

**2020 No. 1059**

**SENIOR COURTS OF ENGLAND AND WALES**

**The Non-Contentious Probate (Amendment) Rules 2020**

*Made* - - - - 29th September 2020

*Laid before Parliament* 30th September 2020

*Coming into force* - - 2nd November 2020

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) and section 2(5) of the Colonial Probates Act 1892(b).

**Citation, commencement and interpretation**

1.—(1) These Rules may be cited as the Non-Contentious Probate (Amendment) Rules 2020 and come into force on 2nd November 2020.

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

**Amendment to the Non-Contentious Probate Rules 1987: Overriding objective**

2.—(1) After rule 3 (Application of other rules) insert—

**“Overriding objective**

**3A.** The overriding objective of these Rules is to enable non-contentious and common form probate business to be dealt with justly and expeditiously by the court and the registry.”.

**Amendment to the Non-Contentious Probate Rules 1987: using the online procedure for applications through solicitors or probate practitioners**

3.—(1) In rule 2(1) (Interpretation), in the definition of “online portal” for “rules 4A (Online procedure for applications through solicitors or probate practitioners)” substitute “rules 4 (Applications for grants through solicitors or probate practitioners)”.

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- (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) 1892 c. 6. Section 2 was amended by section 59(5) of, and paragraph 1 of Part 1 of Schedule 11 to, the Constitutional Reform Act 2005 which provided for the Supreme Court Act 1981 to be cited as the Senior Courts Act 1981 and by sections 52(2) and 59(5) of, and Part 1 of Schedule 13 to, the Finance Act 1975 (c. 7).
- (c) S.I. 1987/2024, relevant amending instruments are S.I. 1991/1876, 1998/1903, 1999/1015, 2017/1034, 2018/1137 and 2019/1057.

(2) For rule 4 (Application for grants through solicitors or probate practitioners) substitute—

“4.—(1) A person applying for a grant through a solicitor or probate practitioner, other than a grant listed in the Third Schedule, must apply using the online portal, unless invited to apply at a registry by that registry.

(2) A person applying through a solicitor or probate practitioner for a grant listed in the Third Schedule may apply either using the online portal, in accordance with instructions given through the online portal, or at any registry.

(3) An application using the online portal must be made in accordance with instructions given through the online portal, by completing and sending the online application form provided through the online portal and electronically paying the appropriate fee.

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

(5) Every solicitor and probate practitioner through whom an application for a grant is made must give the address of their place of business within England and Wales.”.

(3) Omit rule 4A (Online procedure for applications through solicitors or probate practitioners).

(4) After the Second Schedule, insert—

## “THIRD SCHEDULE

### EXCEPTIONS TO THE REQUIREMENT TO USE THE ONLINE PORTAL FOR APPLICATIONS FOR GRANTS MADE THROUGH SOLICITORS OR PROBATE PRACTITIONERS

#### Rule 4

A grant of administration including a grant of administration with will annexed.

A second grant of probate in respect of the same estate.

A grant where the person entitled has been convicted of murder or manslaughter of the deceased or has otherwise forfeited the right to apply.

A grant in respect of a foreign will.

A grant accompanied by an application to prove a copy of the will.

A grant, where all those entitled are deceased, to any of their legal personal representatives.

A grant accompanied by an application for rectification or fiat copy of the will.

A grant under rule 25 (Joinder of administrator).

A grant under rule 27 (Grants where two or more persons entitled in same degree).

A grant under rule 30 (Grants where deceased died domiciled outside England and Wales), except a grant under rule 30(3)(b).

A grant under rule 31 (Grants to attorneys).

A grant under rule 36 (Grants to trust corporations and other corporate bodies).

A grant under rule 39 (Resealing under Colonial Probates Acts 1892 and 1927).

A grant under rule 52 (Grants of administration under discretionary powers of court, and grants ad colligenda bona).”.

**Amendment to the Non-Contentious Probate Rules 1987: reliance on a witness statement in the alternative to an affidavit**

4.—(1) In rule 2(1) (Interpretation)—

- (a) in the definition of “statement of truth” omit “made for the purposes of rule 8 (statement of truth)”, and
- (b) after the definition of “trust corporation” insert—
  - ““witness statement” means a written statement signed by a person which contains the evidence which that person would be allowed to give orally.”.

(2) After rule 2 (Interpretation) insert—

**“Witness statements**

**2A.** Witness statements must be verified by a statement of truth.”.

(3) In the following rules, after “an affidavit” insert “or a witness statement”—

- (a) rule 12(1) (Evidence as to due execution of will),
- (b) rule 25(2) (Joinder of administrator),
- (c) rule 26(1) (Additional personal representatives),
- (d) rule 32(2) (Grants on behalf of minors),
- (e) rule 44(12) (Caveats),
- (f) rule 47(6) (Citation to accept or refuse to take a grant),
- (g) rule 48(2)(a) (Citation to propound a will),
- (h) rule 50(2) (Application for order to attend for examination or for subpoena to bring in a will),
- (i) rule 51 (Grants to part of an estate under section 113 of the Act),
- (j) rule 52 (Grants of administration under discretionary powers of court, and grants ad colligenda bona), and
- (k) rule 55(2) (Application for rectification of a will).

(4) In rule 12(2) (Evidence as to due execution of will)—

- (a) after “no affidavit” insert “or witness statement”, and
- (b) after “on affidavit” insert “or by a witness statement”.

(5) In the following rules, after “affidavit” insert “or witness statement”—

- (a) rule 10(1)(b) (Exhibition of Wills),
- (b) rule 44(6) and (10) (Caveats),
- (c) rule 46(4) (Citations),
- (d) rule 47(4) (Citation to accept or refuse to take a grant), and
- (e) rule 55(3) (Application for rectification of a will).

(6) For rule 16 (Affidavit as to due execution, terms etc., of will), substitute—

**“Affidavit or witness statement as to due execution, terms, etc., of will**

**16.** A district judge or registrar may require an affidavit or a witness statement 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 or witness statement made by an attesting witness or other person present at the time of the execution of a will the deponent must depose to, or the maker of the witness statement must give evidence of, the manner in which the will was executed.”.

(7) In rule 19 (Evidence of foreign law)—

- (a) after “an affidavit” insert “or a witness statement”, and
- (b) after “in the affidavit” insert “or in the witness statement”.

(8) In rule 36(2)(a) (Grants to trust corporations and other corporate bodies), after “affidavits” insert “or witness statements”.

(9) In rule 46(2) (Citations), after “affidavit sworn” in both places where it occurs, insert “or a witness statement made”.

(10) In rule 53 (Applications for leave to swear to death)—

- (a) for the heading substitute “Applications for leave to swear or give evidence as to death”,
- (b) after “An application for leave to swear” insert “or give evidence as”, and
- (c) after “an affidavit” insert “or a witness statement”.

(11) In rule 54(3) (Grants in respect of nuncupative wills and copies of wills)—

- (a) after “an affidavit” insert “or a witness statement”, and
- (b) after “on affidavit” insert “or by a witness statement”.

*Lucy Theis*  
Acting President of the Family Division

I allow these Rules

*Chris Philp*  
Parliamentary Under Secretary of State  
Ministry of Justice

29th September 2020

### **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”) (a) to introduce an overriding objective to the application of the 1987 Rules, (b) to require, with some exceptions, that applications for a grant of probate under the 1987 Rules through solicitors or probate practitioners be made under the online procedure and (c) to permit the use of a witness statement in the alternative to an affidavit.

Rule 2 introduces a new rule 3A to the 1987 Rules which contains the new overriding objective which is to enable the court and the registry to deal with non-contentious and common form probate business justly and expeditiously.

Rule 3 amends the definition of the online portal in rule 2(1) of the 1987 Rules to reflect the changes to rules 4 and 4A of those Rules. Those changes to rules 4 and 4A of the 1987 Rules are to replace them with a new rule 4 to require that applications made through solicitors or probate practitioners for a grant must be made using the online portal unless either, the applicant is invited by any registry to make the application there, or the grant is a grant listed in the new Third Schedule to the 1987 Rules. The grants listed in the new Third Schedule may be made using the online portal or at a registry in accordance with instructions given through the online portal. The new rule 4 of the 1987 Rules retains the requirement that solicitors and probate practitioners through whom such applications are made shall give the address of their place of business in England and Wales.

Rule 5 amends rule 2(1) of the 1987 Rules to introduce a definition of a witness statement, introduces rule 2A, that requires all witness statements to be verified by a statement of truth, and amends rules 10(1)(b), 12(1) and (2), 16, 19, 25(2), 26(1), 32(2), 36(2)(a), 44(6), (10) and (12), 46(2) and (4), 47(4) and (6), 48(2)(a), 50(2), 51, 52, 53, 54(3) and 55(2) and (3) of the 1987 Rules to permit the use of a witness statement in the alternative to an affidavit.

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.

