

2003 No. 185 (L. 3)

SUPREME COURT OF ENGLAND AND WALES

The Non-Contentious Probate (Amendment) Rules 2003

Made - - - - - *28th January 2003*

Laid before Parliament *3rd February 2003*

Coming into force - - *24th February 2003*

The President of the Family Division, in exercise of the powers conferred upon her 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, makes the following Rules:

Citation and commencement

1. These Rules may be cited as the Non-Contentious Probate (Amendment) Rules 2003 and shall come into force on 24th February 2003.

Interpretation

2. In these Rules “the Rules” means the Non-Contentious Probate Rules 1987(c), and a rule referred to by number alone means the rule so numbered in the Rules.

Transitional provisions

3. These Rules shall apply to proceedings commenced on or after 24th February 2003, and the Rules shall apply to proceedings commenced before that date as if these Rules had not come into force.

Amendment to the Non-Contentious Probate Rules 1987

4. In the Arrangement of Rules in the Rules, for the entry for rule 60 there shall be substituted—
“60. Costs”.

(a) 1981 c. 54.

(b) 55 & 56 Vict. c. 6, as amended by sections 52(2) and 59(5) of, and Part I of Schedule 13 to, the Finance Act 1975 (c. 7).

(c) S.I. 1987/2024, as amended by S.I. 1991/1876, 1998/1903 and 1999/1015.

5. For rule 60 there shall be substituted the following—

“Costs

60.—(1) Order 62 of the Rules of the Supreme Court 1965(a) shall not apply to costs in non-contentious probate matters, and Parts 43, 44 (except rules 44.9 to 44.12), 47 and 48 of the Civil Procedure Rules 1998(b) (“the 1998 Rules”) shall apply to costs in those matters, with the modifications contained in paragraphs (3) to (7) of this rule.

(2) Where detailed assessment of a bill of costs is ordered, it shall be referred—

- (a) where the order was made by a district judge, to a district judge, a costs judge or an authorised court officer within rule 43.2(1)(d)(iii) or (iv) of the 1998 Rules;
- (b) where the order was made by a registrar, to that registrar or, where this is not possible, in accordance with sub-paragraph (a) above.

(3) Every reference in Parts 43, 44, 47 and 48 of the 1998 Rules to a district judge shall be construed as referring only to a district judge of the Principal Registry.

(4) The definition of “costs officer” in rule 43.2(1)(c) of the 1998 Rules shall have effect as if it included a paragraph reading—

“(iv) a district probate registrar.”

(5) The definition of “authorised court officer” in rule 43.2(1)(d) of the 1998 Rules shall have effect as if paragraphs (i) and (ii) were omitted.

(6) Rule 44.3(2) of the 1998 Rules (costs follow the event) shall not apply.

(7) Rule 47.4(2) of the 1998 Rules shall apply as if after the words “Supreme Court Costs Office” there were inserted “, the Principal Registry of the Family Division or such district probate registry as the court may specify”.

(8) Except in the case of an appeal against a decision of an authorised court officer (to which rules 47.20 to 47.23 of the 1998 Rules apply), an appeal against a decision in assessment proceedings relating to costs in non-contentious probate matters shall be dealt with in accordance with the following paragraphs of this rule.

(9) An appeal within paragraph (8) above against a decision made by a district judge, a costs judge (as defined by rule 43.2(1)(b) of the 1998 Rules) or a registrar, shall lie to a judge of the High Court.

(10) Part 52 of the 1998 Rules applies to every appeal within paragraph (8) above, and any reference in Part 52 to a judge or a district judge shall be taken to include a district judge of the Principal Registry of the Family Division.

(11) The 1998 Rules shall apply to an appeal to which Part 52 or rules 47.20 to 47.23 of those Rules apply in accordance with paragraph (8) above in the same way as they apply to any other appeal within Part 52 or rules 47.20 to 47.23 of those Rules as the case may be; accordingly the Rules of the Supreme Court 1965 and the County Court Rules 1981 shall not apply to any such appeal.”

6. In rule 65, after paragraph (2) there shall be inserted the following—

“(3) This rule does not apply to an appeal against a decision in proceedings for the assessment of costs.”.

Elizabeth Butler-Sloss, P.

Dated 22nd January 2003

I concur

Irvine of Lairg, C.

Dated 28th January 2003

(a) S.I. 1965/1776, frequently amended. The Rules of the Supreme Court were revoked and replaced by the Civil Procedure Rules 1998 (S.I. 1998/3132), but rule 3 of the Non-Contentious Probate Rules 1987 provides that those Rules as they were in force immediately before 26th April 1999 shall apply with any necessary modifications to non-contentious probate matters.

(b) S.I. 1998/3132 as amended by S.I. 1999/1008, 2000/221, 940, 1317 and 2092 and 2001/256, 1388 and 1769.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules insert a new rule 60 into the Non-Contentious Probate Rules 1987 in substitution for the whole of the existing rule. The new rule provides that Parts 43 to 48 of the Civil Procedure Rules are to apply with modifications to the assessment of costs in non-contentious probate cases, instead of Order 62 of the Rules of the Supreme Court. The court's power to assess costs may be exercised by a costs judge, a district judge of the Principal Registry of the Family Division or a district probate registrar; or, subject to some restrictions, by an authorised court officer attached to the Supreme Court Costs Office or the Principal Registry of the Family Division. The new rule further provides that as in civil proceedings generally, an appeal arising out of the detailed assessment of costs is dealt with:

(a) under rules 47.20 to 47.23 of the Civil Procedure Rules 1998 as at present, where the appeal is against a decision of an authorised costs officer; and

(b) under Part 52 of those Rules, otherwise.

In either case the appeal is made subject to the Civil Procedure Rules 1998 rather than to the Rules of the Supreme Court or the County Court Rules. Appeals dealt with under Part 52 lie from a district judge or other officer of the court to a judge of the High Court.

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