

2018 No. 1137 (L. 13)

SENIOR COURTS OF ENGLAND AND WALES

The Non-Contentious Probate (Amendment) Rules 2018

<i>Made</i> - - - -	<i>1st November 2018</i>
<i>Laid before Parliament</i>	<i>5th November 2018</i>
<i>Coming into force</i> - -	<i>27th November 2018</i>

The President of the Family Division of the High Court (the judicial office holder nominated by the Lord Chief Justice), with the agreement of the Lord Chancellor, makes the following Rules in exercise of the powers conferred by section 127 of the Senior Courts Act 1981(a).

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Non-Contentious Probate (Amendment) Rules 2018, and come into force on 27th November 2018.

(2) In these Rules, a reference to a rule by number alone means the rule so numbered in the Non-Contentious Probate Rules 1987(b).

Amendments to the Non-Contentious Probate Rules 1987: interpretation

2.—(1) Rule 2 (interpretation) is amended as follows.

(2) Omit the definition of “oath” and, in its place, insert—

““online portal” means the online portal established by Her Majesty’s Courts and Tribunals Service for the making of online applications under rules 4A (alternative procedure for applications through solicitors or probate practitioners), 5ZA (online procedure for personal applications) or 5A (alternative online procedure for personal applications);”.

(3) After the definition of “the senior district judge”, insert—

““statement of truth” means a statement made for the purposes of rule 8 (statement of truth) confirming the truthfulness of statements made in the application and the true nature of any documents served in support of the application;”.

Amendments to the Non-Contentious Probate Rules 1987: alternative procedure for applications through solicitors or probate practitioners

3. In rule 4A (alternative procedure for applications through solicitors or probate practitioners), omit paragraph (2).

(a) 1981 c. 54. Section 127 was amended by sections 12(2) and 146 of, and paragraphs 11 and 12 of Part 2 of Schedule 1 and Part 1 of Schedule 18 to, the Constitutional Reform Act 2005 (c.4); and section 59(5) of, and paragraph 1 of Part 1 of Schedule 11 to, the Constitutional Reform Act 2005 provided for the Supreme Court Act 1981 to be cited as the Senior Courts Act 1981.

(b) S.I. 1987/2024, amended by S.I. 1998/1903; there are other amending instruments but none is relevant.

Amendments to the Non-Contentious Probate Rules 1987: personal applications

4.—(1) Rule 5 (personal applications) is amended as follows.

(2) In paragraph (5), after “as” insert “required by instructions given by the registry or as”.

(3) In paragraph (6), for “in the registry” substitute “as required by instructions given by the registry”.

(4) In paragraph (7), omit “oath or”.

(5) For paragraph (9), substitute—

“(9) In any case where an application is made under rule 5ZA (online procedure for personal applications), this rule applies with the exceptions and modifications provided for by that rule.”.

(6) For paragraph (10), substitute—

“(10) In any case where an application is made under rule 5A (alternative online procedure for personal applications), this rule applies with the exceptions and modifications provided for by that rule.”.

Amendments to the Non-Contentious Probate Rules 1987: online procedure for personal applications

5. After rule 5 (personal applications), insert—

“Online procedure for personal applications

5ZA.—(1) Without prejudice to rule 5A (alternative online applications for personal applications), a personal applicant may make an application for a grant online using the online portal.

(2) An application under this rule must be made by completing and sending the online application form provided through the online portal and electronically paying the appropriate fee.

(3) Where an application is made under this rule, rule 5 applies with the following exceptions and modifications—

(a) paragraphs (1), (7) and (8) do not apply; and

(b) paragraphs (5) and (6) apply as if, for the words after “required by” there were substituted “the online application form”.

(4) Where original documents are required to be sent in support of the application, these must be sent separately in accordance with instructions given through the online portal.”

Amendments to the Non-Contentious Probate Rules 1987: alternative online procedure for personal applications

6.—(1) Rule 5A (online procedure for personal applications) is amended as follows.

(2) In the heading, for “Online” substitute “Alternative online”.

(3) In paragraph (2), after “form” insert “(paying the appropriate fee electronically)”.

(4) Omit paragraphs (3)(b) and (4).

Amendment to the Non-Contentious Probate Rules 1987: personal applications using statement of truth

7. Omit rule 5B (personal applications using statement of truth).

Amendments to the Non-Contentious Probate Rules 1987: oath in support of grant

8.—(1) Rule 8 (oath in support of grant) is amended as follows.

- (2) In the heading, for “Oath” substitute “Statement of truth”.
- (3) In paragraph (1), for the words after “supported” substitute—
 - “by—
 - (a) a statement of truth; and
 - (b) such other papers,as required by the district judge, registrar or instructions given through the online portal.”.
- (4) In paragraphs (2), (3) and (4) for the words “the oath shall state”, each time they appear, substitute “the applicant must state in the application”.

Amendment to the Non-Contentious Probate Rules 1987: grant in additional name

9. In rule 9 (grant in additional name), for “shall depose to” substitute “must state in the application”.

Amendments to the Non-Contentious Probate Rules 1987: marking of wills

- 10.**—(1) Rule 10 (marking of wills) is amended as follows.
- (2) For the heading, substitute “Exhibition of wills”.
 - (3) Omit paragraph (1)(a).
 - (4) In paragraph (2) omit “marked or”.

Amendments to the Non-Contentious Probate Rules 1987: grants where two or more persons entitled in same degree

11. In rule 27(1), for “the oath shall state” substitute “the applicant must state in the application”.

Amendments to the Non-Contentious Probate Rules 1987: grants to trust corporations and other corporate bodies

- 12.**—(1) Rule 36 (grants to trust corporations and other corporate bodies) is amended as follows.
- (2) In paragraphs (1) and 4(c), for “shall depose in the oath” substitute “must state in the application”.
 - (3) In paragraph 2(b), for “it shall be deposited in the oath” substitute “the application must include a statement”.

Amendments to the Non-Contentious Probate Rules 1987: standing searches

- 13.**—(1) Rule 43 (standing searches) is amended as follows.
- (2) In paragraph (1), for “by lodging at, or sending by post to any registry or sub-registry” substitute
 - “by—
 - (a) lodging at any registry or sub-registry;
 - (b) sending by post to any registry or sub-registry; or
 - (c) sending by electronic means (paying the appropriate fee electronically) to any registry or sub-registry using an address provided for the purpose,”
 - (3) In paragraph (3)(a), after “or sending by post” insert “or by electronic means (paying the appropriate fee electronically) using an address provided for the purpose.”.
 - (4) In paragraph (3)(b), after “by post” insert “or electronic means”.

Amendments to the Non-Contentious Probate Rules 1987: caveats

14.—(1) Rule 44 (caveats) is amended as follows.

(2) In paragraph (2)(b), for “by sending by post at his own risk” substitute—

“by—

- (i) sending by post at the caveator’s own risk; or
- (ii) sending by electronic means at the caveator’s own risk (paying the appropriate fee electronically) using an address provided for the purpose,”.

(3) In paragraph (3)(a), for “may lodge at, or send by post to” substitute—

“may—

- (i) lodge at;
- (ii) send by post to; or
- (iii) send by electronic means (paying the appropriate fee electronically) using an address provided for the purpose, to”.

(4) In paragraph (3)(b), after “post” insert “or by electronic means”.

(5) In paragraphs (6), (10) and (12), for “eight” substitute “14”.

(6) In paragraph (13), omit “, or, where application to discontinue a caveat is made by consent,”.

(7) In paragraph (14), after “district judge” insert “or registrar”.

Amendment to the Non-Contentious Probate Rules 1987: probate actions

15. In rule 45(3) (probate actions), after “district judge” insert “or registrar”.

Amendment to the Non-Contentious Probate Rules 1987: citations

16. In rule 46(3) (citations), after “district judge” insert “or registrar”.

Amendment to the Non-Contentious Probate Rules 1987: applications made by summons

17. In rule 61 (applications made by summons), after paragraph (4) insert—

“(5) Where an application is required under this rule to be made by summons, a district judge or registrar may—

- (a) give directions (which may be given before listing the application);
- (b) hold a hearing of the application, and receive evidence, by telephone or by using any other method of direct oral communication.

(6) A direction under paragraph (5) may be made subject to conditions, and may specify the consequences of failure to comply with the direction or a condition.”

Andrew McFarlane
President of the Family Division

I allow these Rules

1st November 2018

Lucy Frazer
Parliamentary Under-Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Non-Contentious Probate Rules 1987 (S.I. 1987/2024) (“the 1987 Rules”) to: (a) allow online applications for probate to be made by an unrepresented applicant; (b) enable all applications for probate to be verified by a statement of truth (instead of an oath) and without the will having to be marked (signed by the applicant); (c) extend time limits in the caveat process, which give the person registering the caveat notice of any application for probate; (d) allow caveat applications and standing searches (which give notice of grants being issued) to be made electronically; (e) extend the powers of district probate registrars equivalent to those of district judges; and (f) make further provision for the issue of directions (instructions to the parties) in relation to hearings.

Rule 8 replaces the requirement under rule 8 of the 1987 Rules for the application for grant to be supported by an oath with a requirement for the contents of the application to be verified by a statement of truth.

Rule 10 removes the requirement in rule 10(1)(a) of the 1987 Rules for the will to be marked by the applicant or the applicant’s solicitor or probate practitioner.

Rules 2, 3, 4, 6, 8, 9, 11 and 12 make consequential amendments to rules 2, 4, 4A, 5, 5A, 9, 27 and 36 of the 1987 Rules to reflect the changes to rules 8 and 10. Rule 7 removes rule 5B of the 1987 Rules, which permitted personal applications to be made by way of statement of truth at the invitation of the registry, as it is no longer needed following the general removal of the requirements for an application to be supported by an oath and for the will to be marked.

Rule 5 inserts new rule 5ZA before rule 5A of the 1987 Rules to permit personal applications for grant of probate to be made online without the need for an invitation from the registry, to make a procedure that was previously the subject of a pilot under rule 5A of the 1987 Rules to be made more widely available. Rule 5ZA of the 1987 Rules applies rule 5 of the 1987 Rules with modifications to applications made under the new rule.

Rule 6 amends rule 5A of the 1987 Rules to provide that this is now an alternative procedure to the online procedure provided for by rule 5ZA of the 1987 Rules. Rule 5A of the 1987 Rules permits online features to be tested by way of a pilot procedure. Applicants may participate in the pilot at the invitation of the registry. The retention of rule 5A of the 1987 Rules makes it possible for new online features to be tested in the future.

Rule 13 amends rule 43 of the 1987 Rules to permit applications for standing searches to be sent by electronic means as well as by post or by lodging the application in person, provided that the applicable fee is also paid electronically. Rule 14 makes the same change in relation to applications for a caveat to be entered or extended under rule 44 of the 1987 Rules.

Rule 14 also amends rule 44 of the 1987 Rules to enable certain directions in relation to caveats to be made by a registrar as well as by a district judge. Rule 15 makes the same change to rule 45 of the 1987 Rules (in relation to probate actions) and rule 16 makes the same change to rule 46 of the 1987 Rules (in relation to citations).

Finally, rule 14 amends rule 44 of the 1987 Rules to extend (from 8 to 14 days) the period for a caveator who has been served with a warning against a caveat to issue and serve a summons for directions under paragraph (6) or to enter an appearance in the nominated registry under paragraph (10), as the case may be.

Rule 17 amends rule 61 of the 1987 Rules, which gives power to a district judge or registrar to direct that an application must be made by summons. The amendment makes two changes. First, the district judge or registrar is empowered to give directions, which may be given before listing the application (which may make it possible for the application to be dealt with without needing to be listed at all) and may be subject to conditions and specify the consequences of failure to comply with the direction or a condition (which enables, for example, what is often referred to as an

“unless order” to be made). Second, the district judge or registrar is empowered to hold the hearing of the application, or to take evidence, by telephone or any other direct method of oral communication (such as videoconferencing).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

© Crown copyright 2018

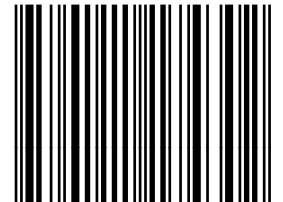
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

£6.90

UK201811021017 11/2018 19585

<http://www.legislation.gov.uk/id/uksi/2018/1137>

ISBN 978-0-11-117430-2



9 780111 174302