any enactment shall not be prevented from obtaining such a grant notwithstanding the operation of rules 20, 22, 25 or 27.

(2) Where the deceased died domiciled outside England and Wales rules 20, 22, 25 or 27 shall not apply except in a case to which paragraph (3) of rule 30 applies.

Grants in respect of settled land

29.—(1) In this rule "settled land" means land vested in the deceased which was settled previously to his death and not by his will and which remained settled land notwithstanding his death.

(2) The special executors in regard to settled land constituted by section 22 of the Administration of Estates Act 1925(**9**) shall have a prior right to a grant of probate limited to settled land.

(3) 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, namely—

(i) the trustees of the settlement at the time of the application for the grant;

(**9**) 1925 c. 23.

(ii) the personal representatives of the deceased.

(4) Where the persons entitled to a grant in respect of the free estate are also entitled to a grant of the same nature in respect of settled land, a grant expressly including the settled land may issue to them.

(5) 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

30.—(1) Subject to paragraph (3) below, where the deceased died domiciled outside England and Wales, a registrar may order that a grant do issue to any of the following persons—

(a) to the person entrusted with the administration of the estate by the court having jurisdiction at the place where the deceased died domiciled; or

(b) where there is no person so entrusted, to the person beneficially entitled to the estate by the law of the place where the deceased died domiciled or, if there is more than one person so entitled, to such of them as the registrar may direct; or

(c) if in the opinion of the registrar the circumstances so require, to such person as the registrar may direct.

(2) A grant made under paragraph (1)(a) or (b) above may be issued jointly with such person as the registrar may direct if the grant is required to be made to not less than two administrators.

(3) Without any order made under paragraph (1) above—

(a) probate of any will which is admissible to proof may be granted—

(i) if the will is in the English or Welsh language, to the executor named therein; or

(ii) if the will describes the duties of a named person in terms sufficient to constitute him executor according to the tenor of the will, to that person; and

(b) where the whole or substantially the whole of the estate in England and Wales consists of immovable property, a grant in respect of the whole estate may be made in accordance with the law which would have been applicable if the deceased had died domiciled in England and Wales.

Grants to attorneys

31.—(1) Subject to paragraphs (2) and (3) below, the lawfully constituted attorney of a person entitled to a grant may apply for administration for the use and benefit of the donor, and such grant shall be limited until further representation be granted, or in such other way as the registrar may direct.

(2) Where the donor referred to in paragraph (1) above is an executor, notice of the application shall be given to any other executor unless such notice is dispensed with by the registrar.

(3) Where the donor referred to in paragraph (1) above is mentally incapable and the attorney is acting under an enduring power of attorney, the application shall be made in accordance with rule 35.

Grants on behalf of minors

32.—(1) Where a person to whom a grant would otherwise be made is a minor, administration for his use and benefit, limited until he attains the age of eighteen years, shall, unless otherwise directed, and subject to paragraph (2) of this rule, be granted to the parents of the minor jointly, or to the statutory or testamentary guardian, or to any guardian appointed by a court of competent jurisdiction; provided that where the minor is sole executor and has no interest in the residuary estate

of the deceased, administration for the use and benefit of the minor limited as aforesaid, shall, unless a registrar otherwise directs, be granted to the person entitled to the residuary estate.

(2) A registrar may by order assign any person as guardian of the minor, and such assigned guardian may 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 intended guardian shall file an affidavit in support of his application to be assigned.

(3) Where there is only one person competent and willing to take a grant under the foregoing provisions of this rule, such person may, unless a registrar otherwise directs, nominate any fit and proper person to act jointly with him in taking the grant.

Grants where a minor is a co-executor

33.—(1) Where a minor is appointed executor jointly with one or more other executors, probate may be granted to the executor or executors not under disability with power reserved to the minor executor, and the minor executor shall be entitled to apply for probate on attaining the age of eighteen years.

(2) Administration for the use and benefit of a minor executor until he attains the age of eighteen years may be granted under rule 32 if, and only if, the executors who are not under disability renounce or, on being cited to accept or refuse a grant, fail to make an effective application therefor.

Renunciation of the right of a minor to a grant

34.—(1) The right of a minor executor to probate on attaining the age of eighteen years may not be renounced by any person on his behalf.

(2) The right of a minor to administration may be renounced only by a person assigned as guardian under paragraph (2) of rule 32, and authorised by the registrar to renounce on behalf of the minor.

Grants in case of mental incapacity

35.—(1) Unless a registrar otherwise directs, no grant shall be made under this rule unless all persons entitled in the same degree as the incapable person referred to in paragraph (2) below have been cleared off.

(2) Where a registrar is satisfied that a person entitled to a grant is by reason of mental incapacity incapable of managing his affairs, administration for his use and benefit, limited until further representation be granted or in such other way as the registrar may direct, may be granted in the following order of priority—

(a) to the person authorised by the Court of Protection to apply for a grant;

(b) where there is no person so authorised, to the lawful attorney of the incapable person acting under a registered enduring power of attorney;

(c) where there is no such attorney entitled to act, or if the attorney shall renounce administration for the use and benefit of the incapable person, to the person entitled to the residuary estate of the deceased.

(3) Where a grant is required to be made to not less than two administrators, and there is only one person competent and willing to take a grant under the foregoing provisions of this rule, administration may, unless a registrar otherwise directs, be granted to such person jointly with any other person nominated by him.

(4) Notwithstanding the foregoing provisions of this rule, administration for the use and benefit of the incapable person may be granted to such two or more other persons as the registrar may by order direct.

(5) Notice of an intended application under this rule shall be given to the Court of Protection.

Grants to trust corporations and other corporate bodies

36.—(1) An application for a grant to a trust corporation shall be made through one of its officers, and such officer shall depose in the oath that the corporation is a trust corporation as defined by these Rules and that it has power to accept a grant.

(a) (2) (a) Where the trust corporation is the holder of an official position, any officer whose name is included on a list filed with the Senior Registrar of persons authorised to make affidavits and sign documents on behalf of the office holder may act as the officer through whom the holder of that official position applies for the grant.

(b) In all other cases a certified copy of the resolution of the trust corporation authorising the officer to make the application shall be lodged, or it shall be deposed in the oath that such certified copy has been filed with the Senior Registrar, that the officer is therein identified by the position he holds, and that such resolution is still in force.

(3) A trust corporation may apply for administration otherwise than as a beneficiary or the attorney of some person, and on any such application there shall be lodged the consents of all persons entitled to a grant and of all persons interested in the residuary estate of the deceased save that the registrar may dispense with any such consents as aforesaid on such terms, if any, as he may think fit.

(a) (4) (a) Subject to sub-paragraph (d) below, where a corporate body would, if an individual, be entitled to a grant but is not a trust corporation as defined by these Rules, administration for its use and benefit, limited until further representation be granted, may be made to its nominee or to its lawfully constituted attorney.

(b) A copy of the resolution appointing the nominee or the power of attorney (whichever is appropriate) shall be lodged, and such resolution or power of attorney shall be sealed by the corporate body, or be otherwise authenticated to the registrar's satisfaction.

(c) The nominee or attorney shall depose in the oath that the corporate body is not a trust corporation as defined by these Rules.

(d) The provisions of paragraph (4)(a) above shall not apply where a corporate body is appointed executor jointly with an individual unless the right of the individual has been cleared off.

Renunciation of probate and administration

37.—(1) Renunciation of probate by an executor shall not operate as renunciation of any right which he may have to a grant of administration in some other capacity unless he expressly renounces such right.

(2) Unless a registrar otherwise directs, no person who has renounced administration in one capacity may obtain a grant thereof in some other capacity.

(3) A renunciation of probate or administration may be retracted at any time with the leave of a registrar; provided that only in exceptional circumstances may leave be given to an executor to retract a renunciation of probate after a grant has been made to some other person entitled in a lower degree.

(4) A direction or order giving leave under this rule may be made either by the registrar of a district probate registry where the renunciation is filed or by a registrar of the Principal Registry.

Notice to Crown of intended application for grant

38. In any case in which it appears that the Crown is or may be beneficially interested in the estate of a deceased person, notice of intended application for a grant shall be given by the applicant to the Treasury Solicitor, and the registrar may direct that no grant shall issue within 28 days after the notice has been given.

Resealing under Colonial Probates Acts 1892 and 1927

39.—(1) An application under the Colonial Probates Acts 1892 and 1927(**10**) for the resealing of probate or administration granted by the court of a country to which those Acts apply may be made by the person to whom the grant was made or by any person authorised in writing to apply on his behalf.

(2) On any such application an Inland Revenue affidavit or account shall be lodged.

(3) Except by leave of a registrar, no grant shall be resealed unless it was made to such a person as is mentioned in sub-paragraph (a) or (b) of paragraph (1) of rule 30 or to a person to whom a grant could be made under sub-paragraph (a) of paragraph (3) of that rule.

(4) No limited or temporary grant shall be resealed except by leave of a registrar.

(5) Every grant lodged for resealing shall include a copy of any will to which the grant relates or shall be accompanied by a copy thereof certified as correct by or under the authority of the court by which the grant was made, and where the copy of the grant required to be deposited under subsection (1) of section 2 of the Colonial Probates Act 1892 does not include a copy of the will, a copy thereof shall be deposited in the registry before the grant is resealed.

(6) The registrar shall send notice of the resealing to the court which made the grant.

(7) Where notice is received in the Principal Registry of the resealing of a grant issued in England and Wales, notice of any amendment or revocation of the grant shall be sent to the court by which it was resealed.

Application for leave to sue on guarantee

40. An application for leave under section 120(3) of the Act or under section 11(5) of the Administration of Estates Act 1971(**11**) to sue a surety on a guarantee given for the purposes of either of those sections shall, unless the registrar otherwise directs under rule 61, be made by summons to a registrar and notice of the application shall be served on the administrator, the surety and any co-surety.

Amendment and revocation of grant

41.—(1) Subject to paragraph (2) below, if a registrar is satisfied that a grant should be amended or revoked he may make an order accordingly.

(2) Except on the application or with the consent of the person to whom the grant was made, the power conferred in paragraph (1) above shall be exercised only in exceptional circumstances.

Certificate of delivery of Inland Revenue affidavit

42. Where the deceased died before 13th March 1975 the certificate of delivery of an Inland Revenue affidavit required by section 30 of the Customs and Inland Revenue Act 1881(**12**) to be borne by every grant shall be in Form 1.

Standing searches

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 with the Senior Registrar, or sending to him by post, a notice in Form 2.

(2) A person who has entered a standing search will be sent an office copy of any grant which corresponds with the particulars given on the completed Form 2 and which—

(**10**) 1892 c. 6, 1927 c. 43.
(**11**) 1971 c. 25.
(**12**) 1881 c. 12.

(a) issued not more than twelve months before the entry of the standing search; or

(b) issues within a period of six months after the entry of the standing search.

(a) (3) (a) Where an applicant wishes to extend the said period of six months, he or his solicitor may lodge at, or send by post to, the Principal Registry written application for extension.

(b) An application for extension as aforesaid must be lodged, or received by post, within the last month of the said period of six months, and the standing search shall thereupon be effective for an additional period of six months from the date on which it was due to expire.

(c) A standing search which has been extended as above may be further extended by the filing of a further application for extension subject to the same conditions as set out in sub-paragraph (b) above.

Caveats

44.—(1) Any person who wishes to show cause against the sealing of a grant may enter a caveat in any registry or sub-registry, and the registrar shall not allow any grant to be sealed (other than a grant ad colligenda bona or a grant under section 117 of the Act) if he has knowledge of an effective caveat; provided that no caveat shall prevent the sealing of a grant on the day on which the caveat is entered.

(2) Any person wishing to enter a caveat (in these Rules called "the caveator"), or a solicitor on his behalf, may effect entry of a caveat—

(a) by completing Form 3 in the appropriate book at any registry or sub-registry; or

(b) by sending by post at his own risk a notice in Form 3 to any registry or sub-registry and the proper officer shall provide an acknowledgement of the entry of the caveat.

(a) (3) (a) Except as otherwise provided by this rule or by rules 45 or 46, a caveat shall be effective for a period of six months from the date of entry thereof, and where a caveator wishes to extend the said period of six months, he or his solicitor may lodge at, or send by post to, the registry or sub-registry at which the caveat was entered a written application for extension.

(b) An application for extension as aforesaid must be lodged, or received by post, within the last month of the said period of six months, and the caveat shall thereupon (save as otherwise provided by this rule) be effective for an additional period of six months from the date on which it was due to expire.

(c) A caveat which has been extended as above may be further extended by the filing of a further application for extension subject to the same conditions as set out in sub-paragraph (b) above.

(4) An index of caveats entered in any registry or sub-registry shall be maintained at the same registry in which the index of pending grant applications is maintained, and a search of the caveat index shall be made—

(a) on receipt of an application for a grant at that registry; and

(b) on receipt of a notice of an application for a grant made in any other registry,

and the appropriate registrar shall be notified of the entry of a caveat against the sealing of a grant for which application has been made in that other registry.

(5) Any person claiming to have an interest in the estate may cause to be issued from the registry in which the caveat index is maintained a warning in Form 4 against the caveat, and the person warning shall state his interest in the estate of the deceased and shall require the caveator to give particulars of any contrary interest in the estate; and the warning or a copy thereof shall be served on the caveator forthwith.

(6) A caveator who has no interest contrary to that of the person warning, but who wishes to show cause against the sealing of a grant to that person, may within eight days of service of the warning upon him (inclusive of the day of such service), or at any time thereafter if no affidavit has been filed under paragraph (12) below, issue and serve a summons for directions.

(7) On the hearing of any summons for directions under paragraph (6) above the registrar may give a direction for the caveat to cease to have effect.

(8) Any caveat in force when a summons for directions is issued shall remain in force until the summons has been disposed of unless a direction has been given under paragraph (7) above.

(9) The issue of a summons under this rule shall be notified forthwith to the registry in which the caveat index is maintained.

(10) A caveator having an interest contrary to that of the person warning may within eight days of service of the warning upon him (inclusive of the day of such service) or at any time thereafter if no affidavit has been filed under paragraph (12) below, enter an appearance in the registry in which the caveat index is maintained by filing Form 5 and making an entry in the appropriate book; and he shall serve forthwith on the person warning a copy of Form 5 sealed with the seal of the court.

(11) A caveator who has not entered an appearance to a warning may at any time withdraw his caveat by giving notice at the registry or sub-registry at which it was entered, and the caveat shall thereupon cease to have effect; and, where the caveat has been so withdrawn, the caveator shall forthwith give notice of withdrawal to the person warning.

(12) If no appearance has been entered by the caveator or no summons has been issued by him under paragraph (6) of this rule, the person warning may at any time after eight days of service of the warning upon the caveator (inclusive of the day of such service) file an affidavit in the registry in which the caveat index is maintained as to such service and the caveat shall thereupon cease to have effect provided that there is no pending summons under paragraph (6) of this rule.

(13) Unless a registrar of the Principal Registry by order made on summons otherwise directs, any caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action.

(14) Except with the leave of a registrar of the Principal Registry, no further caveat may be entered by or on behalf of any caveator whose caveat is either in force or has ceased to have effect under paragraphs (7) or (12) of this rule or under rule 45(4) or rule 46(3).

Probate actions

45.—(1) Upon being advised by the court concerned of the commencement of a probate action the Senior Registrar shall give notice of the action to every caveator other than the plaintiff in the action in respect of each caveat that is in force.

(2) In respect of any caveat entered subsequent to the commencement of a probate action the Senior Registrar shall give notice to that caveator of the existence of the action.

(3) Unless a registrar of the Principal Registry by order made on summons otherwise directs, the commencement of a probate action shall operate to prevent the sealing of a grant (other than a grant under section 117 of the Act) until application for a grant is made by the person shown to be entitled thereto by the decision of the court in such action.

(4) Upon such application for a grant, any caveat entered by the plaintiff in the action, and any caveat in respect of which notice of the action has been given, shall cease to have effect.

Citations

46.—(1) Any citation may issue from the Principal Registry or a district probate registry and shall be settled by a registrar before being issued.

(2) Every averment in a citation, and such other information as the registrar may require, shall be verified by an affidavit sworn by the person issuing the citation (in these Rules called the "citor"), provided that the registrar may in special circumstances accept an affidavit sworn by the citor's solicitor.

(3) The citor shall enter a caveat before issuing a citation and, unless a registrar of the Principal Registry by order made on summons otherwise directs, any caveat in force at the commencement of the citation proceedings shall, unless withdrawn pursuant to paragraph (11) of rule 44, remain in force until application for a grant is made by the person shown to be entitled thereto by the decision of the court in such proceedings, and upon such application any caveat entered by a party who had notice of the proceedings shall cease to have effect.

(4) Every citation shall be served personally on the person cited unless the registrar, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.

(5) Every will referred to in a citation shall be lodged in a registry before the citation is issued, except where the will is not in the citor's possession and the registrar is satisfied that it is impracticable to require it to be lodged.

(6) A person who has been cited to appear may, within eight days of service of the citation upon him (inclusive of the day of such service), or at any time thereafter if no application has been made by the citor under paragraph (5) of rule 47 or paragraph (2) of rule 48, enter an appearance in the registry from which the citation issued by filing Form 5 and shall forthwith thereafter serve on the citor a copy of Form 5 sealed with the seal of the registry.

Citation to accept or refuse or to take a grant

47.—(1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the will or the survivor of them or of the executors of the last survivor of deceased executors who have proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of six months from the death of the deceased, provided that no citation to take a grant shall issue while proceedings as to the validity of the will are pending.

(4) A person cited who is willing to accept or take a grant may, after entering an appearance, apply ex parte by affidavit to a registrar for an order for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may—

(a) in the case of a citation under paragraph (1) of this rule, apply to a registrar for an order for a grant to himself;

(b) in the case of a citation under paragraph (2) of this rule, apply to a registrar for an order that a note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly ceased; or

(c) in the case of a citation under paragraph (3) of this rule, apply to a registrar by summons (which shall be served on the person cited) for an order requiring such person to take a grant within a specified time or for a grant to himself or to some other person specified in the summons.

(6) An application under the last foregoing paragraph shall be supported by an affidavit showing that the citation was duly served.

(7) If the person cited has entered an appearance but has not applied for a grant under paragraph (4) of this rule, or has failed to prosecute his application with reasonable diligence, the citor may—

(a) in the case of a citation under paragraph (1) of this rule, apply by summons to a registrar for an order for a grant to himself;

(b) in the case of a citation under paragraph (2) of this rule, apply by summons to a registrar for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in sub-paragraph (b) of paragraph (5) of this rule; or

(c) in the case of a citation under paragraph (3) of this rule, apply by summons to a registrar for an order requiring the person cited to take a grant within a specified time or for a grant to himself or to some other person specified in the summons;

and the summons shall be served on the person cited.

Citation to propound a will

48.—(1) A citation to propound a will shall be directed to the executors named in the will and to all persons interested thereunder, and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.

(2) If the time limited for appearance has expired, the citor may—

(a) in the case where no person has entered an appearance, apply to a registrar for an order for a grant as if the will were invalid and such application shall be supported by an affidavit showing that the citation was duly served; or

(b) in the case where no person who has entered an appearance proceeds with reasonable diligence to propound the will, apply to a registrar by summons, which shall be served on every person cited who has entered an appearance, for such an order as is mentioned in paragraph (a) above.

Address for service

49. All caveats, citations, warnings and appearances shall contain an address for service in England and Wales.

Application for order to attend for examination or for subpoena to bring in a will

50.—(1) An application under section 122 of the Act for an order requiring a person to attend for examination may, unless a probate action has been commenced, be made to a registrar by summons which shall be served on every such person as aforesaid.

(2) An application under section 123 of the Act for the issue by a registrar of a subpoena to bring in a will shall be supported by an affidavit setting out the grounds of the application, and if any person served with the subpoena denies that the will is in his possession or control he may file an affidavit to that effect in the registry from which the subpoena issued.

Grants to part of an estate under section 113 of the Act

51. An application for an order for a grant under section 113 of the Act to part of an estate may be made to a registrar, and shall be supported by an affidavit setting out the grounds of the application, and

(a) stating whether the estate of the deceased is known to be insolvent; and

(b) showing how any person entitled to a grant in respect of the whole estate in priority to the applicant has been cleared off.

Grants of administration under discretionary powers of court, and grants ad colligenda bona

52. An application for an order for—

(a) a grant of administration under section 116 of the Act; or

(b) a grant of administration ad colligenda bona,

may be made to a registrar and shall be supported by an affidavit setting out the grounds of the application.

Applications for leave to swear to death

53. An application for leave to swear to the death of a person in whose estate a grant is sought may be made to a registrar, and shall be supported by an affidavit setting out the grounds of the application and containing particulars of any policies of insurance effected on the life of the presumed deceased together with such further evidence as the registrar may require.

Grants in respect of nuncupative wills and copies of wills

54.—(1) Subject to paragraph (2) below, an application for an order admitting to proof a nuncupative will, or a will contained in a copy or reconstruction thereof where the original is not available, shall be made to a registrar.

(2) In any case where a will is not available owing to its being retained in the custody of a foreign court or official, a duly authenticated copy of the will may be admitted to proof without the order referred to in paragraph (1) above.

(3) An application under paragraph (1) above shall be supported by an affidavit setting out the grounds of the application, and by such evidence on affidavit as the applicant can adduce as to—

(a) the will's existence after the death of the testator or, where there is no such evidence, the facts on which the applicant relies to rebut the presumption that the will has been revoked by destruction;

(b) in respect of a nuncupative will, the contents of that will; and

(c) in respect of a reconstruction of a will, the accuracy of that reconstruction.

(4) The registrar may require additional evidence in the circumstances of a particular case as to due execution of the will or as to the accuracy of the copy will, and may direct that notice be given to persons who would be prejudiced by the application.

Application for rectification of a will

55.—(1) An application for an order that a will be rectified by virtue of section 20(1) of the Administration of Justice Act 1982(**13**) may be made to a registrar, unless a probate action has been commenced.

(2) The application shall be supported by an affidavit, setting out the grounds of the application, together with such evidence as can be adduced as to the testator's intentions and as to whichever of the following matters as are in issue:—

(a) in what respects the testator's intentions were not understood; or

(b) the nature of any alleged clerical error.

(3) Unless otherwise directed, notice of the application shall be given to every person having an interest under the will whose interest might be prejudiced by the rectification applied for and

(**13**) 1982 c. 53.

any comments in writing by any such person shall be exhibited to the affidavit in support of the application.

(4) If the registrar is satisfied that, subject to any direction to the contrary, notice has been given to every person mentioned in paragraph (3) above, and that the application is unopposed, he may order that the will be rectified accordingly.

Notice of election by surviving spouse to redeem life interest

56.—(1) Where a surviving spouse who is the sole or sole surviving personal representative of the deceased is entitled to a life interest in part of the residuary estate and elects under section 47A of the Administration of Estates Act 1925(**14**) to have the life interest redeemed, he may give written notice of the election to the Senior Registrar in pursuance of subsection (7) of that section by filing a notice in Form 6 in the Principal Registry or in the district probate registry from which the grant issued.

(2) Where the grant issued from a district probate registry, the notice shall be filed in duplicate.

(3) A notice filed under this rule shall be noted on the grant and the record and shall be open to inspection.

Index of grant applications

57.—(1) The Senior Registrar shall maintain an index of every pending application for a grant made in any registry.

(2) Notice of every application for a grant shall be sent by the registry in which the application is made to the registry in which the index is maintained and shall be in the form of a document stating the full name of the deceased and the date of his death.

(3) On receipt of the notice referred to in paragraph (2) above, the registry shall search its current index and shall give a certificate as to the result of that search to the registry which sent the notice.

(4) The requirements of paragraph (2) above shall not apply in any case in which the application for a grant is made in the registry in which the index is maintained.

(5) In this rule "registry" includes a sub-registry.

Inspection of copies of original wills and other documents

58. An original will or other document referred to in section 124 of the Act shall not be open to inspection if, in the opinion of a registrar, such inspection would be undesirable or otherwise inappropriate.

Issue of copies of original wills and other documents

59. Where copies are required of original wills or other documents deposited under section 124 of the Act, such copies may be facsimile copies sealed with the seal of the court and issued either as office copies or certified under the hand of a registrar to be true copies.

Taxation of costs

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(**15**), shall be referred to a registrar of the Principal Registry for taxation and may be taxed by him or such other taxing officer in the Principal Registry as the President may appoint.

(**14**) 1925 c. 23.
(**15**) 1974 c. 47.

Power to require applications to be made by summons

61.—(1) A registrar may require any application to be made by summons to a registrar in chambers or a judge in chambers or open court.

(2) An application for an inventory and account shall be made by summons to a registrar.

(3) A summons for hearing by a registrar shall be issued out of the registry in which it is to be heard.

(4) A summons to be heard by a judge shall be issued out of the Principal Registry.

Transfer of applications

62. A registrar to whom any application is made under these Rules may order the transfer of the application to another registrar having jurisdiction.

Power to make orders for costs

63. On any application dealt with by him on summons, the district probate registrar shall have full power to determine by whom and to what extent the costs are to be paid.

Exercise of powers of judge during Long Vacation

64. All powers exercisable under these Rules by a judge in chambers may be exercised during the Long Vacation by a registrar of the Principal Registry.

Appeals from registrars

65.—(1) An appeal against a decision or requirement of a registrar shall be made by summons to a judge.

(2) If, in the case of an appeal under the last foregoing paragraph, any person besides the appellant appeared or was represented before the registrar from whose decision or requirement the appeal is brought, the summons shall be issued within seven days thereof for hearing on the first available day and shall be served on every such person as aforesaid.

Service of summons

66.—(1) A judge or registrar of the Principal Registry or, where the application is to be made to a district probate registrar, that registrar, may direct that a summons for the service of which no other provision is made by these Rules shall be served on such person or persons as the judge or registrar may direct.

(2) Where by these Rules or by any direction given under the last foregoing paragraph a summons is required to be served on any person, it shall be served not less than two clear days before the day appointed for the hearing, unless a judge or registrar at or before the hearing dispenses with service on such terms, if any, as he may think fit.

Notices, etc.

67. Unless a registrar otherwise directs or these Rules otherwise provide, any notice or other document required to be given to or served on any person may be given or served in the manner prescribed by Order 65 Rule 5 of the Rules of the Supreme Court 1965(**16**)

(**16**) S.I. 1965/1776.

Application to pending proceedings

68. Subject in any particular case to any direction given by a judge or registrar, these Rules shall apply to any proceedings which are pending on the date on which they come into force as well as to any proceedings commenced on or after that date.

Revocation of previous rules

69.—(1) Subject to paragraph (2) below, the rules set out in the Second Schedule are hereby revoked.

(2) The rules set out in the Second Schedule shall continue to apply to such extent as may be necessary for giving effect to a direction under rule 68.

Dated 13th November 1987 *John Arnold,* P.

I concur,

Dated 24th November 1987 *Mackay of Clashfern,* C.