

Holloway's

PROBATE

HANDBOOK

G. J. Maple



Supplement to 8th Edition

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Probate Handbook

*Supplement to
Eighth edition*

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Preface

This is the first time that a supplement has been issued to this work, but in view of the changes that have taken place over the last few months it seems appropriate that one should be compiled.

The main changes have been brought about by the complete revision of the Non-Contentious Probate Rules 1954. Not only has the opportunity been taken to update some of the wording in the Rules, but new provisions now include the giving of notice to all non-proving executors unless dispensed with by a registrar; the abolition of the need for guarantees (although the statutory authority still remains); the use of the term 'facsimile' to cover photographic and other copies; and some amendments to the order of priority for a grant where the deceased left a will.

Other provisions that have come into force are the Family Law Act 1986 and the Family Law Reform Act 1987. The major areas dealt with by this legislation are the recognition of divorces, annulments and legal separations; declarations of status and the further changes to declarations of status brought about by the 1987 Act.

The page references in this supplement all refer to pages in the Eighth edition and references to rules mean the Non-Contentious Probate Rules 1987. In Appendix 2 the addresses of some of the Probate Registries have been updated.

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Chapter 1

Grants of Representation

1.1 Probate jurisdiction

The Non-Contentious Probate Rules 1954 (SI No 796) (as amended) p 2
have been repealed and replaced by the Non-Contentious Probate
Rules 1986 (SI No 2024) with effect from 1 January 1988. By virtue
of r 68, subject to any direction given by a judge or registrar, the
1987 Rules apply to proceedings that were pending on that date.

1.2 Grants of representation

Now the leave of only one registrar is required to issue a grant p 4
of probate or of letters of administration with will annexed within
seven days and a grant of letters of administration within fourteen
days of the date of death of the deceased. (Probate Rule 6(2).)

1.4 How to apply for a grant

Probate Rules 3 and 4 are now Probate Rules 4(2) and 5. p 5

(a) *By application through a solicitor at the Principal Registry* p 8
Probate Rule 59 is now Probate Rule 60.

(b) *By application through a solicitor at a district probate registry* p 9
or sub-registry

Probate Rule 5A is now Probate Rule 7(3).

There is now no requirement for the central index of pending p 10
applications to be kept at the Principal Registry so long as the
Senior Registrar maintains such an index. (Probate Rule 57.)

Personal applicants can no longer prepare their own papers.

A personal applicant applying for the re-sealing of a colonial
grant may apply through an agent (see p 232).

Chapter 2

Wills

2.6 The form of the testator's signature

- p 21 Probate Rule 11 is now Probate Rule 13. The effect of the rule remains the same.

2.8 The date of the will

- p 22 Probate Rule 12(3) is now Probate Rule 14(4). The effect of the rule remains the same.

2.9 Alterations in the will

- p 23 Probate Rule 12(1) is now Probate Rule 14(1). The effect of the rule remains the same.

2.10 Plight and condition of the will

- p 24 Probate Rule 13 is now Probate Rule 15. The effect of the rule remains the same.

- p 25 The requirement in Probate Rule 12(2) is not repeated in the new Probate Rule 14. It follows that marks on wills need no longer be invested in every case.

It would appear that a copy to perpetuate pencil writings in a will is no longer required.

2.11 Evidence of execution by persons present at the time

- p 26 Probate Rule 8 is now Probate Rule 10 which gives the registrar wider discretion to allow facsimile copies to be marked in lieu of originals.

2.12 Other evidence in support of due execution

Under Probate Rule 12 the registrar may require notice of the application to be given to any person who may be prejudiced by the will and he may dispense with evidence as to execution if the distribution of the estate is not affected. p 31

Form 2.12.1 Affidavit of application in support of will

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Add, if appropriate, 'and that I have given notice of the said application to the said AB and the said CD as directed by the court.'

2.13 Wills not duly executed

Probate Rule 10 is now Probate Rule 12. p 35

2.14 Who may give evidence concerning the state of a will or as to its date, etc

Probate Rule 14 is now Probate Rule 16. The effect of the rule remains the same. p 36

2.16 Rectification of a will

Probate Rule 55(1). The numbering and effect of this rule remain the same. p 41

2.19 Incorporation of documents

Probate Rule 12(2) is now Probate Rule 14(3). The effect of the rule remains the same. p 44

2.22 Will lost or not available

Probate Rule 53 is now Probate Rule 54. The new rule sets out more clearly the evidence that is required and gives the registrar a wider discretion as to the evidence required. p 47

2.26 Privileged wills

The deceased must have died domiciled in England and Wales. (Probate Rule 18.) p 50

p 52 *(d) Form of a privileged will*

Probate Rule 53 is now Probate Rule 54. The effect of the rule remains the same.

p 53 *(g) Evidence required*

Probate Rule 15 is now Probate Rule 17. The effect of the rule remains the same.

p 54 Paragraph 2 of Form 2.26 must now contain a statement that the deceased died domiciled in England and Wales.

2.27 Seamen's wills

p 55 Probate Rule 17 has been repealed and not replaced.

2.30 Effect on will of dissolution or annulment of marriage

p 60 In line 22 delete 'specially' and insert 'specifically'.

Chapter 3

Executors

Probate Rule 27 provides that notice of an application for a grant of probate is to be given to those executors to whom power is to be reserved. A registrar of the Principal Registry or a district probate registrar may dispense with the giving of such notice if he is satisfied that to do so is impracticable or would result in unreasonable delay or expense. p 66

Application is by way of summons. The relevant paragraphs of Probate Rule 27 are set out below:

(1) Subject to paras (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 para (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 para (1) above if he is satisfied that the giving of such a notice is impracticable or would result in unreasonable delay or expense.

The Senior Registrar issued a direction on 21 December 1987 which states:

Solicitors may wish to consult the registrar in advance of preparing their oaths to ascertain whether in the circumstances of the particular case the registrar would be prepared to dispense with notice. Such preliminary enquiry should be supported by a letter by the solicitors setting out the reasons why the registrar is being asked to dispense with the giving of notice. If no preliminary enquiry is made, and the case is one in which notice has not been given to any executor to whom power is to be reserved, the application for the grant must be accompanied by a similar letter.

3.2 Oath for executors

- p 69 Probate Rule 6(1) is now Probate Rule 8(1). An oath is not now required when a grant is re-sealed.

Form 3.2 Oath for executors

- p 72 (3) *Occupations or descriptions*

Probate Rule 65 is repealed and not replaced. The requirement to give the occupation or description of the deponent remains (RSC, Ord 41, r 1(4)).

2

- p 73 Probate Rule 8 is now Probate Rule 10 and the registrar is given wider discretion to allow facsimile copies of the will to be marked in lieu of the original.

- p 76 *Domicile*

Probate Rule 6(4) is now Probate Rule 8(2).

- p 77 *Power is to be reserved to some executors*

Where power is to be reserved, notice of application for a grant must be given to them or application must be made to a registrar of the Principal Registry or a district probate registrar to dispense with the giving of such notice. See noter-up to p 66.

In addition, the oath must contain the following paragraph:

And I/we further make oath and say (or 'do solemnly and sincerely affirm') that notice of this application has been given to (insert names of all the executors to whom it is proposed that power should be reserved) the executor(s) to whom power is to be reserved. [save].

- p 79 Rule 2(2) of the Non-Contentious Probate Rules 1954 (SI No 796) is now r 2(1) of the Non-Contentious Probate Rules 1987 (SI No 2024).

3.3 Power reserved

- p 85 It would seem that the marginal endorsement is unnecessary if the oath now contains the relevant paragraph. See noter-up to pp 66 and 77.

Form 3.4 Oath for double probate

- p 87 If power is to be reserved to other executors see noter-up to pp 66 and 77.

A guarantee by sureties will not ususally be required. A grant of administration may be made to any person entitled thereto without notice to other persons entitled in the same degree. Probate Rule 27(4). p88

Chapter 4

Letters of Administration with Will Annexed

4.2 Order of preference — death on or after 1 January 1926

p90-1 Probate Rule 19 is now Probate Rule 20 which is set out below:

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). See noter-up to p212);
(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.

Failure of gift

p 92

Probate Rule 20 is now Probate Rule 21. The effect of the rule remains the same.

Trust interests

p 94

Probate Rule 19, class (ii) is now Probate Rule 20(b).

Life interests and Ultimate interests

Probate Rule 19, classes (iii) and (iv) are now Probate Rule 20(c). It is to be noted that life and ultimate interests have now been amalgamated into one and have equal priority.

Interests in undisposed residue

p 95

Probate Rule 19, class (iv) is now Probate Rule 20(c).

Probate Rule 25(3) is now Probate Rule 27.

p 96

Personal representatives of persons entitled to the residue

p 98

Personal representatives of residuary legatees and devisees or creditors of any persons entitled to share in any residue not disposed of by the will now have a separate and lower title than a living ultimate residuary legatee or devisee or person entitled to undisposed estate.

Probate Rule 25(3) is now probate Rule 27.

Probate Rule 37 is now Probate Rule 38. The effect of these rules remains the same.

p 99

(c) Legatees, devisees and creditors, etc

pp 99-100

(d) Contingent legatees, etc

These two categories were separate classes governed by Probate Rule 19, classes (v) and (vi), but have now been amalgamated by Probate Rule 20(e) into a single class with equal priority. Persons with only an interest in undisposed estate in the event of an accretion and persons with no interest under the will are now excluded.

Personal representatives of any other legatee or devisee or creditor. Probate Rule 20(b) provides that the personal representatives of any other legatee or devisee (but not one for life or one holding in trust for any other person) or any creditor of the deceased now have a separate and lower title than a living legatee, devisee or creditor.

4.3 Order of preference — death before 1 January 1926

Probate Rule 23 now provides that where the deceased died before 1 January 1926, the person or persons entitled to a grant shall

p 102

be determined in accordance with the principles and rules under which the court would have acted at the date of death.

4.4 Oath for administrators with will annexed

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p 107 It is no longer possible to apply for a spes grant. References to r 29(c) of the Non-Contentious Probate Rules 1954 (SI No 796) should now be read as references to r 30(1)(c) of the Non-Contentious Probate Rules 1987 (SI No 2024).

8

p 107–8 It is no longer possible to apply for a spes grant, nor will a grant now issue to the ‘person entitled’ under foreign law.

Chapter 5

Letters of Administration

A grant of administration may be made to any person entitled thereto without notice to other persons entitled in the same degree. (Probate Rule 27(4).) p 109

5.1 Deaths before 1 January 1926

Probate Rule 21A is now Probate Rule 23.

5.2 Deaths between 1 January 1926 and 31 December 1952

Probate Rule 22 does not now contain any reference to the distinction between deaths before and after 1 January 1953. For the order of priority see noter-up to p 116. p 111

A guarantee by sureties will not usually be required.

5.3 Deaths on or after 1 January 1953

The order of priority is contained in Probate Rule 22 which provides: p 116

(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;
- (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 para (5) of rule 27, the personal representative of a person in any of the classes mentioned in para (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-paras (b) to (h) of para (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.

p 117 The table at the top of the page has been amended by the Family Provision (Intestate Succession) Order 1987 (SI No 799). In respect of a person dying on or after 1 June 1987, the residuary estate in favour of a surviving spouse is increased from £40,000 to £75,000 where the deceased is survived by issue, and from £85,000 to £125,000 where the deceased leaves no issue, but is survived by a parent or brother or sister of the whole blood or issue of such brother or sister.

In the fourth line from the bottom of the page delete '£40,000' and insert '£75,000 where the deceased died on or after 1 June 1987.'

p 118 In the third line down delete '£85,000' and insert '£125,000 where the deceased died on or after 1 June 1987.'

p 119 (c) *Right to a grant*

Probate Rule 21 is now Probate Rule 22. See noter-up to p 116 where the rule is set out.

p 120 (d) *Grant to a surviving spouse*

References to '£40,000' should be to '£75,000' and references to '£85,000' should be to '£125,000' in respect of deaths on or after 1 June 1987.

pp 120-1 (f) *Renunciation or death of surviving spouse*

References to '£40,000' should be to '£75,000' and references to '£85,000' should be to '£125,000' in respect of deaths on or after 1 June 1987.