
STATUTORY INSTRUMENTS

1998 No. 1903 (L.6)

SUPREME COURT OF ENGLAND AND WALES

The Non-Contentious Probate (Amendment) Rules 1998

Made - - - - *30th July 1998*
Laid before Parliament *4th August 1998*
Coming into force - - *14th September 1998*

The President of the Family Division, in exercise of the powers conferred upon him by section 127 of the Supreme Court Act 1981(1) and with the concurrence of the Lord Chancellor, hereby makes the following Rules—

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Non-Contentious Probate (Amendment) Rules 1998 and shall come into force on 14th September 1998.

(2) In these Rules, unless the context otherwise requires, a rule referred to by number alone means the rule so numbered in the Non-Contentious Probate Rules 1987(2) and a reference to any form by number alone means the form so numbered in the First Schedule to those Rules.

Amendments to the Non-Contentious Probate Rules 1987

2. In the Arrangement of Rules—

- (a) the words “or probate practitioners” shall be added at the end of the title of rule 4; and
- (b) the words “62A. Exercise of a registrar’s jurisdiction by another registrar” shall be added after rule 62.

3. In paragraph (1) of rule 2—

- (a) in the definition of “personal applicant”, the words “or probate practitioner” shall be inserted after the word “solicitor”; and
- (b) the following definition shall be inserted after the definition of “personal applicant”—
““probate practitioner” means a person to whom section 23(1) of the Solicitors Act 1974(3) does not apply by virtue of section 23(2) of that Act.”.

(1) 1981 c. 54.

(2) S.I.1987/2024, as amended by S.I. 1991/1876.

(3) 1974 c. 47. Section 23 was amended by the Administration of Justice Act 1985 (c. 61), section 7.

4. In rule 4—
- (a) the words “or probate practitioners” shall be added at the end of the title; and
 - (b) in paragraphs (1) and (2), the words “or probate practitioner” shall be inserted after both occurrences of the word “solicitor”.
5. The following words shall be inserted at the end of paragraph (3)(a) of rule 5—
“, unless a judge, district judge or registrar so permits”.
6. In rules 5(3)(b), 43(3)(a), 44(2), 44(3)(a) and 46(2) the words “or probate practitioner” shall be inserted after the word “solicitor”.
- 7.—(1) In paragraph (1A) of rule 27, the words “appointed by reference to their being” and “and not by their names,” shall be omitted.
- (2) For paragraph (7) of rule 27, there shall be substituted the following—
“(7) The issue of a summons under this rule in a registry shall be noted forthwith in the index of pending grant applications.”.
- 8.—(1) After paragraph (1)(a) of rule 32, the following new sub-paragraph shall be inserted—
“(aa) a person who has, or is deemed to have, parental responsibility for the minor by virtue of section 12(2) of the Children Act 1989(4) where the court has made a residence order under section 8 of that Act in respect of the minor in favour of that person; or”.
- (2) At the end of paragraph (1)(b) of rule 32, the word “or” shall be inserted.
- (3) After paragraph (1)(b) of rule 32, the following new sub-paragraph shall be inserted—
“(c) a local authority which has, or is deemed to have, parental responsibility for the minor by virtue of section 33(3) of the Children Act 1989 where the court has made a care order under section 31(1)(a) of that Act in respect of the minor and that local authority is designated in that order;”.
- 9.—(1) In paragraph (4) of rule 35, for the words “two or more other persons”, there shall be substituted the words “other person”.
- (2) The following words shall be inserted at the beginning of paragraph (5) of rule 35—
“Unless the applicant is the person authorised in paragraph (2)(a) above.”.
10. After paragraph (2) of rule 37, there shall be inserted the following new paragraph—
“(2A) Renunciation of probate or administration by members of a partnership—
(a) may be effected, or
(b) subject to paragraph (3) below, may be retracted by any two of them with the authority of the others and any such renunciation or retraction shall recite such authority.”.
- 11.—(1) For paragraph (4) of rule 44, there shall be substituted the following—
“(4) An index of caveats entered in any registry or sub-registry shall be maintained and upon receipt of an application for a grant, the registry or sub-registry at which the application is made shall cause a search of the index to be made and the appropriate district judge or registrar shall be notified of the entry of a caveat against the sealing of a grant for which the application has been made.”.

(2) In paragraphs (5), (9), (10) and (12) of rule 44, for the words “registry in which the caveat index is maintained”, there shall be substituted the words “nominated registry”.

(3) After paragraph (14) of rule 44, there shall be added the following new paragraph—

“(15) In this rule, “nominated registry” means the registry nominated for the purpose of this rule by the senior district judge or in the absence of any such nomination the Leeds District Probate Registry.”.

12. In paragraph (3) of rule 55, after the word “prejudiced”, there shall be inserted the words “, or such other person who might be prejudiced,”.

13. For rule 57, there shall be substituted the following new rule—

“Index of grant applications

57.—(1) The senior district judge shall maintain an index of every pending application for a grant made in any registry or sub-registry.

(2) Every registry or sub-registry in which an application is made shall cause the index to be searched and shall record the result of the search.”.

14. The following new rule shall be inserted after rule 62—

“Exercise of a registrar’s jurisdiction by another registrar

62A. A registrar may hear and dispose of an application under these Rules on behalf of any other registrar by whom the application would otherwise have been heard, if that other registrar so requests or an application in that behalf is made by a party making an application under these Rules; and where the circumstances require it, the registrar shall, without the need for any such request or application, hear and dispose of the application.”.

15. In paragraph (1) of rule 66, for the second occurrence of the words “judge or district judge”, there shall be substituted “judge, district judge or registrar”.

16. In Form 3—

- (a) the words “or probate practitioner” shall be inserted after the first occurrence of the word “solicitor”; and
- (b) the words “/probate practitioner” shall be inserted after the second occurrence of the word “solicitor”.

17. In Form 4—

- (a) the words “or probate practitioner” shall be inserted after both occurrences of the word “solicitor”;
- (b) for the words “[*The Registry in which the caveat index is maintained*]”, there shall be substituted the words “[*The nominated registry as defined by rule 44(15)*]”; and
- (c) for the words “[*name and address of the registry in which the caveat index is maintained*]”, there shall be substituted the words “[*name and address of the nominated registry*]”.

18. In Form 5, the words “/probate practitioner” shall be inserted after the word “Solicitor”.

Dated 29th July 1998

Stephen Brown, P.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

I concur,

Dated 30th July 1998

Irvine of Lairg, C.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Non-Contentious Probate Rules 1987 as follows—

- (a) rules 2(a), 3, 4, 6, 16, 17(a) and 18 provide that probate practitioners may act for applicants as well as solicitors; persons falling into the category of probate practitioners as defined in these Rules, may be found listed in section 23(2) of the Solicitors Act 1974;
- (b) rules 5, 7, 9 and 15 provide for minor changes and corrections to the 1987 Rules;
- (c) rule 8 provides for all persons having parental responsibility for a minor to have an equal right in respect of a grant on behalf of a minor;
- (d) rule 10 provides for any two partners to renounce probate or administration on behalf of the other members of a partnership;
- (e) rules 11, 13, 17(b) and 17(c) provide for amendments as a result of the computerisation of the index of caveats and summonses;
- (f) rule 12 widens the persons to whom notice must be given of an application for the rectification of a will, where they might be prejudiced by it; and
- (g) rules 2(b) and 14 provide for the exercise of a registrar's jurisdiction by another registrar in certain circumstances.