TRISTRAM AND COOTE'S PROBATE PRACTICE

THIRD SUPPLEMENT TO
THIRTY-FIRST EDITION
(CUMULATIVE)

RR D'COSTA
P TEVERSON
T SYNAK

LexisNexis®

Tristram and Coote's Probate Practice

The University of Law
WITHDRAWN
14 Store Street
London
WC1E 7DE

The University of Law

This book must be returned to the library on or before the last date stamped below. Failure to do so will result in a fine.

Bloomsbury Library
T: 01483 216387
library-bloomsbury@law.ac.uk

Moorgate Library
T: 01483 216371
library-moorgate@law.ac.uk

University of Law
A05105

WITHDRAWN

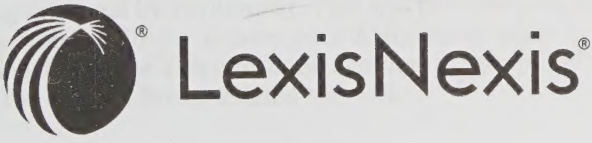
Tristram and Coote's Probate Practice

Third Supplement to Thirty-first edition (Cumulative)

R D'Costa
Formerly District Probate Registrar, Oxford

P Teverson
Master of the Senior Courts, Chancery Division

T Synak
Formerly HMRC Inheritance Tax



LexisNexis® UK & Worldwide

United Kingdom	RELX (UK) Limited trading as LexisNexis®, 1–3 Strand, London WC2N 5JR and 9–10 St Andrew Square, Edinburgh EH2 2AF
LNUK Global Partners	LexisNexis® encompasses authoritative legal publishing brands dating back to the 19th century including: Butterworths® in the United Kingdom, Canada and the Asia-Pacific region; Les Editions du Juris Classeur in France; and Matthew Bender® worldwide. Details of LexisNexis® locations worldwide can be found at www.lexisnexis.com

© RELX (UK) Limited 2019

Published by LexisNexis

All rights reserved. No part of this publication may be reproduced in any material form (including photocopying or storing it in any medium by electronic means and whether or not transiently or incidentally to some other use of this publication) without the written permission of the copyright owner except in accordance with the provisions of the Copyright, Designs and Patents Act 1988 or under the terms of a licence issued by the Copyright Licensing Agency Ltd, Saffron House, 6–10 Kirby Street, London EC1N 8TS. Applications for the copyright owner's written permission to reproduce any part of this publication should be addressed to the publisher.
Warning: The doing of an unauthorised act in relation to a copyright work may result in both a civil claim for damages and criminal prosecution.

Crown copyright material is reproduced with the permission of the Controller of HMSO and the Queen's Printer for Scotland. Parliamentary copyright material is reproduced with the permission of the Controller of Her Majesty's Stationery Office on behalf of Parliament. Any European material in this work which has been reproduced from EUR-lex, the official European Communities legislation website, is European Communities copyright.

LexisNexis® and the Knowledge Burst logo are registered trademarks of RELX Group plc, used under license. Butterworths® and Tolley® are registered trademarks of RELX (UK) Ltd. Matthew Bender® is a registered trademark of Matthew Bender & Company Inc. Other products and services may be trademarks or registered trademarks of their respective companies.
A CIP Catalogue record for this book is available from the British Library.

ISBN for this volume: 9781474314664

Printed and bound in Great Britain by Hobbs the Printers Ltd, Totton, Hampshire

Visit LexisNexis at www.lexisnexis.co.uk

Preface

This supplement updates the main work to include the effect of the Non-Contentious Probate (Amendment) Rules 2018 (SI 2018/1137) on the applications process for grants of representation. The main change for the practitioner is that the NC Probate Rules 1987 replace the oath in support of an application for a grant of representation with a statement of truth by the applicant. Additionally, where a will is being proved it is referred to by its date in the statement of truth and the previous requirement of rule 10 for the will to be marked by the signatures of the applicant and the person before whom the oath is sworn administering the oath is omitted. The format of a statement of truth adapted to suit each application may be found in Appendix VI.

The Rules (as amended) also: (i) allow caveat applications and standing searches (which give notice of grants being issued) to be made electronically; (ii) extend time limits in the caveat process, which gives the person registering the caveat notice of any application for probate; (iii) extend the powers of district probate registrars to align them with those of district judges; and (iv) make further provision for the issue of directions (instructions to the parties) in relation to hearings.

An unrepresented applicant may now make an online application for a grant of representation if it meets certain criteria. This facility is being made available to practitioners after its suitability has been tested in an ongoing pilot.

The publication of this supplement coincides with the announcement of a major modernisation programme to reform and upgrade the probate service. The Ministry of Justice is preparing to close down probate registries and move the Service into one or two customer service centres as part of HM Courts and Tribunals modernisation programme. While one hopes that in any change the transition will be smooth, urgent improvement is necessary for a better service in the light of the current backlog and delay in the processing of the majority of applications.

Practitioners may be aware that a draft NC probate (Fees) Order is now awaiting approval by Parliament. This will provide for a banded fees structure ranging from £250 for estates over £50,000 in value to £6,000 for estates exceeding £2m. The delay in implementing the proposed fees may in part be due to the current Brexit-related turmoil.

So far as the Inheritance Tax section of this supplement in Chapter 8 is concerned, the main amendments relate to the revisions to the updated account form IHT400, and the new centralised postcode address to correspond with the Inheritance Tax, HM Revenue and Customs Office.

The Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019, which received Royal Assent on 26 March 2019, enables heterosexual couples to form civil partnerships. It is likely, in due course, to entitle such partners to claim an exemption from Inheritance Tax in the same way as married couples and same sex partners in a civil partnership already can. However, the legislation will only take full effect when the Secretary of State exercises the power to amend the Civil Partnership Act 2004, with the proviso that this exercise must be by 31 December 2019. That power has not yet been exercised at the time of writing.

The Business and Property Courts ('B&PCs') were launched in July 2017 and became operational on 2 October 2017. The work in the B&PCs is divided between specialist courts and lists. The relevant list for contentious probate claims is the Property, Trusts and Probate List (ChD).

Part 57 and its Practice Direction no longer provides a complete guide for starting probate claims in the High Court. Reference must also be made to Part 57A Business and Property Courts and its two Practice Directions: Practice Direction 57AA – Business and Property Courts, and Practice Direction 57AB – Shorter and Flexible Trials Schemes. This material is included in this supplement in Appendix II: Part II Contentious Business.

From 1 January 2019, for two years CPR Update 100 (4 September 2018) provides that disclosure in the B&PCs and in the seven B&PCs District Registries (Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and Newcastle) is subject to the Disclosure Pilot now to be found in Practice Direction 51U. There are no transitional provisions. Standard Disclosure is replaced by Initial Disclosure and a series of Extended Disclosure Models. Commentary has been provided on how the Disclosure Pilot impacts on probate claims.

Case law in contentious probate continues in abundance, much of it applying rather than changing established principles. The Law Commission Consultation Paper 231 'Making a Will' published on 13 July 2017 proposed a number of significant changes in the law relating to wills as a whole. The project has been paused pending a review of the law relating to weddings.

The Guardianship (Missing Persons) Act 2017 came into force on 31 July 2019. It enables the High Court to appoint a guardian over the property and affairs of a 'missing person' as defined in section 1 of the Act. It complements the Presumption of Death Act 2013 which came into effect on 1 October 2014. A Code of Practice has been published by the Lord Chancellor pursuant to section 22 of the Act which contains a useful summary of the Act's provisions and guidance for persons making applications under the Act and for guardians. The Civil Procedure (Amendment No. 2) Rules 2019 brought into force on 31 July 2019 rules of court governing applications under the Act. Part 57 is amended to add Rules 57.24 to 57.28 (inclusive), and Practice Direction 57C

– Proceedings under the Guardianship (Missing Persons) Act 2017 supplements Part 57 as amended. Part 57 incorporating these new rules and PD 57C are included in this supplement.

RD'C

PT

TS

July 2019



Digitized by the Internet Archive
in 2022 with funding from
Kahle/Austin Foundation

https://archive.org/details/tristramcootespr0000dcos

Contents

Preface		v
Table of abbreviations		xiii
Table of statutes		xvii
Table of statutory instruments		xxi
Table of cases		xxv
	PART I THE COMMON FORM PROBATE PRACTICE	
1	The probate jurisdiction of the Family Division	3
2	General procedure in registry	7
3	Wills and codicils	17
4	Probates	25
5	Letters of administration with the will annexed	45
6	Letters of administration	57
7	Minority or life interests and second administrators	89
8	HMRC accounts	93
9	Trust corporations	113
10	Settled land grants	117
11	Limited grants	121
12	Grant where deceased died domiciled out of England and Wales	139
13	Grants 'de bonis non' – Cessate grants – Double probate	145
14	Right of the court to select an administrator; 'Commorientes'	151
15	Renunciation and retraction	153

16	Amendment and notation of grants	155
17	Revocation and impounding of grants	159
18	Resealing	161
20	Deposit and registration of wills of living persons	169
21	Searches and copies – Exemplifications – Duplicate grants	171
22	Affidavits, affirmations and statutory declarations	175
23	Caveats (objections)	177
24	Citations (notifications)	183
25	Applications to District Judge, Registrar or High Court Judge (Non-Contentious Business)	185

PART II CONTENTIOUS BUSINESS

26	Introduction	195
27	Claims	197
28	Parties to claims	201
29	Claim form	203
31	Testamentary documents	207
32	Statements of case generally	209
33	Particulars of claim	211
34	Defence and counterclaim	213
36	Disclosure	225
37	Costs and case management of probate claims	229
38	Interim applications	233
39	Trial	235
40	Costs	237
41	Associated actions	239

APPENDICES

I	Statutes	247
II	Rules, Orders and Regulations	305
III	Fees (Non-Contentious Business)	395

IV	Rates of Inheritance Tax and Capital Transfer Tax	413
VI	Forms	415
Index		549

List of abbreviations

AC (preceded by date)	Law Reports, Appeal Cases, House of Lords and Privy Council
Add	Addams' Ecclesiastical Reports
A & E, Ad & El	Adolphus and Ellis, QB reports
Adam	Adam's Justiciary Reports
All ER (preceded by date)	All England Law Reports
All ER Rep (preceded by date)	All England Law Reports Reprint
App Cas	Law Reports, Appeal Cases
B & Ad	Barnewall and Adolphus
B & PCs	Business and Property Courts
Beav	Beavan's Rolls Court
Bos & Pu	Bosanquet and Puller
Bro CC	Brown's Chancery Reports
CA	Court of Appeal
CB	Common Bench Reports
Ch	Law Reports, Chancery Division (1890 onwards)
Ch D	Law Reports, Chancery Division (1875–1890)
Cox	Cox's Chancery Reports
CPD	Law Reports, Common Pleas Division
CPR	Civil Procedure Rules 1998

Curt	Curteis's Ecclesiastical Reports
Deane Ecc R	Deane's Ecclesiastical Reports
Dea & Sw	Dean and Swabey's Ecclesiastical Reports
De GM & G	De Gex, MacNaughten and Gordon's Reports
Dick	Dickens's Reports
Dir Ag	Directions to Agents
E & B	Ellis and Blackburn's Reports
Eq Cas	Equity Cases
Fam	Family Division, Series of Law Reports
F & F	Foster and Finlayson's Reports
Gow	NP Gow's Nisi Prius Cases
Hag Cons	Haggard's Consistory Court Cases
Hag Ecc	Haggard's Ecclesiastical Reports
Hare	Hare's Chancery Reports
HL	House of Lords
Ir Eq Rep	Irish Equity Reports
ITELR	International Trusts & Estates Law Reports
JP	Justice of the Peace Reports
JP Jo	Justice of the Peace and Local Government Review
Johns & H	Johnson and Hemming's Reports
Jur	Jurist Reports
KB (preceded by date)	Law Reports, King's Bench Division
Knapp	Knapp's Privy Council Cases
LGR	Local Government Reports
LJR	Law Journal Reports
LR Ir	Law Reports (Ireland)
LRP & D	Law Reports, Probate and Divorce
LT	Law Times Reports
LTJo	Law Times Newspaper
Lee	Lee's Ecclesiastical Reports
Lev	Levinz, KB
M & W	Meeson and Welsby's Reports
Moo	Moore's Privy Council Reports

NC	Notes of Cases
NC	Non-Contentious
NCPR	Non-Contentious Probate Rules 1987
NLJ	New Law Journal
P (preceded by date)	Law Reports, Probate, etc, Division
PC	Privy Council Cases
PCC	Prerogative Court of Chancery
PD	Law Reports, Probate Division
P & D	Law Reports, Probate and Matrimonial
P & M	Law Reports, Probate and Matrimonial
Phill	Phillimore's Ecclesiastical Reports
Phill Ch R	Phillip's Chancery Reports
Plowd	Plowden, KB
Prec C	Precedents in Chancery
P Wms	Peere Williams' Chancery Reports
QB	Queen's Bench Reports
QBD	Law Reports, Queen's Bench Division
R	The Reports
RR	Revised Reports
Rob	Robertson's Ecclesiastical Reports
RSC	Rules of the Supreme Court
Russ Ch Rep	Russell's Chancery Reports
SCF	Supreme Courts Fees
Sim	Simon's Chancery Reports
Sol Jo	Solicitor's Journal
Spinks	Spinks' Ecclesiastical and Admiralty Reports
S & T	Swabey and Tristram's Reports
Sw & Tr	Swabey and Tristram's Reports
Sugd Pow	Sugden on Powers
TLR	Times Law Reports
Vern	Vernon's Chancery Reports
Ves	Vesey's Chancery Reports
Ves Sen	Vesey's Chancery Reports

WLR	Weekly Law Reports
WN (preceded by date)	Law Reports, Weekly Notes
WR	Weekly Reporter
WTLR	Wills & Trusts Law Reports
WW & D	Willmore, Woolaston and Davisson, KB or QB
Y & CCC	Young and Collier's Chancery Reports

Table of Statutes

Paragraph references printed in **bold** type indicate where an Act is set out in part or in full.

A

Administration of Estates Act 1925 ..... 5.99, 6.27, 6.48
s 7(1) 4.86
23(3), (4) 10.136
30(3) 6.332
Pt IV 6.75
s 46 .. 5.273, 6.48, 6.112, 6.390, 16.36
(2A) A6.97
46A 6.67, 33.75, A6.100, A6.120
47 ..... A6.128
(1)(i) 6.67, 33.75
51(2) 6.167
55(1)(x) 6.48
Administration of Estates Act 1971
s 2, 3 ..... 4.211, 18.23
Administration of Justice Act 1982
s 20 ..... 41.01
Administration of Justice Act 1985
s 49 ..... A6.220
50 ..... 41.12, 41.16
Adoption Act 1926
s 5(2) 27.22
Adoption Act 1958
..... A6.102, A6.104, A6.105
s 16(1) 6.310
Adoption Act 1976
s 12 ..... A6.127, A6.129
(1) 11.163
39 ..... 6.310, A6.166
41 ..... 5.46
Sch 2
para 6 ..... 27.22
Adoption and Children Act 2002
..... 11.126
s 1 ..... A1.498
53 ..... A1.508
67 ..... 6.310
69(4)(c) 6.90
Sch 6 ..... **A1.537**

B

Births and Deaths Registration Act 1953
s 10 ..... 6.186
14 ..... 6.235

C

Children Act 1989
..... 1.49
Pt 1 (ss 2–6) 11.26
s 2 ..... 11.26, 11.155
(1) 7.25, 11.157, A6.90, A6.129, A6.172
(2)(b) 11.159, A6.129
4 ..... A6.90, A6.91
(1) 11.159
4A A6.91, A6.130
5 ..... 11.178, 11.193, A6.131
12(2) A6.133
14A 11.203, A6.132
33 ..... A1.445
105 ..... **A1.451**
Sch 14
para 4 ..... 11.161
6 ..... 11.161
12, 13 ..... 11.193, A6.131
14 ..... A6.131
Civil Evidence Act 1968
s 12 ..... 6.186
Civil Partnership Act 2004
..... 8.49
s 1 ..... 6.33A
3 ..... 6.33A
71 ..... 34.104
Sch 4
Pt 1
para 3(a) 34.104
Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019
s 2(1), (2) 3.42A, 6.33A
Colonial Probates Act 1892
..... 18.39
s 2(2) 18.42
Companies Act 2006
..... 9.23
Consular Conventions Act 1949
s 1 ..... 11.114
County Courts Act 1984
s 25 ..... 41.19
Courts and Legal Services Act 1990
s 53 ..... A1.469

D

Domicile and Matrimonial Proceedings Act 1973
s 1 ..... 8.108

E

Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011 ..... 33.75

F

Family Law Act 1986
s 56 ..... 27.22
58(4) 27.22
60(1) 27.22
Family Law Reform Act 1969
s 1 ..... 4.194, 7.03
4(1) 11.161
Pt II (ss 14–19) 6.388
s 14 ..... 6.48
(4) 6.75
16 ..... A6.166
18(1), (2) 6.313
21 ..... 6.313
27 ..... 6.308
Family Law Reform Act 1987
s 18 ..... 6.388
21 ..... 6.176
Fatal Accidents Act 1846 ..... 4.226
Fatal Accidents Act 1864 ..... 4.226
Fatal Accidents Act 1959 ..... 4.226
Fatal Accidents Act 1976 ..... 4.226
Finance Act 1894
s 5(2) 8.138
Finance Act 1975
s 19 ..... 8.20
20(2), (3) 8.20
22(4) 8.138
Sch 4
para 16 ..... 8.203
Sch 6 ..... 8.20, 8.49
para 1 ..... 8.199
10–13 ..... 8.199
23(1) 8.199
Finance Act 1976
s 96 ..... 8.199
Finance Act 1989
s 178(1) 8.202
Finance Act 1996
s 158 ..... 8.138
Finance Act 1998
s 161 ..... 8.138
Finance Act 2012
s 109 ..... 8.50
Sch 33 ..... 8.50
Finance Act 2013
s 178 ..... 8.49
Finance Act 2016
s 93 ..... 8.50
95 ..... 8.229
94 ..... 8.44
97 ..... 8.44
Sch 15 ..... 8.138
Finance Act (No 2) 2015
s 9 ..... 8.50
14 ..... 8.172
15 ..... 8.203
Forfeiture Act 1982 ..... A6.100, A6.168
s 1(1) **33.73**
2 ..... 33.73, A1.359
(2) 33.74
5 ..... 33.73

G

Gender Recognition Act 2004
s 22(4)(b) 4.109
25 ..... A1.581
Guardianship of Minors Act 1971 ..... 6.186, 11.193
Guardianship (Missing Persons) Act 2017 ..... **A1.722A**
s 1 ..... 41.48
s 22 ..... 41.48

H

Human Fertilisation and Embryology Act 2008 ..... 1.49, 11.126
s 43 ..... 6.176
Human Rights Act 1998
s 3 ..... 27.22
Sch 1
art 1(3) 6.50A
6 ..... 7.19, 25.245
8 ..... 6.33A
14 ..... 6.33A

I

Inheritance and Trustees' Powers Act 2014
s 1 ..... 6.48
47A 6.50A
Sch 4 ..... 6.50A
art 1(3) 6.50A
Inheritance (Provision for Family and Dependants) Act 1975 ..... 11.376, 13.28, 27.26, 27.41, 28.03, 41.12, 41.41
s 3(1) 41.19
(2)(a) 33.73
4 ..... 41.35, 41.36

Inheritance (Provision for Family and Dependants) Act 1975 – *cont.*
s 15(1) 16.50
19(3) 16.52, 41.39
23 ..... 41.35
Inheritance Tax Act 1984
s 1, 2 ..... 8.20
3(1), (2) 8.20
3A 8.20
6 ..... 8.20
7 ..... 8.50, **A1.727**
18 ..... 8.20, 8.49, 8.199
19(3A) 8.49
20–22 ..... 8.49
23–26 ..... 8.49, 8.199
27–29 ..... 8.49
65(4) 8.172
Pt III (ss 43–93) 8.172
s 102(1) 8.172
144(2) 8.172
147(4) 8.203
162A–162C 8.07
175A 8.07
216 ..... 8.02
234 ..... 8.203
267 ..... 4.176, 8.108, **A1.742**
(5) 8.49
267A, 267B 8.49
Sch 1A 8.20
6
para 2 ..... 8.138
Sch 7
para 3(1) 8.20
5(1) 8.20
(6) 8.20
Interpretation Act 1978
..... 22.02

K

Kiribati Act 1979 ..... 18.39

L

Law of Property Act 1925
s 184 ..... 14.51, A6.143, A6.144
Law of Property (Amendment) Act 1926
s 3 ..... A1.138
Law Reform (Miscellaneous Provisions) Act 1934 ..... 4.226
Legal Services Act 2007
..... 1.41, 4.49
Legitimacy Act 1926
..... 6.235
s 1(4) 6.199
Schedule 6.199, 6.235
Legitimacy Act 1976
..... 6.235
s 1 ..... 6.231
9 ..... 6.235
Sch 1
Legitimacy Act 1976 – *cont.*
Sch 1 – *cont.*
para 6 ..... 6.235
Legitimation (Re-registration of Birth) Act 1957
s 1(1) 6.235

M

Marriage (Same Sex Couples) Act 2013
..... 41.19
s 1(1) 34.104
9 ..... A1.699
11(1) 34.104
Sch 3
Pt 1 ..... 3.40A
Matrimonial Causes Act 1973
s 45(1) 6.240
Mental Capacity Act 2005
..... 7.22, 11.44, 11.82, 11.165A, 11.254, 11.256, 11.287, 11.291, 13.93, 17.52, 17.67, 25.105, 34.28, A6.123, A6.125, A6.137, A6.138, A6.139, A6.175
s 13 ..... 11.279A, **A1.621**
19 ..... 25.37
Merchant Shipping Acts 1970
..... 4.160
Merchant Shipping Acts 1995
..... 4.160

N

National Assistance Act 1948
s 21(1)(a) 25.105

P

Parliamentary and other Pensions Act 1972
s 24 ..... 1.101
Powers of Attorney Act 1971
s 3 ..... 11.44
Presumption of Death Act 2013
..... 27.41, 41.42
s 1 ..... 25.20, 25.50
(3) 41.43, 41.44
(4) 41.43
2(1)(a), (b) 41.44
3 ..... 41.45
(1) 4.157, 25.20
(2)–(4) 25.20
11 ..... 41.46
15 ..... 41.46
Sch 1
para 4 ..... 41.47
Public Records Act 1958
s 5(5) **A1.165**
8 ..... A1.166
Public Trustee Act 1906
.... 11.210, 11.217, A6.67, A6.163

Public Trustee Act 1906 – *cont.*
s 11(3) 9.71

S

Sexual Offences Act 1956
..... 11.193
Senior Courts Act 1981
s 16 ..... A1.304
17 ..... A1.304
61(1) 26.16
101 ..... 2.01
108 ..... 23.18
(2) **23.23**
109 ..... 8.02
113 ..... 11.336, A6.151
(1) 8.73
114(2) 6.97, 7.11, 7.25, 11.209, 11.256, 12.138
116 ..... 6.387, 25.96, 25.105, 27.10, A6.147, A6.148, A6.150, A6.176, A6.190
(1) 6.17, 24.11
123 ..... 25.194
Sch 1
para 1(h) 26.16
Settled Land Act 1925
s 30(3) 10.119, A6.85
Singapore Act 1966
..... 18.39
Social Security Act 1975
..... 4.226
South Africa Act 1962
s 2 ..... 18.37, 18.39
Sch 2 ..... 18.39
Stamp Duty Act 1891
..... 5.253
Suicide Act 1961
s 2(1) 33.73
Superannuation Act 1972
..... 4.224
Supreme Court Act 1981
s 114(2) 5.205

T

Trustee Act 2000
s 28(4)(a) 34.103

W

Wills Act 1837 ..... 5.99
s 1 ..... A1.01
9 ..... 3.108A, 34.21
15 ..... 34.103, 34.104, A6.161
18 ..... A6.181
18B **3.43**
33 ..... A6.133
33A 33.75, A6.167, A6.168
Wills Act 1963 ..... 11.363, 12.31, A6.87
s 3 ..... 3.417
33A 5.196
Wills Act 1968
s 1 ..... 34.103

Other Jurisdictions

New Zealand

Public Trust Act 2001
..... 18.81

Table of Statutory Instruments

Paragraph references printed in **bold** type indicate where an Act is set out in part or in full.

A

Administration of Estates (Small Payments) (Increase of Limit) Order 1975, SI 1975/1137 ..... 1.101

Administration of Estates (Small Payments) (Increase of Limit) Order 1984, SI 1984/539 ..... 1.101

C

Civil Procedure Rules 1998, SI 1998/3132 ..... 27.10

Pt 3
r 3.1(2)(e) 34.04
3.4 ..... 34.04
3.12(1)(a)–(e) 29.19
PD 3E 29.19
para 5 ..... 41.41
Pt 7 ..... 29.02, 29.19
8 ..... 41.41
16
r 16.2(3), (4) **29.12**
16.5 ..... 34.12
Pt 19
r 19.6, 19.7 ..... 28.07
19.8 ..... 11.379
19.8A 28.07, 29.14
Pt 23 ..... 11.365
24 ..... 38.43
29
r 29.2(3)(f) 25.245
29.4 ..... 37.07
PD 29
para 4.6 ..... 37.07
Pt 30
r 30.2(8) 26.16
30.5 ..... 29.02
Pt 39
r 39.2 ..... 25.245
(3)(c) 41.19
PD 39
para 1.5(9) 41.19
2 ..... 25.245
3.2–3.9 ..... 37.26
Pt 43 ..... 25.03
44 ..... 25.03
r 44.9–44.12 ..... 25.03
Pt 47 ..... 25.03
48 ..... 25.03

Civil Procedure Rules 1998, SI 1998/3132 – *cont.*
Pt 51
PD 51U
para 1.2–1.4 ..... 36.00
2.7 ..... 36.00
5.1–5.3 ..... 32.08
5.8 ..... 32.08
6.4 ..... 36.00
7.3 ..... 36.00
7.6 ..... 36.00
8.2, 8.3 ..... 36.00
Appendix 1
para 1.11 ..... 36.00
Pt 57 ..... **A2.166–A2.188J**
r 57.1 ..... 32.07
(2) 41.01
(b)(i), (ii) 26.16, 29.02
(c) 32.08
57.2 ..... 32.07
(4) 29.19, 36.00
57.3(a) 26.16, 29.02
(b) 29.02, 29.19, 36.00
57.5(5) 32.08
57.6(1) 28.03
57.7 ..... 27.26
(4) 34.12
(5) 40.37
(a), (b) 27.26
57.8(1), (2) 34.02
57.9(3)–(5) 34.04
57.12 ..... 27.41, 11.376, 41.01
57.13 ..... 27.41, 41.12
Section IV (r 57.14–57.16) 41.46
r 57.15(1) 41.19
57.16(1) 41.12
(3A) 11.376
Section V (r 57.17–57.23) 27.41
PD 57(A) 27.41, 29.02, 36.00, **A2.189–A2.207**
para 2.1 ..... 29.06
2.2 ..... 31.14
4.1, 4.2 ..... 28.07
8.4 ..... 11.367
9–11 ..... 41.01
13(2) 41.12
18.1–18.3 ..... 41.39
PD 57B 25.50, 27.41, **A2.208–A2.213**
para 3.2 ..... 41.46
PD 57C **A2.214–A2.224**
Pt 57A 29.02, **A2.225–A2.227**

Civil Procedure Rules 1998, SI 1998/3132 – *cont.*
PD 57AA 29.02, A2.228–A2.232
para 2.3(1) 29.02A
(3) 29.02A
PD 57AB A2.233–A2.235
Sch 1–RSC
Ord 41
r 11 ..... 3.122
Ord 65
r 5 ..... 25.238
Court Fees (Miscellaneous Amendments) Order 2019 ..... 21.04, 21.30
Courts Guides
Chancery Guide
para 17.6 ..... 37.07
17.25 ..... 37.07
20.1 ..... 37.21
20.3 ..... 37.21
20.4 ..... 37.22
20.5 ..... 37.23
20.6 ..... 37.24
20.7 ..... 37.20
20.11 ..... 39.06
21.20 ..... 37.28, 39.08
21.21 ..... 37.28
21.22 ..... 37.28, 39.06
21.23–21.26 ..... 37.28
21.29, 21.30 ..... 39.08
21.34–21.72 ..... 37.26
21.90, 21.91 ..... 39.09
21.93 ..... 39.15
21.94 ..... 39.15
29.45 ..... 26.18
29.53–29.55 ..... 31.15
29.56 ..... 26.18
Colonial Probates Act (Application to Tanzania) Order 1969 ..... 18.39

D

District Probate Registries Order 1982, SI 1982/379 ..... 2.08

E

Enduring Powers of Attorney (Prescribed Form) Regulations 1990, SI 1990/1376 ..... 11.42
Enduring Powers of Attorney (Prescribed Form) (Amendment) Regulations 2005, SI 2005/3116 ..... 11.42
Enduring Powers of Attorney (Prescribed Form) (Amendment) Amendment Regulations 2007, SI 2007/548 ..... 11.42
Enduring Powers of Attorney (Welsh Language Prescribed Form) (Amendment) Regulations 2007, SI 2007/549 ..... 11.42

F

Family Procedure Rules 2010, SI 2010/2955
r 8.20 ..... 27.10

H

High Court and County Courts Jurisdiction Order 1991, SI 1991/724
art 2(8) 41.19
Hong Kong (Colonial Probates Act) Order 1997, SI 1997/1572 ..... 18.39

I

Inheritance Tax (Delivery of Accounts) (Excepted Estates) Regulations 2004, SI 2004/2543 ..... 4.204, A6.65
reg 2 ..... A2.119
Inheritance Tax (Delivery of Accounts) (Excepted Estates) (Amendment) Regulations 2014, SI 2014/488 ..... 8.07
Intestate Succession (Interest and Capitalisation) Order 1977, SI 1977/1491 ..... 6.48
Intestate Succession (Interest and Capitalisation) Order 1977 Amendment) Order 1983, SI 1983/1374 ..... 6.48

N

Non-Contentious Probate Rules 1954, SI 1954/796 ..... 25.03
Non-Contentious Probate (Amendment) Rules 1967, SI 1967/748 ..... 25.03
Non-Contentious Probate (Amendment) Rules 1985, SI 1985/1232 ..... 25.03
Non-Contentious Probate Rules 1987, SI 1987/2024
r 1 ..... A2.40
2 ..... A2.41
(1) 2.18, 4.31, 5.240, 9.18, 11.210, 11.217, 25.182, A6.66, A6.117, A6.171
3 ..... A2.42
4 ..... A2.43
4A 4.92A, 5.269A, 6.379A, 11.165A, A2.43A

Non-Contentious Probate Rules 1987, SI 1987/2024 – *cont.*
r 5 ..... A2.44
(1) 2.81
(6) 2.92
(7) 2.93
5ZA 2.90A, 6.379A, 11.165A
5A 2.81, 2.90A, 2.94, 4.92A, 5.269A, 6.379A, 11.165A, **A2.44A**
5B A2.44B
6 ..... A2.45
(1) 4.99, 5.271
7 ..... 25.182, **A2.46**
(1) 2.05, 2.16, 2.19
(a) 11.367, A6.140
(b) 6.235, 25.03
(2), (3) 2.19
8 ..... 4.91, 22.02, **A2.47**
(1) 6.379
(2) 4.176, 6.383, 12.13, 12.120, 12.131, 18.23
(3) 4.63, 4.180, 5.276, 6.385, 13.60, A6.57B
(4) 5.97, 5.270, 5.271, 6.101, 6.384, 11.366, 13.60, A6.57B
9 ..... 4.130, 4.140, 6.386, **A2.48**
10 ..... 4.124, **A2.49**
(1) 12.71
(a), (b) 3.122
(2) 4.127, 13.67, 13.71, 15.22
11 ..... A2.50
12 ..... 22.02, A2.51
13 ..... A2.52
14 ..... A2.53
(3) 3.301
15 ..... A2.54
16 ..... A2.55
17 ..... A2.56
18 ..... A2.57
19 ..... A2.58
20 ..... 4.31, 5.97, 13.96, A2.59
(c)(i) A6.154
(ii) A6.162
class (c) 5.111
r 20(e) A6.161
21 ..... A2.60
22 ..... A2.61, A6.89
(1) 6.17
(a) 6.112
(b) 6.112, 6.169
(c), (d) 6.112
(3) 6.112, 6.343
(4) 6.114, 6.124
, proviso 6.123
23 ..... 1.49, **A2.62**
24 ..... A2.63, A6.119, A6.169
(3) 6.371
25 ..... A2.64, A6.89
(2) 6.105
(3)(a) 7.25
26 ..... A2.65
27 ..... A2.66

Non-Contentious Probate Rules 1987, SI 1987/2024 – *cont.*
r 27(1) 2.81, 4.55
(3) 4.55, 4.201
(5) 11.130
28 ..... A2.67
29 ..... A2.68
(3) 10.66
30 ..... 18.51, **A2.69**
(1)(a) 12.133, A6.177
(b) 12.23, 12.107, 12.133, A6.178
(c) 12.23, 12.107, 12.113, 12.134, 18.39, A6.179
(2) 12.141
(3)(b) 12.23, A6.87, A6.180
31 ..... 25.105, A2.70
(1) 11.44, 11.82
32 ..... A2.71
(1)(a)(iii) 11.163
(2) 7.25, 11.126, 11.127
(3) .. 7.25, 11.170, 11.175, 11.203, 11.240
33 ..... A2.72
34 ..... A2.73
35 ..... 11.42, 25.105, A2.74
(2) 7.22
(c) 11.282
(3) 7.22
(4) 11.291, A6.139
36 ..... A2.75
(1) 9.18
(2)(b) 9.18
37 ..... A2.76
38 ..... 4.229, 5.127, 6.235, **A2.77**, A6.162
39 ..... A2.78
(5) 18.60
40 ..... A2.79
41 ..... A2.80
42 ..... 4.208, **A2.81**
43 ..... 21.12, 23.01, **A2.82**
44 ..... 23.01, **A2.83**
(1) 23.29
(2) 23.18
(3)(a) 23.28
(4) **23.24**
(5) 23.39, A6.209
(6) 23.15, 23.41, 23.67
(8) 23.15
(11) 23.15
(12) 23.52
(13) 23.54, 25.221
(15) 23.29
45 ..... **A2.84**
(4) 23.17
46 ..... **A2.85**
(5) 24.19
47 ..... **A2.86**
(1) A6.33
48 ..... A2.87, A6.142
(2) 6.04

Non-Contentious Probate Rules 1987, SI 1987/2024 – *cont.*
r 49 ..... 23.42, **A2.88**
50 ..... A2.89
(2) 25.194
51 ..... A2.90
52 ..... **A2.91**
(b) 25.182
53 ..... 25.20B, **A2.92**
54 ..... A2.93
55 ..... A2.94
56 ..... A2.95
57 ..... A2.96
(1) 23.24
58 ..... A2.97
59 ..... A2.98
60 ..... A2.99
61 ..... A2.100
(1) 11.292
(3) 25.03, 25.233
(4) 25.233
62 ..... 25.03, A2.101
62A 25.233, A2.102
63 ..... A2.103
64 ..... A2.104
65 ..... A2.105
66 ..... A2.106
67 ..... A2.107
68 ..... A2.108
69 ..... A2.109
Sch 1
Form 1–6 ..... A2.110
Sch 2 ..... A2.111

Non-Contentious Probate (Amendment) Rules 1991, SI 1991/1876 ..... 25.03

Non-Contentious Probate (Amendment) Rules 2003, SI 2003/185 ..... 25.03

Non-Contentious Probate (Amendment) Rules 2016, SI 2016/972 .... 4.92A, 5.269A, 6.379A, 11.165A, 22.05A

Non-Contentious Probate (Amendment) Rules 2017, SI 2017/1034 .... 4.92A, 5.269A, 6.379A, 11.165A, 22.05A

Non-Contentious Probate (Amendment) Rules 2018, SI 2018/1137 ..... 4.92A, 22.05A, 25.03, A6.02, A6.57B

L

Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007, SI 2007/1253
r 2 ..... A2.145
6 ..... A2.148

Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007, SI 2007/1253 – *cont.*
r 7 ..... A2.149
8 ..... A2.150
9 ..... A2.151
10 ..... A2.152
11 ..... A2.153
Sch 1
Pt 1 ..... 11.44
2 ..... 11.44

Legal Services Act 2007 (Designation as a Licensing Authority) Order 2017, SI 2017/27 ..... 1.36A

N

Non-Contentious Probate Fees Order 2004, SI 2004/3120 ..... 1.54, 2.53, 21.13, 23.26, 23.28, 24.57
art 1 ..... A3.01
2 ..... **A3.02**
3 ..... **A3.03**
4 ..... 4.224, 4.271, **A3.04**
5 ..... **A3.05**
6 ..... **A3.06**
7 ..... **A3.07**
8 ..... A3.08
Sch 1 ..... **A3.09**
1A A3.10
2 ..... **A3.11**

P

Parental Responsibility Agreement Regulations 1991, SI 1991/1478
Schedule A2.111

Presumption of Death Act 2013 (Commencement and Transitional and Saving Provision) Order 2014, SI 2014/1810 ..... 4.157

Public Trustee (Custodian Trustee) Rules 1975, SI 1975/1189 ..... 25.105

Public Trustee Rules 1912, SI 1912/348
r 30(1) 11.210, 11.217

S

Solicitors' (Non-Contentious Business) Remuneration Order 2009, SI 2009/1931 ..... 6.109

T

Taxes and Duties (Interest Rate) (Amendment) Regulations 2009, SI 2009/2032 ..... 8.202

Table of Cases

A

Adams, Re [1990] Ch 601, [1990] 2 All ER 97, [1990] 2 WLR 924, [1990] 2 FLR 519, [1990] Fam Law 403, 134 Sol Jo 518, (1989) Times, 12 December 34.87
Addison's Estate, Re (1964) 108 Sol Jo 504, PDA 34.93
Adepoju v Akinola [2016] EWHC 3160 (Ch) 27.22
Alkin v Raymond [2010] Lexis Citation 17, [2010] All ER (D) 48 (May) 41.16
Allen, Re (1962) 106 Sol Jo 115, PDA 34.93
Amiss's Goods, Re (1849) 2 Rob Eccl 116, 163 ER 1262, 7 Notes of Cases 274 ..... 34.21
Andreason, Re (September 1943, unreported) 4.14
Ashmore's Goods, Re (1843) 3 Curt 756, 7 Jur 1045, 163 ER 892, 2 Notes of Cases 465 ..... 34.21
Atkinson v Morris [1897] P 40, 66 LJP 17, 45 WR 293, 41 Sol Jo 110, 75 LT 440, 13 TLR 83, CA 34.87
A-G v Quixley (1929) 27 LGR 693, 93 JP 227, 98 LJKB 652, [1929] All ER Rep 696, 141 LT 288, 45 TLR 455, CA 4.224

B

Banks v Goodfellow (1870) LR 5 QB 549, 39 LJQB 237, [1861–73] All ER Rep 47, 22 LT 813 ..... 34.28
Barrett v Bem [2012] EWCA Civ 52, [2012] Ch 573, [2012] 2 All ER 920, [2012] 3 WLR 330, (2012) Times, 05 March, [2012] All ER (D) 175 (Jan) 34.104
Baudains v Richardson [1906] AC 169, 75 LJPC 57, 94 LT 290, 22 TLR 333, PC 34.48
Belbin v Skeats (1858) 27 LJP & M 56, 1 Sw & Tr 148, 164 ER 669 ..... 27.13
Bell v Hughes (1880) 5 LR Ir 407 ..... 34.21
Belliss, Re, Polson v Parrott (1929) 73 Sol Jo 628, 141 LT 245, 45 TLR 452, PDA 38.43
Berger v Berger [2013] EWCA Civ 1305, [2013] All ER (D) 319 (Oct) 41.36
Bibb v Thomas (1775) 2 Wm Bl 1043, 96 ER 613 ..... 34.87
Blyth v Sykes [2019] EWHC 54 (Ch), [2019] All ER (D) 78 (Jan) 34.87, 34.93
Botting's Estate, Re, Botting v Botting [1951] 2 All ER 997, [1951] 2 TLR 1089, PDA 34.93
Boughey v Moreton (1758) 3 Hag Ecc 191, 2 Lee 532, 161 ER 429 ..... 34.87
Bowie (or Ramsay) v Liverpool Royal Infirmary [1930] AC 588, 99 LJPC 134, [1930] All ER Rep 127, 143 LT 388, 46 TLR 465, HL 12.07
Boyse v Rossborough (1857) 6 HL Cas 2, 3 Jur NS 373, 5 WR 414, 10 ER 1192, [1843–60] All ER Rep 610, 29 LTOS 27, HL 34.47
Braddock's Goods, Re (1876) 1 PD 433, 40 JP 792, 45 LJP 96, 24 WR 1017, PDA 34.21
Bradshaw, Re, Bradshaw v Bradshaw [1950] Ch 582, [1950] 1 All ER 643, 94 Sol Jo 162, 66 (pt 1) TLR 579, CA 6.167
Breslin v Bromley & Lockwood [2015] EWHC 3760 (Ch), [2016] WTLR 219, [2015] 6 Costs LR 1115 ..... 40.30
British Red Cross v Werry and Garcia [2017] EWHC 875 (Ch), [2017] WTLR 441 ..... 41.39
Bridgett and Hayes' Contract, Re [1928] Ch 163, 97 LJ Ch 33, [1927] All ER Rep 191, 71 Sol Jo 910, 138 LT 106, 44 TLR 222 ..... 10.39
Bridgewater's Estate, Re [1965] 1 All ER 717, [1965] 1 WLR 416, 109 Sol Jo 13, PDA 34.93
Broadway v Fernandes [2007] EWHC 684 (Ch), [2007] All ER (D) 485 (Mar) 34.87
Bromham's Estate, Re, Wass v Treasury Solicitor (or Solicitor-General) [1952] 1 All ER 110n, 95 Sol Jo 804, [1951] 2 TLR 1149, PDA 34.93

Brown's (Hope) Goods, Re [1942] P 136, 111 LJP 78, 58 TLR 338, sub nom Re Brown's Goods [1942] 2 All ER 176, 86 Sol Jo 260, 167 LT 95, PDA 34.93
Brunt v Brunt (1873) LR 3 P & D 37, 37 JP 312, 21 WR 392, 28 LT 368 ..... 34.87
Bulloch's Estate, Re [1968] NI 96 ..... 34.21
Bunn, Re, Durber v Bunn [1926] All ER Rep 626, 134 LT 669, PDA 34.93
Burgess v Hawes [2013] EWCA Civ 74, [2013] All ER (D) 220 (Feb) 34.64, 34.67

C

Campbell v French (1797) 3 Ves 321, 30 ER 1033, 34 ER 838 ..... 34.93
Carey, Re (1977) 121 Sol Jo 173 ..... 34.93
Cassidy's Goods, Re (1832) 4 Hag Ecc 360, 162 ER 1477 ..... 11.83
Cattermole v Prisk [2006] 1 FLR 693, [2006] Fam Law 98 ..... 34.67
Chadwick v Collinson [2014] EWHC 3055 (Ch), [2015] WTLR 25, [2014] All ER (D) 172 (Sep)33.74
Chambers v Bicknell (1843) 2 Hare 536, 7 Jur 167, 67 ER 222 ..... 11.83
Chamney's Goods, Re (1849) 1 Rob Eccl 757, 163 ER 1204, 14 LTOS 89, 7 Notes of Cases 70 ..... 34.21
Chana v Chana [2001] WTLR 205 ..... 34.87
Channon v Perkins (a firm) [2005] EWCA Civ 1808, 149 Sol Jo LB 1493, [2005] All ER (D) 30 (Dec) 27.13
Chanter's Goods, Re (1844) 1 Rob Eccl 273, 163 ER 1036, 3 Notes of Cases 438 ..... 11.374
Charles George Bingham, Re [2015] EWHC 226 (Ch) 41.44
Chin v Chin [2019] EWHC 523 (Ch) 34.67
Christodoulides v Marcou [2017] EWHC 2632 (Ch) 34.52A
Clarke v Scripps (1852) 2 Rob Eccl 563, 16 Jur 783, 163 ER 1414, 20 LTOS 83 .... 34.87
Cleaver, Re, Cleaver v Insley [1981] 2 All ER 1018, [1981] 1 WLR 939, 125 Sol Jo 445 ..... 3.222
Clifton's Estate, Re [1931] P 222, 100 LJP 121, 146 LT 14, 47 TLR 618, PDA 10.136
Cocke's Goods, Re [1960] 2 All ER 289, [1960] 1 WLR 491, 104 Sol Jo 389, PDA 34.93
Colling, Re, Lawson v von Winckler [1972] 3 All ER 729, [1972] 1 WLR 1440, 116 Sol Jo 547 ..... 3.102
Coombs v Coombs (1866) LR 1 P & D 288, 31 JP 118, 36 LJP & M 21, 15 WR 286, 15 LT 329 ..... 6.351
Coombs' Goods, Re (1866) LR 1 P & D 193, 35 LJP & M 78, 14 WR 975, 14 LT 635 ..... 6.351
Cooney v Cooney (1950) 100 L Jo 705, Ct of Sess 12.07
Cope's Goods, Re (1850) 2 Rob Eccl 335, 163 ER 1337 ..... 34.21
Cossey v Cossey (1900) 64 JP 89, 69 LJP 17, 82 LT 203, 16 TLR 133, PDA 34.93
Cowan v Foreman and others [2019] EWHC 349 (Fam), [2019] 1 FLR 1191, [2019] Fam Law 482 ..... 41.36
Cowderoy v Cranfield [2011] EWHC 1616 (Ch), [2011] WTLR 1699, [2011] All ER (D) 191 (Jun) 34.48, 34.67
Cowley (Earl) v Countess of Cowley [1901] AC 450, 70 LJP 83, 50 WR 81, 85 LT 254, 17 TLR 725, HL 4.131
Cranfield, Re (12 June 1950, unreported) 6.97
Crispin v Doglioni (1860) 29 LJP 130, 2 Sw & Tr 17, 9 WR 19, 164 ER 897, 3 LT 179 ..... 28.01

D

DWS, Re [2001] Ch 568, [2001] 1 All ER 97, [2000] 3 WLR 1910, [2001] 1 FCR 339, [2000] NLJR 1788, 150 NLJ 1788, (2000) Times, 22 November, [2000] Lexis Citation 3884, [2000] All ER (D) 1747 ..... 33.74
Da Silva's Goods, Re (1861) 25 JP 519, 30 LJPM & A 171, 2 Sw & Tr 315, 164 ER 1017, 5 LT 140 ..... 3.227
Daintree v Butcher and Fasulo (1888) 13 PD 102, 57 LJP 76, 58 LT 661, 4 TLR 445, CA 3.102

Dale v Murrell (March 1879, unreported) 40.30
Dale, Re, Proctor v Dale [1994] Ch 31, [1993] 4 All ER 129, [1993] 3 WLR 652, [1994] Fam Law 77, [1993] 14 LS Gaz R 43, [1993] NLJR 544, (1993) Times, 16 February, 137 Sol Jo LB 83 ..... 3.211
Dancer v Crabb (1873) LR 3 P & D 98, 37 JP 663, 42 LJP & M 53, [1861–73] All ER Rep 692, 28 LT 914 ..... 34.93
Davies v Jones [1899] P 161, 68 LJP 69, 80 LT 631, P, D and Admlty 40.37
Davies' Estate, Re, Russell v Delaney [1951] 1 All ER 920 ..... 34.93
Davis v Chanter (1848) 2 Ph 545, 15 Sim 300, 17 LJ Ch 297, 41 ER 1054, 60 ER 633, 10 LTOS 477, Ct of Ch 11.374
Davis' Goods, Re (1843) 3 Curt 748, 163 ER 889, 2 Notes of Cases 350 ..... 34.21
Dawson's Goods, Re, Maclean and Maclean v Dawson (1859) 1 Sw & Tr 425, 164 ER 796, 43 LTOS 53 ..... 11.374
Denning, Re, Harnett v Elliott [1958] 2 All ER 1, [1958] 1 WLR 462, 102 Sol Jo 293, PDA 3.113, 34.21
Dennis, Re, Dennis v Lloyds Bank Ltd [1981] 2 All ER 140, 124 Sol Jo 885, 131 NLJ 210 ..... 41.36
Denton v TH White Ltd [2014] EWCA Civ 906, [2015] 1 All ER 880, [2014] 1 WLR 3926, 154 ConLR 1, [2014] BLR 547, 164 NLJ 7614, [2014] 4 Costs LR 752, [2014] All ER (D) 53 (Jul) 41.36
Dickson, Re [1984] LS Gaz R 3012, [1984] Lexis Citation 368, CA 34.87
District Judge's Direction 12 January 1999 ..... 21.13A
Dixon v Treasury Solicitor [1905] P 42, 74 LJP 33, 92 LT 427, 21 TLR 145, PDA 34.93
Dufour v Pereira (1769) 1 Dick 419, 21 ER 332, 2 Hargrave Juridical Arguments 304 ..... 3.222
Duggins' Goods, Re (1870) 34 JP 265, 39 LJP & M 24, 22 LT 182 ..... 34.21
Dunbar v Plant [1998] Ch 412, [1997] 4 All ER 289, [1997] 3 WLR 1261, [1998] 1 FLR 157, [1997] 3 FCR 669, [1998] Fam Law 139, [1997] 36 LS Gaz R 44, (1997) Times, 13 August 33.73

E

Edkins v Hopkins and others [2016] EWHC 2542 (Ch) 34.48
Edwards (dec'd), Re, Edwards v Edwards [2007] EWHC 1119 (Ch), [2007] All ER (D) 46 (May) 34.47, 34.52A
Elliott v Simmonds [2016] EWHC 962 (Ch), [2016] WTLR 1375 ..... 34.32, 40.37
Emerald Supplies Ltd v British Airways plc [2010] EWCA Civ 1284, [2011] Ch 345, [2011] 2 WLR 203, [2010] NLJR 1651, [2010] All ER (D) 200 (Nov) 28.07
Estate of Bhusate (deceased), Re, Bhusate v Patel and others [2019] EWHC 470 (Ch), [2019] All ER (D) 112 (Mar) 41.36
Evans v Tyler (1849) 2 Rob Eccl 128, 14 Jur 47, 13 Jur 413, 163 ER 1266, 14 LTOS 450, 13 LTOS 264, 7 Notes of Cases 296 ..... 11.253
Eyre v Eyre [1903] P 131, 72 LJP 45, 51 WR 701, 88 LT 567, 19 TLR 380, P, D and Admlty 34.87

F

Feay v Barnwell [1938] 1 All ER 31 ..... 4.226
Fendall (otherwise Goldsmid) v Goldsmid (1877) 2 PD 263, 46 LJP 70, PDA 4.131
Fernie's Goods, Re (1849) 13 Jur 216, 12 LTOS 559, 6 Notes of Cases 657 ..... 4.41
Flynn, Re, Flynn v Flynn [1968] 1 All ER 49, [1968] 1 WLR 103, 112 Sol Jo 93 .... 12.04
Franks v Sinclair [2006] EWHC 3365 (Ch), [2007] WTLR 439, [2006] All ER (D) 340 (Dec) 34.67
Fuller v Strum [2001] EWCA Civ 1879, [2002] 2 All ER 87, [2002] 1 WLR 1097, 4 ITELR 454, [2002] 1 FCR 608, (2002) Times, 22 January, [2001] All ER (D) 92 (Dec) 34.12, 34.67

G

Garrard v Garrard (1871) LR 2 P & D 238, 35 JP 647, 19 WR 569, 25 LT 162 ..... 5.09
Ghafoor v Cliff [2006] EWHC 825 (Ch), [2006] 2 All ER 1079, [2006] 1 WLR 3020, [2006] All ER (D) 165 (Apr) 25.182
Giles v Warren (1872) LR 2 P & D 401, 36 JP 663, 41 LJP & M 59, 20 WR 827, 26 LT 780 ..... 34.87
Gill v Gill [1909] P 157, 78 LJP 60, 53 Sol Jo 359, 100 LT 861, 25 TLR 400, P, D and Admlty 34.87
Gill v Woodall [2010] EWCA Civ 1430, [2011] Ch 380, [2011] 3 WLR 85, (2011) Times, 01 February, [2010] All ER (D) 167 (Dec) 34.67
Goldsborough's Goods, Re (1859) 5 Jur NS 417, 1 Sw & Tr 295, 7 WR 375, 164 ER 736 ..... 11.83
Goodchild, Re, Goodchild v Goodchild [1997] 3 All ER 63, [1997] 1 WLR 1216, [1997] 2 FLR 644, [1997] 3 FCR 601, [1997] NLJR 758, (1997) Times, 12 May 3.222
Goss-Custard and another v Templeman and others [2018] EWHC 2476 (Ch), [2018] WTLR 893, [2018] All ER (D) 20 (Oct) 38.43
Green, Re, Lindner v Green [1951] Ch 148, [1950] 2 All ER 913, 94 Sol Jo 742, 66 (pt 2) TLR 819 ..... 3.222
Green's Estate, Re, Ward v Bond (1962) 106 Sol Jo 1034, P, D and Admlty 34.87
Groffman, Re, Groffman and Block v Groffman [1969] 2 All ER 108, [1969] 1 WLR 733, 113 Sol Jo 58, PDA 3.102
Gullan's Goods, Re (1858) 27 LJP & M 15, 4 Jur NS 196, 1 Sw & Tr 23, 5 WR 307, 164 ER 612, 30 LTOS 326 ..... 34.87
Gunstan's (or Gunston) Goods, Re, Blake v Blake (1882) 7 PD 102, 51 LJ Ch 377, 51 LJP 36, 30 WR 505, [1881–5] All ER Rep 870, 46 LT 641, CA 3.102
Gupta (deceased), Re, Gupta v Gupta and others [2018] EWHC 1353 (Ch), [2018] All ER (D) 126 (Jun) 34.67

H

H (minors) (sexual abuse: standard of proof), Re [1996] AC 563, [1996] 1 All ER 1, [1996] 2 WLR 8, [1996] 1 FLR 80, [1996] 1 FCR 509, [1996] Fam Law 74, (1995) Times, 15 December, 140 Sol Jo LB 24, HL 34.12
Hall v Hall (1868) LR 1 P & D 481, 32 JP 503, 37 LJP & M 40, 16 WR 544, 18 LT 152 ..... 34.47
Hand v George [2017] EWHC 533 (Ch), [2017] 3 WLR 559, [2017] 2 FLR 1565, [2017] Fam Law 591, [2017] WTLR 495, [2017] All ER (D) 147 (Mar) 27.22
Harris v Berrall (1858) 1 Sw & Tr 153, 7 WR 19, 164 ER 671 ..... 34.87
Harris v Earwicker [2015] EWHC 1915 (Ch) 41.16
Haslip, Re [1958] 2 All ER 275n, [1958] 1 WLR 583, 102 Sol Jo 366, PDA 11.366
Haynes v Andre [2018] EWHC 489 (Ch) 41.16
Hey's Estate, Re, Walker v Gaskill [1914] P 192, 83 LJP 152, 59 Sol Jo 45, 111 LT 941, 30 TLR 637, PDA 3.222
Hindmarsh v Charlton (1861) 25 JP 339, 8 HL Cas 160, 7 Jur NS 611, 9 WR 521, 11 ER 388, [1861–73] All ER Rep 186, 4 LT 125, HL 3.102, 3.108, 34.21
Horne v Featherstone (1895) 73 LT 32, PDA 34.21
How's Goods, Re (1858) 27 LJP & M 37, 4 Jur NS 366, 1 Sw & Tr 53, 164 ER 626, 31 LTOS 26 ..... 25.20B
Hudson (deceased); Nicholls v Hudson [2006] EWHC 3006 (Ch), 150 Sol Jo LB 1333, [2006] All ER (D) 60 (Oct) 34.87
Hugo's Goods, Re (1877) 2 PD 73, 41 JP 632, 46 LJP 21, 25 WR 396, 36 LT 518, PDA 3.206
Humblestone v Martin Tolhurst Partnership (a firm) [2004] EWHC 151 (Ch), 6 ITELR 900, (2004) Times, 27 February, [2004] All ER (D) 67 (Feb) 3.95

I

IRC v Bullock [1976] 3 All ER 353, [1976] 1 WLR 1178, [1976] STC 409, 51 TC 522, [1976] TR 179, 120 Sol Jo 591, L(TC) 2598 ..... 12.07

Inchbald v Inchbald [2017] EWHC 616 (Ch) 40.35
Irvin's Estate, Re (1908) 25 TLR 41, PDA 34.93
Irvine's Goods, Re [1919] 2 IR 485 ..... 34.93

J

Jackson (deceased), Re; Ilott v Mitson [2017] UKSC 17, [2017] 4 All ER 545, [2017] 2 WLR 979, [2017] 4 LRC 153, 19 ITELR 1021, [2017] 1 FLR 1717, 167 NLJ 7739, [2017] WTLR 533, [2017] All ER (D) 96 (Mar), SC 41.19
Jackson's Goods, Re (1902) 47 Sol Jo 93, 87 LT 747, 19 TLR 74, P, D and Admlty 25.20B
James v James [2018] EWHC 43 (Ch), [2018] WTLR 1313, [2018] All ER (D) 124 (Jan) 34.28
Jemma Trust Co Ltd v Liptrott [2003] EWCA Civ 1476, [2004] 1 All ER 510, [2004] 1 WLR 646, [2003] 45 LS Gaz R 29, [2003] NLJR 1633, (2003) Times, 30 October, 147 Sol Jo LB 1275, [2004] 1 Costs LR 66, [2003] All ER (D) 405 (Oct) 6.109
Jolley, Re, Jolley v Jarvis [1964] P 262, [1964] 1 All ER 596, [1964] 2 WLR 556, 108 Sol Jo 115, CA 24.36
Jones' Estate, Re (1927) 43 TLR 324, PDA 4.51
Jones' Goods, Re (1920) 123 LT 202, 36 TLR 294, PDA 3.302

K

K, Re [1985] Ch 85, [1985] 1 All ER 403, [1985] 2 WLR 262, [1985] FLR 558, [1985] Fam Law 129, 129 Sol Jo 132, [1985] LS Gaz R 1335; affd [1986] Ch 180, [1985] 2 All ER 833, [1985] 3 WLR 234, [1986] 1 FLR 79, [1985] Fam Law 19, 129 Sol Jo 364, [1985] LS Gaz R 2242, [1985] NLJ Rep 655 ..... 33.75
Kershaw v Michlethwaite [2010] EWHC 506 (Ch) 41.16
Kettell v Stancliffe [2012] EWHC 2446 (Ch) 27.13
Kipping and Barlow v Ash (1845) 1 Rob Eccl 270, 9 Jur 542, 163 ER 1035, 4 Notes of Cases 177 ..... 28.01
Kohli (in her capacity as executrix and beneficiary of the estate of Kohli, deceased) v Proles (a minor by her mother and litigation friend) [2019] EWHC 193 (Ch) 12.04
Kosa v Nesheim [2006] EWHC 2710 (Ch), [2007] Fam Law 1132, [2006] All ER (D) 40 (Oct) 41.35
Kostic v Chaplin [2007] EWHC 2909 (Ch), (2008) Times, 11 January, [2008] 2 Costs LR 271, [2007] All ER (D) 119 (Dec) 40.35

L

Lamothe v Lamothe [2006] EWHC 1387 (Ch), [2006] All ER (D) 153 (Jun) 34.87
Land (decd), Re; Land v Land [2006] EWHC 2069 (Ch), [2007] 1 All ER 324, [2007] 1 WLR 1009, [2006] All ER (D) 71 (Oct) 33.73
Larke v Nugus (1979) 123 Sol Jo 337 ..... 26.31, 32.08
Legg v Burton [2017] EWHC 2088 (Ch), [2017] 4 WLR 186, [2017] WTLR 1017, [2017] All ER (D) 64 (Sep) 3.211, 3.222
Leonard v Leonard [1902] P 243, 71 LJP 117, 46 Sol Jo 666, 87 LT 145, 18 TLR 747, P, D and Admlty 34.87
Leverington's Goods, Re (1886) 11 PD 80, 55 LJP 62, PDA 34.21
Lewis v Lewis (1861) 26 JP 88, 2 Sw & Tr 153, 164 ER 952, 4 LT 583, sub nom Lewis's Goods, Re 31 LJPM & A 153, 7 Jur NS 688 ..... 34.21
Long-Sutton's Estate, Re [1912] P 97, 81 LJP 28, 56 Sol Jo 293, 106 LT 643, P, D and Admlty 4.152, 25.20B

M

McConville v McCreesh (1879) 13 ILTR 35 ..... 34.21
Mackenzie's Estate, Re [1909] P 305, 79 LJP 4, 26 TLR 39, P, D and Admlty 34.87

McNulty v McNulty [2002] Lexis Citation 1054, [2002] WTLR 737, [2002] All ER (D) 150 (Jan) 41.35, 41.36
Maddock's Goods, Re (1874) LR 3 P & D 169, 38 JP 631, 43 LJP & M 29, 22 WR 741, [1874–80] All ER Rep 367, 30 LT 696 ..... 34.21
Maltby v D J Freeman & Co [1978] 2 All ER 913, [1978] 1 WLR 431, 122 Sol Jo 212, [1977] Costs LR (Core) 64 ..... 6.109
Mark v Mark [2005] UKHL 42, [2006] 1 AC 98, [2005] 3 All ER 912, [2005] 3 WLR 111, [2005] 2 FCR 467, [2005] 2 FLR 1193, [2005] Fam Law 857, [2005] 28 LS Gaz R 32, (2005) Times, 5 July, [2005] All ER (D) 370 (Jun) 12.07
Marley v Rawlings [2014] UKSC 2, [2015] AC 129, [2014] 1 All ER 807, [2014] 2 WLR 213, 16 ITELR 642, [2015] 1 FCR 187, [2014] 2 FLR 555, [2014] Fam Law 466, 164 NLJ 7592, (2014) Times, 28 January, [2014] All ER (D) 132 (Jan) 3.95
Meeking v Meeking [2013] Lexis Citation 28, [2013] All ER (D) 250 (May) 33.74
Menzies v Pulbrook and Ker (1841) 2 Curt 845, 163 ER 605, 1 Notes of Cases 132 ..... 27.10
Mezvinsky (acting by their Litigation Friends v Associated Newspapers Ltd [2018] EWHC 1261 (Ch) 29.02
Mills v Millward (1889) 15 PD 20, 59 LJP 23, 61 LT 651, P, D and Admlty 34.87
Morris v Browne [2017] EWHC 631 (Ch) 27.27
Mountain v Bennet (1787) 1 Cox Eq Cas 353, 29 ER 1200 ..... 34.47

N

Nesbitt v Nicholson; Boyes, Re [2013] EWHC 4027 (Ch), [2014] All ER (D) 102 (Jan) 34.48
Nield-Moir v Freeman [2018] EWHC 299 (Ch), [2018] All ER (D) 123 (Feb) 36.28
Ninian v Findlay [2019] EWHC 297 (Ch) 33.73, 33.74

O

O'Brien v Seagrave [2007] EWHC 788 (Ch), [2007] 3 All ER 633, [2007] 1 WLR 2002, (2007) Times, 2 May, [2007] All ER (D) 56 (Apr) 27.22, 28.03, 32.07
O'Grady v Wilmot [1916] 2 AC 231, 85 LJ Ch 386, 60 Sol Jo 456, 114 LT 1097, 32 TLR 456, [1916–17] All ER Rep Ext 1385, HL 4.225
O'Keefe, Re, Poingdestre v Sherman [1940] Ch 124, [1940] 1 All ER 216, 109 LJ Ch 86, 84 Sol Jo 44, 162 LT 62, 56 TLR 204 ..... 12.31
Oldham, Re, Hadwen v Myles [1925] Ch 75, 95 LJ Ch 148, [1924] All ER Rep 288, 69 Sol Jo 193, 132 LT 658 ..... 3.222
Orton v Smith (1873) LR 3 P & D 23, 37 JP 503, 42 LJP & M 50, 28 LT 712 ..... 40.30
Owen v Williams (1863) 32 LJPM & A 159, 4 Sw & Tr 202, 11 WR 808, 164 ER 1494, 9 LT 86 ..... 27.13

P

Patel v Patel [2017] EWHC 133 (Ch) 34.12
Patten v Poulton (1858) 22 JP 180, 27 LJP & M 41, 4 Jur NS 341, 1 Sw & Tr 55, 6 WR 458, 164 ER 626, 31 LTOS 40 ..... 34.87
Payne v Payne [2018] EWCA Civ 985, (2018) Times, 25 May, (2018) Times, 17 May 3.108A, 27.13, 31.01, 34.21
Perrins v Holland [2009] EWHC 1945 (Ch), [2009] All ER (D) 30 (Aug); affd [2010] EWCA Civ 840, [2011] Ch 270, [2011] 2 All ER 174, [2011] 2 WLR 1086, 13 ITELR 405, [2010] NLJR 1076, 154 Sol Jo (no 29) 34, [2010] All ER (D) 210 (Jul) 34.28
Perrins v Holland [2010] EWCA Civ 840, [2011] Ch 270, [2011] 2 All ER 174, [2011] 2 WLR 1086, 13 ITELR 405, [2010] NLJR 1076, 154 Sol Jo (no 29) 34, [2010] All ER (D) 210 (Jul) 34.17, 34.67
Perry v Dixon (1899) 80 LT 297, P, D and Admlty 40.37
Peverett's Goods, Re [1902] P 205, 71 LJP 114, 87 LT 143, PDA 3.113
Phipps v Hale (1874) LR 3 P & D 166, 22 WR 742 ..... 34.21

Poole v Everall [2016] EWHC 2126 (Ch), [2016] WTLR 1621, [2016] All ER (D) 80 (Aug) 34.64
Powell v Powell (1866) LR 1 P & D 209, 35 LJP & M 100, [1861–73] All ER Rep 362, 14 LT 800 ..... 34.93
Practice Direction; (Administration of estates: Grant of administration: Legitimation) [1965] 2 All ER 560, [1965] 1 WLR 955 ..... 6.235
Practice Direction (Probate: Grant: Inland Revenue accounts) [1981] 2 All ER 832, [1981] 1 WLR 1185 ..... 4.175, 4.208
Practice Direction; (Probate: Grant: Trust corporation) [1981] 2 All ER 1104 .. 9.21, A6.66
Practice Direction; (parties: change of name: public company) [1982] 1 All ER 384, [1982] 1 WLR 214 ..... 9.23
Practice Direction; (probate: non-contentious probate: grant on behalf of minor) [1991] 4 All ER 562, [1991] 1 WLR 1069 ..... 11.155, 11.157, 11.159, 11.163
Practice Direction (probate: name of deceased) [1999] 1 All ER 832, [1999] 1 WLR 259 ..... 4.140
Practice Direction (reading lists and time estimates) [2000] 1 All ER 640, (2000) Times, 1 February, [1999] All ER (D) 1512 ..... 37.28
Practice Direction (22 March 2002, unreported) 4.205
Practice Direction (Citation of Authorities (2012)) [2012] 2 All ER 255, [2012] 1 WLR 780, [2012] NLJR 504, [2012] Lexis Citation 21, [2012] All ER (D) 190 (Mar) 37.27
Practice Note; (Evidence of Mental Incapacity in Probate Matters) [1962] 2 All ER 613, P, D and Admlty 17.52
Practice Note (1976) 15 September 23.28
Practice Note; (Procedure: Reference to Hansard) [1995] 1 All ER 234, (1994) Times, 31 December, SC 25.238
Practice Note (citation of cases: restrictions and rules) [2001] 2 All ER 510, [2001] 1 WLR 1001, SC 37.27
President's Direction (Non-Contentious Probate) (1925, unreported) 6.392
President's Direction (22 March 2003) 4.143
President's Instructions, 27 March 1908 ..... 9.60

R

R (on the application of Steinfeld and another) v Secretary of State for International Development (in substitution for the Home Secretary and the Education Secretary) [2018] UKSC 32, [2018] 4 All ER 1, [2018] 3 WLR 415, [2018] 2 FLR 906, [2018] Fam Law 1119, 168 NLJ 7800, 45 BHRC 169, [2018] All ER (D) 145 (Jun), SC 6.33A
Randall v Randall [2016] EWCA Civ 494, [2016] 3 WLR 1217, 19 ITELR 273, [2016] Fam Law 969, 166 NLJ 7703, (2016) Times, 28 June, [2016] WTLR 1277, [2016] All ER (D) 25 (Jun) 27.10, 27.22, 28.01, 28.03, 28.06, 32.07
Roberts v Fresco [2017] EWHC 283 (Ch), [2017] Ch 433, [2017] 3 WLR 209, [2017] All ER (D) 23 (Mar) 41.39
Roberts v Phillips (1855) 4 E & B 450, 24 LJQB 171, 1 Jur NS 444, 119 ER 162, 3 CLR 513, 24 LTOS 337 ..... 34.21
Rogers (decd), Re [2006] EWHC 753 (Ch), [2006] 2 All ER 792, [2006] 1 WLR 1577, 8 ITELR 886, [2006] NLJR 644, (2006) Times, 3 May, [2006] All ER (D) 68 (Apr) 4.41, 4.47
Ross, Re, Ross v Waterfield [1930] 1 Ch 377, 99 LJ Ch 67, [1929] All ER Rep 456, 142 LT 189, 46 TLR 61 ..... 12.31

S

Salmon, Re, Coard v National Westminster Bank Ltd [1981] Ch 167, [1980] 3 All ER 532, [1980] 3 WLR 748, 124 Sol Jo 813 ..... 41.36
Sargeant v Sargeant [2018] EWHC 8 (Ch), [2018] WTLR 1451, [2018] All ER (D) 19 (Jan) 41.36
Schumacher v Clarke [2019] EWHC 1031 (Ch) 41.12
Sharman's Goods, Re (1869) LR 1 P & D 661, 33 JP 695, 38 LJP & M 47, 17 WR 687, 20 LT 683 ..... 34.21

Sherrington v Sherrington [2005] EWCA Civ 326, 7 ITELR 711, [2005] 3 FCR 538, [2005] WTLR 587, (2005) Times, 24 March, [2005] All ER (D) 359 (Mar) ... 27.13, 34.67
Simon v Byford [2014] EWCA Civ 280, 17 ITELR 536, [2014] WTLR 1097, [2014] All ER (D) 154 (Mar) ... 34.67
Singellos v Singellos [2010] EWHC 2353 (Ch), [2011] Ch 324, [2011] 2 WLR 1111, (2010) Times, 22 December, [2010] All ER (D) 130 (Sep) ... 34.17
Singh and McDonald v Vozniak [2016] EWHC 114 (Ch) ... 34.87
Sirett, Re, Pratt v Burton [1968] 3 All ER 186, [1969] 1 WLR 60, 112 Sol Jo 1022, 207 Estates Gazette 527 ... 6.167
Solicitor, A, Re [1975] QB 475, [1974] 3 All ER 853, [1975] 2 WLR 105, 118 Sol Jo 737 ... 34.64
Southerden's Estate, Re, Adams v Southerden [1925] P 177, 95 LJP 1, [1925] All ER Rep 398, 69 Sol Jo 723, 133 LT 505, 41 TLR 539, CA ... 34.93
Spencer v Anderson (Paternity Testing: Jurisdiction) [2016] EWHC 851 (Fam), [2016] 3 WLR 905, [2016] Fam Law 808, 151 BMLR 92, 166 NLJ 7697, [2016] All ER (D) 140 (Apr) ... 34.87
Sperling's Goods, Re (1863) 27 JP 777, 33 LJPM & A 25, 9 Jur NS 1205, 3 Sw & Tr 272, 12 WR 354, 164 ER 1279, 9 LT 348 ... 3.108, 34.21
Spicer, Re, Spicer v Spicer [1899] P 38, 68 LJP 19, 47 WR 271, 79 LT 707, 15 TLR 40, P, D and Admlty ... 40.37
Sprigge v Sprigge (1868) LR 1 P & D 608, 33 JP 104, 38 LJP & M 4, 17 WR 80, 19 LT 462 ... 34.87
Stanley (Lord), Re (1939) March, unreported ... 11.333
Stone v Hoskins [1905] P 194, 74 LJP 110, 54 WR 64, 93 LT 441, 21 TLR 528, [1904–7] All ER Rep Ext 1406, PDA ... 3.222
Streatley's Goods, Re [1891] P 172, 60 LJP 56, 39 WR 432, PDA ... 34.21
Supple v Pender [2007] EWHC 829 (Ch), [2007] All ER (D) 195 (Feb) ... 34.12
Sykes, Re, Drake v Sykes (1906) 22 TLR 741, P, D and Admlty; affd (1907) 23 TLR 747, CA ... 34.87

T

Taylor's Estate, Re, National and Provincial and Union Bank of England v Taylor (1919) 64 Sol Jo 148, P, D and Admlty ... 34.87
Taylor's Goods, Re (1851) 2 Rob Eccl 411, 15 Jur 1090, 163 ER 1362, 19 LTOS 177 ... 34.21
Towgood's Goods, Re (1872) LR 2 P & D 408, 36 JP 615, 41 LJP & M 84, 20 WR 802, 26 LT 984 ... 16.09
Treloar v Lean (1889) 14 PD 49, 58 LJP 39, 37 WR 560, 60 LT 512, P, D and Admlty ... 34.87

U

UTB LLC v Sheffield United Ltd; Sheffield United Ltd v UTB LLC and others [2019] EWHC 914 (Ch), 169 NLJ 7838, [2019] All ER (D) 90 (Apr) ... 36.00
Udny v Udny (1869) LR 1 Sc & Div 441, 7 Macq 89, HL ... 12.04

V

Vere-Wardale, Re, Vere-Wardale v Johnson [1949] P 395, [1949] 2 All ER 250, [1949] LJR 1494, 93 Sol Jo 553, 65 TLR 493, PDA ... 27.13

W

Watton v Crawford [2016] NICh 14 ... 26.31
Walker v Badmin [2014] Lexis Citation 237, [2014] All ER (D) 258 (Nov) ... 34.28
Webb v Kirby (1856) 7 De GM & G 376, 26 LJ Ch 145, 3 Jur NS 73, 5 WR 189, 44 ER 147, 28 LTOS 314 ... 11.83

Welch v Phillips (1836) 1 Moo PCC 299 ..... 34.87
West v West [1921] 2 IR 34 ..... 34.93
Wharton v Bancroft [2011] EWHC 3250 (Ch), [2011] WTLR 693, [2011] All ER (D) 84 (Dec) 34.48
White, Re, Barker v Gribble [1991] Ch 1, [1990] 3 All ER 1, [1990] 3 WLR 187, [1991] 1 FLR 112, [1991] Fam Law 60 ..... 34.21
Whytte (or Whyte) v Ticehurst [1986] Fam 64, [1986] 2 All ER 158, [1986] 2 WLR 700, [1986] 2 FLR 83, [1986] Fam Law 192, 130 Sol Jo 185, [1986] LS Gaz R 875 ..... 41.39
Wilkes, Re, Wilkes v Wilkes [2006] WTLR 1087 ..... 34.67
Wilkinson v Kitzinger [2006] EWHC 2022 (Fam), [2007] 1 FCR 183, [2007] 1 FLR 295, [2006] 33 LS Gaz R 25, (2006) Times, 21 August, [2006] All ER (D) 479 (Jul) 3.43
Williams v Goude (1828) 1 Hag Ecc 577, 162 ER 682 ..... 34.47
Wilson v Bassil [1903] P 239, 72 LJP 89, 52 WR 271, 89 LT 586, [1900–3] All ER Rep Ext 1047, P, D and Admlty 40.30
Wilson v Beddard (1841) 12 Sim 28, 10 LJ Ch 305, 5 Jur 624, 59 ER 1041 ..... 3.75
Wilson's Estate, Re, Walker v Treasury Solicitor (1961) 105 Sol Jo 531, P, D and Admlty 34.87
Wingrove v Wingrove (1885) 11 PD 81, 50 JP 56, 55 LJP 7, 34 WR 260, PDA 34.47
Winstone's Goods, Re [1898] P 143, 67 LJP 76, 78 LT 535, P, D and Admlty 25.20B
Wintle v Nye [1959] 1 All ER 552, [1959] 1 WLR 284, 103 Sol Jo 220, HL 34.64
Wren v Wren [2006] EWHC 2243 (Ch), [2006] WTLR 531, 9 ITELR 223, [2006] 3 FCR 18, [2006] All ER (D) 30 (Sep) 34.87
Wyatt v Berry [1893] P 5, 62 LJP 28, 1 R 462, 68 LT 416, 9 TLR 36, PDA 3.102
Wyniczenko v Plucinska-Surowka [2005] EWHC 2794 (Ch), 8 ITELR 385, [2005] All ER (D) 245 (Nov) 34.12

Y

Yule's Estate, Re (1965) 109 Sol Jo 317, P, D and Admlty 34.87

Part I

THE COMMON FORM PROBATE PRACTICE

of the Family Division of the High Court of Justice

Chapter 1

THE PROBATE JURISDICTION OF THE FAMILY DIVISION

COMMON FORM BUSINESS

1.30 Grants of representation may be applied for either through a probate practitioner or in person at the Principal Registry of the Family Division or at any of the district probate registries.

1.36A The Legal Services Act 2007 (Designation as a Licensing Authority) Order 2017 (SI 2017/27) came into force on 17 February 2017. It designates the General Council of the Bar as a licensing authority in relation to:

(a) the exercise of a right of audience;
(b) the conduct of litigation;
(c) reserved instrument activities;
(d) probate activities, and
(e) the administration of oaths.

1.36B The General Council to the Bar is already an approved regulator of reserved activities and the Order allows it to license alternative business structures to provide legal services to the public. Alternative businesses may be wholly or partly owned or controlled by non-lawyers.

1.41 For the time being, approved regulators responsible under the Legal Services Act 2007 (as amended) for authorising their members to carry on probate activities are:

- The Law Society (through the Solicitors Regulation Authority);
- The General Council of the Bar (through the Bar Standards Board);
- The Master of Faculties (Notaries);
- The Council of Licenced Conveyancers;
- The Association of Chartered Accountants;
- The Institute of Chartered Accountants in England and Wales;
- The Chartered Institute of Legal Executives.

Rules

1.49 The current rules are the Non-Contentious Probate Rules 1987 (SI 1987/2024) (see **1.52** below), as amended by the Non-Contentious Probate (Amendment) Rules 1991, 1998, 1999, 2003, 2004, 2016, 2017 and 2018. The Rules were further amended with effect from 1 October 2007 by the

Mental Capacity Act (Transitional and Consequential Provisions) Order 2007 (SI 2007/1898) and the Non-Contentious Probate (Amendment) Rules 2009 (SI 2009/1893) (effective from 1 September 2009) which reflect amendments to the Children Act 1989 consequential upon the Human Fertilisation and Embryology Act 2008. These rules govern the practice in the case of death on or after 1 January 1926. Where the deceased died before 1 January 1926 the right to a grant is, subject to the provisions of any enactment, to be determined by the principles and rules under which the court would have acted at the date of the death (see r 23 of the 1987 Rules).

1.50 In 2009 Sir Mark Potter, then President of the Family Division, invited the then Lord Justice Mumby (now President of the Family Division) to chair a working group to undertake the revision of the Non-Contentious Probate Rules 1987 and produce a set of draft rules and supporting practice directions, which set out fair and efficient procedures which are both simple and simply addressed. The working party produced a consultation paper following which draft rules were prepared. The working party has since reported to the President and the implementation of these revised rules is now awaited. In anticipation of these rules, this work includes references to some of the new practice changes which will emerge.

Table of fees

1.54 The current table of fees to be taken in non-contentious business is contained in the Non-Contentious Probate Fees Order 2004 (SI 2004/3120), as amended, which is reproduced in Appendix III, para **A3.01** ff. At the time of writing there are proposals to increase probate fees and a draft order is awaiting acceptance by the House of Commons.

PROPERTY FOR WHICH GRANT REQUIRED

Vesting of property prior to issue of grant

1.70 When an estate has so vested and it is necessary to serve on the Public Trustee a notice to quit the notice should be served direct on the Public Trustee at the Office of the Official Solicitor and Public Trustee, Victory House, 30–34 Kingsway, London WC2B 6EX *or* DX 0012 Chancery Lane. Tel: 020 3681 2759. Fax: 020 3681 2762. Email: enquiries@offsol.gov.gsi.uk.

SMALL SUMS: PAYMENT WITHOUT GRANT

Production of unproved wills to National Savings and Investments

1.93 In dealing with applications for payment under the provisions set out in the preceding paragraphs without the production of a grant of representation National Savings and Investments (NS&I) will normally accept, in lieu of the original will, a clear photocopy or other facsimile of the will, certified personally by a solicitor to be a true copy of the original. Typewritten copies

are not accepted[1].

[1] Notice by Department for National Savings: *Law Society's Gazette*, 6 October 1976.

Members of Parliament

1.101 Amounts payable in respect of pensions or refund of pensions contributions of deceased members or office holders of the House of Commons may be paid on production of a grant or confirmation issued by any court in the United Kingdom. If the amount payable, excluding any interest, does not exceed £5,000 it may be paid by the trustees of the Parliamentary Contributory Pension Fund without production of a grant, in whole or in part to any person or persons who appear to the trustees to be beneficially entitled to the estate of the deceased, but if written notice of any claim against the estate is received by the trustees before they have made full payment then, except where the sum payable appears to be bona vacantia, they must make no, or no further, payment to anyone other than the personal representative until the claim is satisfied or withdrawn[1].

[1] Parliamentary and other Pensions Act 1972, s 24 and the Rules of Parliamentary Contributory Pension Fund (2015) r 28. The former limit of £500 was increased to £1,500 in relation to deaths occurring on or after 10 August 1975 by the Administration of Estates (Small Payments) (Increase of Limit) Order 1975 (see paras **A2.03** ff) and to £5,000 in respect of deaths occurring on or after 11 May 1984 by the Administration of Estates (Small Payments) (Increase of Limit) Order 1984: paras **A2.36** ff.

Chapter 2

GENERAL PROCEDURE IN REGISTRY

Note: The Non-Contentious Probate Rules 1987 were amended by SI 2018/1137, which came into force on 27 November 2018. The amended rules replace the oath application for a grant of representation with a statement of truth. In anticipation of the further revision of the Non-Contentious Probate Rules, the expressions 'witness statement' and 'statement of truth' where they are used in this work refer to the form of application or evidence required with reference to any rule in force at the time of the application.

AT THE PRINCIPAL REGISTRY

Situation of offices

2.01 Section 105 of the Senior Courts Act 1981[1] provides that application for a grant of probate or administration may be made at the Principal Registry of the Family Division. The Principal Registry is situated at First Avenue House, 7th Floor, 42–49 High Holborn, London WC1V 6NP or DX160011 Kingsway 7. The Principal Registry's Probate Department's Public Enquiries telephone number is 0207 421 8509. Email enquiries are to: londonpersonalapplication senquiries@justice.gov.uk and londonprobate@hmcts.gsi.gov.uk

[1] See para **A1.324**.

2.03 The Principal Registry is a member of the British Document Exchange and its box number is DX 160011 Kingsway 7.

2.04 Remittances for fees should be by crossed cheque made payable to 'HMCTS' or 'HM Court & Tribunal Service'. Probate practitioners are requested to state in all communications their reference or the name of the person dealing with the particular matter.

Administration pending determination of a probate claim

2.05 Previously, a grant of administration pending determination of a probate claim (formerly administration pending suit) could only be made at the Principal Registry[1]. It may now be made to any district probate registry. As to application for an order for such a grant, see paras **38.01** ff.

[1] Direction, 1935; NCPR SI 1987/2024 r 7(1).

AT DISTRICT PROBATE REGISTRIES AND SUB-REGISTRIES

Situation of registries

2.08 The function of sub-registries is to receive applications for grants and transmit them to their parent registries for the issue of the grants. Although the District Probate Registries Order 1982 (SI 1982/379) remains in force, the sub-registries are not open to the public, and callers (except by arrangement) and post from probate practitioners is directed to the parent registries. The sub-registries do not accept applications from probate practitioners. It is advisable to contact the parent district registry before making a personal call to a sub-registry. To avoid delay, it is therefore desirable that all applications and enquiries be submitted to a district probate registry. The following table lists the sub-registries for information only.

Further and current details may be obtained at: https://courttribunalfinder.service.gov.uk/search/

2.09 The court and tribunal finder webpage lists the London (Principal) Registry and district probate registries and sub-registries as situated at the following places[1]. However, in practice many of the sub-registries and offices are not open save by prior arrangement:

Registries	Sub-registries	Addresses, telephone numbers, fax number and document exchange number
Birmingham		The Priory Courts, 33 Bull Street, Birmingham B4 6DU Tel: 0121 681 3400/3401 Card payment tel: 0191 211 2183 DX 701990 Birmingham 7 Email: birminghamdprenquiries@justice.gov.uk
	Nottingham	
	Stoke on Trent	
Brighton		William Street, Brighton BN2 0RF Tel: 01273 573510 Card payment tel: 01273 573512 DX 98073 Brighton 3 Email: brightondprenquiries@justice.gov.uk
	Maidstone	
Bristol	*address correspondence to:*	The Probate Registry of Wales, 3rd Floor, Cardiff Magistrates' Court, Fitzalan Place, Cardiff CF24 0RZ Tel 1: 02920 474373 Card payment tel: 02920 573512 DX 743940 Cardiff 38

Registries	Sub-registries	Addresses, telephone numbers, fax number and document exchange number
		Email:
		cardiffdprenquiries@justice.gov.uk
Probate Registry of Wales [*Cardiff*]		3rd Floor, Cardiff Magistrates Court, Fitzalan Place, Cardiff CF24 0RZ
		Tel: 029 2047 4373
		Card payment tel: 02920 573512
		Email: cardiffdprenquiries@justice.gov.uk
		DX 743940 Cardiff 38
	Bodmin	
	Caernarfon [*Bangor*]	
	Carmarthen	
	Exeter	
Leeds		York House, York Place, Leeds LS1 2BA
		Tel: 0113 3896 133
		Card payment tel: 0113 3896 133
		Email: leedsdprenquiries@justice.gov.uk
		DX 26451 Leeds Park Square
	Lincoln	
	Sheffield	
	York	
Liverpool		Queen Elizabeth II Law Courts, Derby Square, Liverpool L2 1XA
		Tel: 0151 236 8264
		Card payment tel: 0151 224 6501
		Email: liverpooldprenquiries@justice.gov.uk
		DX 14246 Liverpool 1
	Chester	
	Lancaster	
London Probate Department		Principal Registry of the Family Division
		First Avenue House
		42–49 High Holborn
		London WC1V 6NP
		Tel: 020 7421 8509
		Card payment tel: 020 7421 8511
		Email:

Registries	Sub-registries	Addresses, telephone numbers, fax number and document exchange number
		londonpersonalapplicationenquiries@justice.gov.uk
Manchester		Ground Floor, Manchester Civil Justice Centre, 1 Bridge Street West, PO Box 4240, Manchester M60 1WJ Tel: 0161 240 5701/2 Card payment tel: 0161 240 5708/5721 Email: manchesterdprenquiries@justice.gov.uk DX 724784 Manchester 44
	Nottingham	[*Details as for Birmingham*]
Newcastle upon Tyne		1 Waterloo Square, Newcastle upon Tyne NE1 4AL Tel: 0191 211 2170 Card payment tel: 0191 211 2183 Email: newcastledprenquiries@justice.gov.uk DX 61081 Newcastle upon Tyne 14
	Carlisle	
	Middlesbrough	
	York	
Oxford		Combined Court Building, St Aldates, Oxford OX1 1TL Tel 1: 01865 793050 Tel 2: 01865 793055 Card payment tel: 01865 264268/264249 Email: oxforddprenquiries@justice.gov.uk DX 96454 Oxford 4
	Gloucester	
	Leicester	
Winchester		1st Floor, Southside Offices, The Law Courts Winchester SO23 9EL Tel: 01962 814100 Card payment tel: 01962 814100 Email: winchesterdprenquiries@justice.gov.uk DX 96900 Winchester 2

The opening hours of district registries and those sub-registries which are open to the public are 9.30am until 4.00pm, Monday to Friday.

[1] The District Probate Registries Order 1982 (SI 1982/379) as amended (see paras A2.30 ff). The registries which are closed are not the subject of any particular Order.

Jurisdiction of district probate registries

2.15 There are no territorial limitations on the jurisdiction of the respective registries. Application for a grant may be made at any registry.

Administration pending determination of a probate claim

2.16 A grant of administration pending determination of a probate claim (formerly administration pending suit) can be made only at any registry. As to application for an order for such a grant, see paras 38.01 ff.

Powers of district probate registrars

2.18 District probate registrars now have, in relation to matters proceeding in the district probate registries, the same powers as the district judges of the Principal Registry (see definition of 'registrar' in NCPR SI 1987/2024 r 2(1)).

2.19 No grant may, however, be made by a district probate registrar in any case where there is contention until the contention is disposed of, or in any case where it appears to the district registrar that a grant ought not to be made without the directions of a High Court judge or a district judge of the Principal Registry[1]. Formerly, it was for this reason that an application for a grant pending determination of a probate claim could only be made to the Principal Registry. The district probate registrar now issues a grant in such an application. In any case where the district probate registrar seeks directions under the aforesaid provision, he is required to send a statement of the matter in question to the Principal Registry for directions[2]. Where directions are sought, a district judge of the Principal Registry may either confirm that the matter be referred to a High Court judge and give directions accordingly or he may direct the district probate registrar to proceed with the matter in accordance with such instructions as are deemed necessary, or direct him to take no further action in relation to the matter[3]. In practice this procedure is rarely used.

[1] NCPR SI 1987/2024 r 7(1).
[2] NCPR SI 1987/2024 r 7(2).
[3] NCPR SI 1987/2024 r 7(3).

Settling documents to lead grant

2.28 While it is not the practice to settle affidavits (*witness statements, when the Non-Contentious Probate Rules are revised*) of facts (eg affidavits to lead an order of the district judge, or affidavits as to due execution of wills) the probate manager or registrar may at his or her discretion peruse and comment on these complex draft affidavits.

Application for grant at district registry

2.30 A probate practitioner makes an application for a grant at a district probate registry by lodging at, or sending by post or document exchange to, the registry (see para 2.09) the papers to lead the grant, namely, the will and codicils (if any) together with two plain copies of each testamentary paper on A4 size paper, the oath, the HMRC account summary Form IHT 241 (unless such an account is not required, see Chapter 8) or return of estate in Form IHT205 as appropriate (see Chapter 8) and any affidavits etc, which the particular circumstances of the case may render necessary A personal applicant may apply for a grant at any district probate registry.

Fees

2.32 Remittances for fees should be by crossed cheque made payable to 'HMCTS' or 'HM Court & Tribunal Service'. Solicitors and probate practitioners are requested to state in all communications their reference or the name of the person dealing with the particular matter.

Inheritance tax account

2.34 Postal remittances for inheritance tax or capital transfer tax payable in England and Wales should be sent to: HMRC Trusts and Estates, Inheritance Tax BH9 IHT.

Procedure in district registry

2.42 The probate computer system maintains records of grants, pending applications, caveats[1], standing searches[2] and testamentary papers deposited for safe custody. The registry enters details of each case in the computer which automatically searches against its database for matching records in respect of the same estate. The records of grants go back to 1858. Subject to any information or impediment to issue of a grant which may emerge as a result of the searches the papers are then examined and, if in order, a form of grant is prepared, to which is attached a photographic copy of the will and codicils (if any). The grant is signed by a district registrar and sealed with the seal of the Family Division. Photographic copies of the grant and will are filed for record purposes, and are available for inspection by the public, and an entry of the grant is recorded in the calendar (ie index), which is open for public search (see Chapter 21).

[1] See Chapter 23 as to caveats.
[2] See para 21.13.

2.43 Sub-registries have no power to issue grants.

Form of grant

2.48 The grant of representation is not now prepared in the probate registry. It is printed at a remote location by a third party and contains an electronic

signature and seal. In a departure from previous practice, the grant is not affixed with any will proved at the same time. A sealed copy of the will should be ordered separately.

2.53 *Note: Probate fees may rise shortly. A draft Non-Contentious Probate (Fees) Order 2018 has been laid before Parliament to implement proposals on which there has been much comment. The draft order increases the threshold below which no fee is payable for an application for a grant from £5,000 to £50,000. Above that it introduces fees on a sliding scale ranging from £250 for estate values between £50,000 and £300,000 to £6,000 for estates worth more than £2,000,000. At the time of writing the proposed fees await approval of both Houses of Parliament.*

The Non-Contentious Probate Fees Order 2004 (SI 2004/3120), as amended by the Non-Contentious Probate Fees (Amendment) Order 2014 (see Appendix III, paras **A3.01** ff) provides, *inter alia*, for the payment of a flat fee of £155 on application for a grant of representation in cases in which the assessed or net value of the estate passing under the grant exceeds £5,000. No fee is payable if the assessed or net value does not exceed £5,000.

2.57 The wording at the foot of the form of grant is now as follows:

> 'It is hereby certified that it appears from information supplied on the application for this grant that the gross value of the said estate in the United Kingdom amounts to £ and that the net value of such estate amounts to £ .'

Calendar

2.80 Depending upon the year of grant issue, the calendar containing a note of every grant passed in England and Wales in each year can be inspected at a district registry either in printed book form, microfiche records or the court computer.

Interested parties may now search the Probate calendars using computer terminals in most Probate Registries. Copies of any grant found may be ordered through the local registry.

PERSONAL APPLICATIONS

Personal application for grant

2.81 A personal application for a grant of probate or letters of administration (with will) or letters of administration may be made by the person entitled to the grant[1]. There is no financial limit on the value of the estate.

[1] NCPR SI 1987/2024 r 5(1).

Where made

2.88 A personal application may be made at the Principal Registry or any district probate registry. There are no territorial limits on jurisdiction.

2.89 A personal applicant signs a statement of truth to verify the application and he or she is not required to attend an interview as a matter of course. If this becomes necessary the probate registry will advise where this will take place.

Procedure

2.90 A booklet giving details of the procedure on a personal application may be obtained from any probate registry. The forms of application may be obtained on request by letter, telephone or personal call, from the nearest probate registry or the probate helpline (0300 123 1072). Alternatively the forms may be download over the internet from the Probate Service website at www.gov.uk/wills-probate-inheritance. These should be completed by the applicant to show full details of the estate left by the deceased, and names and addresses etc, of the deceased and the applicant, and sent to, or handed in at, a district probate registry. A death certificate and the will (and codicils), if any, left by the deceased should accompany the forms.

2.90A With effect from 1 November 2016 and subsequently 27 November 2018, the Non-Contentious Probate Rules have been amended to allow a personal applicant to apply to any probate registry either by sending the application to the registry or by applying online if invited to do so by that registry[1]. Rule 5ZA allows the personal applicant to make the application using the online portal. The applicant completes and sends the application through the online portal and electronically pays the appropriate fee. Original documents are sent separately in accordance with instructions given through the online portal. Under Rule 5A the personal applicant completes and sends the application online if invited to do so by the registry. In place of swearing an oath, the applicant verifies his application by a statement of truth in the online application. The application refers to any will by reference to its date. If the application is for probate, the applicant also confirms in the online form in accordance with instructions given through the online portal or by the registry that notice has been given to any executor to whom power is reserved in accordance with r 27(1).

[1] NCPR SI 1987/2024, r 5A (inserted by SI 2016/972). The revised rules are incorporated in Appendix II of this supplement; see para **A2.39**.

2.91 Save as stated in the preceding paragraph on receipt of the completed forms, notice of an appointment to attend at the chosen registry or office will be sent to the applicant.

2.92 Where necessary the statement of truth and any other documents apart from the HMRC account, necessary in connection with the application are prepared in the registry[1]. The personal applicant is responsible for completing the HMRC Inheritance Tax account forms, and he must deal directly with the HMRC Trusts and Estates, Inheritance Tax Office for the payment of inheritance tax or control of the account if this is necessary before the registry issues the grant. A telephone helpline (0300 123 1231072) operated jointly by the Probate Service and HMRC Trusts and Estates, Inheritance Tax will provide information about probate and inheritance tax.

[1] NCPR SI 1987/2024 r 5(6).

2.93 Unless otherwise directed by the district judge or registrar, every affidavit (*witness statement*) required on a personal application must be sworn by all the deponents before an authorised officer of a probate registry[1]. Applicants are now given the choice of swearing the affidavit by a commissioner for oaths after it has been prepared in the probate registry.

[1] NCPR SI 1987/2024 r 5(7).

2.94 The revised probate rule 5A requires only that a personal application be completed in the form of a questionnaire in which the applicant verifies the answers in a statement of truth, as may be required by any instruction given by the registry. Unless otherwise directed, no attendance will be necessary.

Fees

2.95 An additional fee of £60 (Fee No 2) is payable in applications for grants or resealing made through the Personal Application procedure. For the fees in respect of personal applications, see para **A3.09** but see note to para **2.53**.

Chapter 3

WILLS AND CODICILS

Note: The Non-Contentious Probate Rules 1987 were amended by SI 2018/1137, which came into force on 27 November 2018. The amended rules replace the oath application for a grant of representation with a statement of truth. In anticipation of the further revision of the Non-Contentious Probate Rules, the expressions 'witness statement' and 'statement of truth' where they are used in this work refer to the form of application or evidence required with reference to any rule in force at the time of the application.

WHAT DOCUMENTS CAN BE PROVED

Admissibility of wills to proof: deceased domiciled in England and Wales

3.26 It should be shown on any application to prove a will that the testator died possessed of some estate in England and Wales; or, if not, that for some sufficient reason it is necessary to prove the will or obtain a grant of representation notwithstanding that the testator left no estate in this country (eg for purposes of title to pass a legal estate in land vested in the deceased, or to constitute a personal representative for the purpose of taking or defending legal proceedings: the reason for which the grant is required must in such cases be deposed to in the statement of truth[1]).

[1] Registrar's Direction (1932) 30 November.

REVOCATION OF WILLS

Revocation by subsequent marriage

Will made on or after 1 January 1983

3.40A With effect from 29 March 2014 marriage includes a reference to the marriage of a same sex couple[1].

[1] See Marriage (Same Sex Couples) Act 2013, Sch 3, Pt 1.

Revocation by subsequent formation of Civil Partnership

3.42A The Civil Partnerships, Marriage and Deaths (Registration etc) Act 2019 received royal assent on 26 March 2019. The Act in s 2(1) empowers the Secretary of State to make regulations to amend the Civil Partnership Act 2004

so that two persons who are not of the same sex are eligible to form a civil partnership in England and Wales (provided that they would be eligible to do so apart from the question of sex). Further, s 2(2) provides that the Secretary of State must exercise this power so that regulations are in force no later than 31 December 2019.

3.43 The effect of this Act is that it places a civil partnership on similar footing to a marriage. Section 71 and Sch 4 of this Act amend the Wills Act 1837 and other enactments so that they apply in relationship to a civil partnership as they apply to marriage. In *Wilkinson v Kitzinger* [2006] EWHC 2022 (Fam), [2007] 1 FCR 183, [2007] 1 FLR 295 the English court declined on grounds of public policy to recognise a form of marriage between two persons of the same sex which is valid and lawful in the jurisdiction in which it took place. Such relationship would qualify in the United Kingdom as a formation of a civil partnership. Schedule 4 amends the Wills Act 1837 to provide in s 18B:

> '(1) Subject to subsections (2) to (6), a will is revoked by the formation of a civil partnership between the testator and another person.
> (2) A disposition in a will in exercise of a power of appointment takes effect despite the formation of a subsequent civil partnership between the testator and another person unless the property so appointed would in default of the appointment pass to the testator's personal representatives.
> (3) If it appears from a will –
> (a) that at the time it was made the testator was expecting to form a civil partnership with a particular person, and
> (b) that he intended that the will should not be revoked by the formation of the civil partnership,
> the will is not revoked by its formation.
> (4) Subsections (5) and (6) apply if it appears from a will–
> (a) that at the time it was made the testator was expecting to form a civil partnership with a particular person, and
> (b) that he intended that a disposition in the will should not be revoked by the formation of the civil partnership.
> (5) The disposition takes effect despite the formation of the civil partnership.
> (6) Any other disposition in the will also takes effect, unless it appears from the will that the testator intended the disposition to be revoked by the formation of the civil partnership.'

3.43A A form of marriage between two persons of the same sex which is lawful and valid in a jurisdiction in which it took place outside the United Kingdom before the Civil Partnership Act 2004 and the Marriage (Same Sex Couples) Act 2013 came into force is not recognised. However, where such a marriage was subsequently treated as a civil partnership in England and Wales, it is now recognised as a marriage.

Exceptions

Will made in contemplation of marriage

3.51 Wills made in contemplation of marriage are sometimes expressed to be conditional upon the intended marriage being solemnised within a stated period. In this event, the statement of truth should state that the contemplated marriage was duly solemnised and give the date of it. If the will contains no such condition it is admissible to proof whether or not the intended marriage

takes place, but is revoked in the event of the testator's marriage to any person other than the one with whom the marriage was expressed to be contemplated.

EXECUTION OF WILLS—INTERNAL LAW OF ENGLAND AND WALES

By mark

3.75 Where a testator had his hand guided in making his mark, it was held to be a sufficient signature within the Statute of Frauds[1]. The object of guiding the testator's hand is to steady it rather than lead it.

[1] *Wilson v Beddard* (1841) 12 Sim 28.

Re-execution by acknowledgment

3.95 Practitioners who are instructed to draft a will but do not supervise its execution are under a duty to check that it is properly executed when it is returned to them for safekeeping[1].

[1] *Humblestone v Martin Tolhurst Partnership (a Firm)* [2004] EWHC 151 (Ch), (2004) Times, 27 February (it was found on examination after the death of the deceased that the will was not signed by him). See also *Marley v Rawlings* [2014] UKSC 2, [2015] AC 129, [2014] 1 All ER 807.

Presence of witnesses

3.102 The witnesses must have seen, or have had the opportunity of seeing, the testator's signature[1], even though they were unaware of the nature of the document they were asked to sign[2], and they must both subscribe their names (or sign or acknowledge their signatures *where the testator's death occurred on or after 1 January 1983*) after this has occurred in their joint presence[3]. The will is not duly executed if the testator acknowledges his signature in the presence of one witness who thereupon signs the will, and subsequently the testator acknowledges his signature in the joint presence of the two witnesses, after which the second witness signs[4] but see para **3.103**.

[1] *Re Gunstan's Goods, Blake v Blake* (1882) 7 PD 102; *Re Groffman, Groffman and Block v Groffman* [1969] 2 All ER 108, [1969] 1 WLR 733.

[2] *Daintree v Butcher and Fasulo* (1888) 13 PD 67; on appeal (1888) 13 PD 102, CA.

[3] *Hindmarsh v Charlton* (1861) 8 HL Cas 160.

[4] *Wyatt v Berry* [1893] P 5, following *Hindmarsh v Charlton* (1861) 8 HL Cas 160; *Re Colling, Lawson v von Winckler* [1972] 3 All ER 729, [1972] 1 WLR 1440.

Attestation

3.107 '*Attests and signs the will in the presence of the testator*'. The witnesses must sign the will in the presence of the testator after he has signed it, or acknowledged his previously made signature, when all of them were present together; but under English law it is not essential that the witnesses should sign in the presence of each other.

3.108 No form of attestation is necessary; but to make a valid signature or subscription and attestation, either the name or initials of each witness, or some mark or name intended to represent his name, must be written or made by him in the presence of the testator[1].

[1] *Re Sperling's Goods* (1863) 3 Sw & Tr 272; see also *Hindmarsh v Charlton* (1861) 8 HL Cas 160; *Charlton v Hindmarsh* (1859) 1 Sw & Tr 433.

3.108A The Court of Appeal held that the term 'sign' used in s 9 of the Wills Act 1837 as amended with effect from 1 January 1983 by the Administration of Justice Act 1982 should be construed as meaning the same as the original requirement to 'subscribe'[1]. The change of term was a modernisation and not intended to be of any substance. A signature in the sense of an identifiable and personal mark as when signing a cheque or other formal document was not required. The court further held that a witness merely had to write his name with the intention that the act of writing it should operate as an attestation.

[1] *Payne v Payne* [2018] EWCA Civ 985.

Position of witnesses' signatures

3.113 A testatrix wrote her will, consisting of the date, dispositive words and her signature, on a small single sheet of paper. There was no attestation clause. On the reverse side, upside down, were written in different handwritings the names of two persons whom it had proved impossible to trace. It was held, applying *Re Peverett's Goods* [1902] P 205, and the maxim *omnia praesumuntur rite esse acta* (all things are presumed to have been done rightly), that the document was a duly executed will, there being no practical reason why the names should be on the reverse of the document unless for the purpose of attesting the will[1].

[1] *Re Denning, Harnett v Elliott* [1958] 2 All ER 1, [1958] 1 WLR 462.

Will to be exhibited

3.122 Attention is drawn to the different requirements of NCPR SI 1987/2024 r 10(1)(b):

(a) Formerly, NCPR SI 1987/2024 r 10(1)(a) required the applicant for a grant to mark the will. This was revoked by the NCP (Amendment) Rules 2018 SI 2018/1137.

(b) NCPR SI 1987/2024 r 10(1)(b) relates to a will being exhibited to an affidavit (*witness statement*), not the statement of truth. Where a will is exhibited to an affidavit RSC Ord 41, r 11 also applies. The will in this instance is to be endorsed with the appropriate exhibit clause signed (only) by the person before whom the affidavit is sworn, and is again not to be physically annexed to the statement of truth.

Refusal of probate

Fiat against a will. Probate refused

3.140 The procedure for obtaining the district judge's or registrar's marking 'Probate refused' on a testamentary document is as follows:

(a) *Prior to an application for a grant.* An application by a solicitor or probate practitioner to a district judge or registrar for a document to be marked 'Probate refused' must be made through the probate department in the Principal Registry or to a probate registry. If and when so marked, the refused document together with the affidavits (*witness statements*) leading to the district judge's or registrar's fiat is retained and it will not be handed out without the leave of a district judge or registrar. Upon the issue of a grant in respect of the estate of the deceased the refused document and its accompanying affidavits will be filed with the statement of truth to lead the grant.

(b) *Simultaneously with the application for a grant.* Where the application for refusal of probate and for a grant are simultaneous, the purported will and the affidavits (*witness statements*) by the witnesses should be lodged with the remainder of the papers at the probate department, probate registry or sub-registry.

Codicils

Revocation of codicil

3.172 The following notations will be made, by the registry, at the foot of each document:

> On the will: 'Partially revoked by codicil dated . . . .' On the codicil: 'The codicil of which this is a copy (or reconstruction) was revoked by destruction.'

The grant will *not* contain the limitation 'until a more authentic copy be proved'[1].

[1] Registrar's Direction (1949) 30 July.

Two or more wills

Conditional will

3.206 If the later will is wholly conditional, eg on an event which never occurred, the earlier one will be proved. A revocation clause in a conditional will is effective only if the condition is fulfilled and so makes the whole will operative[1]. See also paras **3.224** ff.

[1] *Re Hugo's Goods* (1877) 36 LT 518.

Description in statement of truth

3.207 Where two or more wills are proved as together constituting the true last will, they should be marked 'A', 'B', etc, and described in the statement of truth to lead the grant as 'the true and original last will and testament, as contained in the paper writings marked "A", "B", (etc)'.

Joint and mutual wills

3.211 The term 'mutual will' is commonly used to denote one of two testamentary instruments made respectively by two persons whereby each gives the other corresponding rights in his property although the doctrine of mutual wills can also apply to cases where the two testators leave their property to particular beneficiaries rather than each other[1]. As to enforceability of an agreement between testators who made mutual wills in reliance on the agreement, see *Legg v Burton*[2].

1 See *Re Dale, Proctor v Dale* [1994] Ch 31, [1993] 4 All ER 129.
2 [2017] EWHC 2088 (Ch), [2017] 4 WLR 186.

Practice in proving joint wills

3.218 The grant in the estate of the second testator must be extracted from the registry at which the will was proved on the first occasion[1].

1 Secretary's Circular, 10 August 1962.

Revocation of joint and mutual wills

3.222 If after the death of one testator, the survivor revokes his will, the revocation is recognised in the probate registry as operative, but his personal representative may be directed[1] to hold the estate on trust to carry out the terms of the contract, or implied contract (if any), originally made[2]. It does not necessarily follow, because joint or mutual wills are made, that there was a contract: and this is a question to be decided in the Chancery Division[3], the probate registry being concerned only with the formal validity of the dispositions.

1 By the Chancery Division.
2 *Dufour v Pereira* (1769) 1 Dick 419; *Stone v Hoskins* [1905] P 194; *Re Oldham, Hadwen v Myles* [1925] Ch 75 (the probability of a contract is greater if the mutual gifts are for life only); *Re Green, Lindner v Green* [1951] Ch 148, [1950] 2 All ER 913 (the wills themselves may contain a clear indication of a contract); *Re Cleaver, Cleaver v Insley* [1981] 2 All ER 1018, [1981] 1 WLR 939 (the whole evidence must be looked at to determine whether there was a definite agreement between the testators: the mere fact that the wills were to the same effect, though a relevant circumstance, was not in itself sufficient).
3 *Re Heys' Estate, Walker v Gaskill* [1914] P 192 at 200; *Re Goodchild* [1997] 3 All ER 63, [1997] 1 WLR 1216 (the court confirmed that for the doctrine of mutual wills to apply there had to be a contract at law between two testators that both wills would be irrevocable and remain unaltered. It was not sufficient that both testators merely had a mutual desire that the wills should remain unaltered); *Legg v Burton* [2017] EWHC 2088 (Ch), [2017] 4 WLR 186.

Conditional wills

3.227 When a question arises whether a conditional will or codicil should be admitted to probate or not, affidavit (*witness statement*) evidence as to the fulfilment or non-fulfilment of the condition is required before a decision is given, unless it is apparent from the application for the grant that the condition is inoperative. A conditional document which is not admitted to probate and the affidavit (*witness statement*) evidence, if any, will be filed with the statement of truth to lead the grant. It should be noted that reference in a later conditional testamentary document to an earlier document, which purports to be testamentary, whether such reference is by date or not, and even if the

earlier document is not duly executed as a will or codicil, may have the effect of republishing or incorporating the earlier document, and on that ground alone entitle the conditional document to probate, notwithstanding that the condition is not fulfilled[1]. (See also paras **3.174–3.180.**)

[1] Registrar's Direction (1941) 10 March. See *Re Da Silva's Goods* (1861) 2 Sw & Tr 315.

Incorporation of papers by reference

Production of document

3.301 Whenever a will or codicil refers to any list, memorandum, or other document in such a manner as to suggest that such document was in existence at the time the will or codicil referring to it was executed, such document must be produced with a view to ascertaining if it is entitled to probate (NCPR SI 1987/2024 r 14(3)) (save that where a will incorporates by reference standard will forms or clauses as contained in a published document, production of that document will not be required in any individual case, unless otherwise directed, if the published document containing the standard forms or clauses (together with as many copies as may be required) has been previously lodged with the Senior District Judge and accepted by him as sufficient lodgement for the purposes—*District Judge's Direction*, 10 April 1995).

3.302 The identity of the document produced as the document referred to in the will or codicil is proved by affidavit (*witness statement*), and if it refers, in any way, to the disposition of property[1], the district judge or registrar will decide whether the document is to be incorporated. As to the wording of the statement of truth in such cases, see para **3.315.**

[1] See *Re Jones' Goods* (1920) 123 LT 202.

Practice: description in statement of truth

3.315 Any question of incorporation should be decided before the statement of truth to lead the grant is sworn. Where a document is to be incorporated and proved as part of the will, the will should be marked 'A', and the incorporated papers 'B', 'C', etc. The documents should be described in the executor's statement of truth as 'the will as contained in paper writings marked A and B, etc'.

PRIVILEGED WILLS

Testator under age

3.340 If the testator was under the age of 18 years, or 21 years, as the case may be, when the will was made, this fact should be recited in the statement of truth, or other affidavit (*witness statement*).

Privileged wills of the forces of the Crown

Practice for proving a nuncupative will

3.372 When the order is obtained the affidavit/s (*witness statement*) and the statement in writing are filed with the application for the grant, the statement in writing being subsequently produced as the will with the statement of truth.

WILLS ACT 1963

Requirements of foreign law to be treated as formal

3.417 Where a law in force outside the United Kingdom applies in relation to a will, any requirement of that law whereby special formalities are to be observed by testators answering a particular description, or witnesses to the execution of a will are to possess certain qualifications is notwithstanding any rule of that law to the contrary, to be treated as a formal requirement only (s 3).

Chapter 4

PROBATES

Note: In anticipation of the revision of the Non-Contentious Probate Rules the expression 'witness statement' where it is used in this work refers to the form of application or evidence required with reference to any rule in force at the time of the application.

Note: The Non-Contentious Probate Rules 1987 were amended by SI 2018/1137, which came into force on 27 November 2018. The amended rules replace the oath application for a grant of representation with a statement of truth. In anticipation of the further revision of the Non-Contentious Probate Rules, the expressions 'witness statement' and 'statement of truth' where they are used in this work refer to the form of application or evidence required with reference to any rule in force at the time of the application.

EXECUTORS

Conditional appointment

4.14 Where a testator has appointed as executor 'A, but if A is not in England at the date of death then such person as A may appoint to act in the settlement of my estate' probate will be granted to A's appointee, upon its being sworn in the statement of truth that A was not in England at the date of death, and production of the appointment by A[1].

[1] *Re Andreason* (September 1943, unreported).

4.15 When a person is appointed executor provided a certain condition is satisfied, the statement of truth to lead a grant of probate to such executor should include the facts establishing that the condition was satisfied.

Executor according to the tenor

4.21A The term 'personal representative' may be accepted as meaning executor subject to the direction of the registrar being sought as to the sufficiency.

Corporation not a trust corporation

4.39 Where a corporation (not being a trust corporation) and an individual are appointed executors the individual's right to probate has priority under

NCPR SI 1987/2024 r 20, and probate may be granted to the individual only, it being recited in the statement of truth that the corporation is not a trust corporation as defined by NCPR SI 1987/2024 r 2(1). Alternatively, application for the grant of probate may be made by the individual alone, with power being reserved to the non-trust corporation: so the status of the corporation to extract a grant of double probate will be tested at the time when application is made for the subsequent grant[1].

[1] Registrar's Direction (1977) 6 December.

Firm appointed executors

4.41 If a firm of solicitors or a trading firm is appointed executors, the appointment applies only to the members of the firm at the date of the will of the testator, unless a contrary intention is expressed in the will, the appointment being regarded as of the individual members constituting such firm at the date of appointment[1]. In such a case the statement of truth should state that the applicants were equity partners or share owning or profit-sharing members[2] in the firm in question at the date of the will. All such partners or members should be accounted for in the same way as if the individual members had been named as executors (eg by reciting any renunciation or death, or reserving power to non-proving members of the firm).

[1] *Re Fernie's Goods* (1849) 6 Notes of Cases 657. Quaere, where a will appoints a firm of solicitors as executors and that will is subsequently confirmed and republished by a codicil, whether the appointment of the executors should be regarded as of the individual partners of the firm as at the date of the codicil.

[2] *Re Rogers* [2006] EWHC 753 (Ch), [2006] 2 All ER 792, [2006] 1 WLR 1577; see para **4.47**.

Partnership firm succeeded by limited liability partnership

4.47 The usual appointment of a partnership containing a succession clause (see para **4.43**) has caused a difficulty where at the date of the testator's death a limited liability partnership succeeded the partnership. Formerly the district judges and registrars held the view that the appointment failed in consequence of the limited liability partnership being a corporate body (with a legal personality) whose members were not partners. On a further scrutiny of the appointment clause it was held in *Re Rogers (decd)* [2006] EWHC 753 (Ch), [2006] 2 All ER 792, [2006] 1 WLR 1577 that the court should take a practical and common sense view in eliciting and giving effect to the intentions of the testatrix and that on a true construction probate should be granted to profit-sharing members of the limited liability partnership (they being the equivalent of partners in the previous partnership). Lightman J held that just as a partner in a partnership was a profit sharing partner the appointment could only apply to profit-sharing members unless a contrary intention is established in the will. In consequence of this the statement of truth should confirm that the applicant executors are profit sharing or share-owning members of the limited liability partnership at the death of the deceased.

Alternative business structures

4.49 Nowadays the situation may arise where the appointment of an executor applies to a firm which is a corporate body comprised of share owner lawyers or probate practitioners (authorised persons) as well as other share owners or persons (non-authorised persons) who exercise control or have an interest in the body but are not lawyers or probate practitioners. Such a firm may provide a mixture of legal and other professional services (alternative business structure). It is licensable by the Solicitors Regulation Authority, an approved regulator under the Legal Services Act 2007. Unless the will expresses a contrary intention, the appointment of the firm as executor would appear to apply to all the shareholders. The question may arise as to who would constitute the executors where the appointment applies to a successor firm and the instituted executors were all share-owning probate practitioners or other legal practitioners.

An official appointed executor

4.51 Where an executor is designated by his official title, and is not named, the appointment refers to the holder of the office at the date of the death of the testator and not at the date of the will, unless the context indicates otherwise[1]. In this case the statement of truth should include a statement that the applicant was the holder of the office at the date of death.

[1] *Re Jones' Estate* (1927) 43 TLR 324. See Registrar's Circular, 30 July 1946.

Reservation of power to non-proving executors

4.55 Notice of the application for probate normally must be given to the executor or executors to whom power is to be reserved (r 27(1)), unless a district judge or registrar dispenses with the giving of such notice where he is satisfied that it is impracticable or would result in unreasonable delay or expense to give it (r 27(3)). The statement of truth must state that such notice has been given, unless a district judge or registrar otherwise directs.

4.56 Where leave is sought to dispense with the giving of notice prior to preparing the statement of truth probate practitioner making the application for the grant should set out the reasons for this in a letter to the district judge or registrar. 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. The statement of truth should contain a paragraph confirming that notice of the application has not been given to the non-proving executors and if appropriate that notice of the application has been dispensed with.

Settled land

4.63 In every oath or, after 26 November 2018, in every statement of truth to lead a grant of probate, where the deceased died on or after 1 January 1926, the deponent must swear or state that to the best of his knowledge, information and belief whether there was land vested in the deceased which

was settled previously to his death (and not by his will) and which remained settled land notwithstanding his death (NCPR SI 1987/2024 r 8(3)).

TRANSMISSION OF EXECUTORSHIP

Death of acting executor where power is reserved to another

4.86 However, if the proving executor leaves an executor who proves his will there is a chain of representation which is liable to be broken, as the chain ceases to apply if an executor to whom power was reserved afterwards exercises his power to take double probate: see Administration of Estates Act 1925, s 7(1). The non-proving executor may be cited to accept or refuse double probate with a view to the extinction of his rights: see paras **24.16** ff and **24.89** ff.

Chain in abeyance

4.87 When the only, or surviving, proving executor has died, leaving a will appointing an executor, who for some reason does not prove his testator's will, or renounce probate thereof, a grant may be made, without any order of the district judge or registrar, to a residuary legatee or other person entitled, of the unadministered estate of the original deceased, limited until the executor shall obtain probate of his testator's will. The reasons for his failure to prove his testator's will should be set out in the statement of truth to lead the de bonis non grant.

HOW SOON A WILL CAN BE PROVED

Expedition of grant

4.90 For good reason, the issue of a grant may be expedited at the discretion of the district judge, registrar or probate manager.

REQUIREMENTS ON PROVING A WILL

The executor's statement of truth

4.91 The Non-Contentious Probate Rules define 'statement of truth' as a statement made for purposes of confirming the truthfulness of statements made in the application for a grant and the true nature of any documents served in support of the application. The proving executor makes the application identifying the will and sets out the facts of the case in the statement of truth (see NCPR SI 1987/2024 r 8, as amended NCPR SI 2018/1137 and Forms No 60 ff (para **A6.65** ff)).

4.92 The oath has now been replaced by a statement of truth. For the most part the requirements for the statement are set out in the following paragraphs.

4.92A The current programme for modernisation of the courts has led to the Non-Contentious Probate (Amendment) Rules 2016 and 2017 (SI 2016/972

and SI 2017/1034 respectively). These amend the Non-Contentious Probate Rules 1987 to provide new rules 4A and 5A. A personal applicant (SI 2016/972 with effect from 1 November 2016) or a solicitor or probate practitioner (together referred to as a probate practitioner in this work) (SI 2017/1034 with effect from 20 November 2017) may apply for a grant of probate or administration online at any registry if invited to do so by that registry. The amendment rules for the new alternative online process were introduced on a pilot basis. Further amendments to the Rules replaced the pilot for personal or unrepresented applicants (SI 2018/1137). The Non-Contentious Probate Rules 1987 as amended are set out in Appendix II.

4.92B The procedure for making online applications is being trialled for applications from solicitors and probate practitioners. At present the criteria for personal applications are as follows:

- applications for probate by up to four executors;
- the original will and codicils are in existence; and
- the deceased died domiciled in England and Wales.

The criteria in applications for probate by practitioners should be broadly similar. When invited to do so, a probate practitioner makes the application by completing and sending an online application form in accordance with instructions given by the registry. The applicant must verify the application by a statement of truth in the online application form. As well as completing the online form, the original will and any codicils (with two copies), inheritance tax forms and any supporting documents such as renunciations must be posted to the registry. At the present time the online project is in its infancy and the amendment rules have not been supplemented by any explanatory practice direction. It would seem that in individual cases the registry gives directions about the provision of evidence to support the application in matters such as evidence of identity or in support of execution of a will or codicil. In due course this online process will begin in the probate registries for other types of applications for grants (letters of administration with and without will) as the pilot scheme works out difficulties and improves the online process.

4.93 The following paragraphs set out the requirements for the executor's statement of truth. When it becomes available, similar care should be taken when completing an online application form together with any modifications required by the registry. In this work references to executor's witness statement include a statement of truth contained in an online application form.

Settling statements of truth

4.94 The Probate Service no longer settles straightforward statements of truth. Where there is a particular difficulty about the application the practitioner should set this out clearly when he or she may submit the statement of truth in draft for settling by the registry from which the grant is to issue. The probate registries prefer that a pre-lodgement form be used for this. Examples of difficulty may be an ambiguous appointment of executor or imprecise attestation clause (see para **2.27** as to form of pre-lodgement enquiry and **A6.195A** for precedent Form 190A). The settled draft should be lodged with the sworn papers.

Name of deponent

4.96 Care should be taken to ascertain, and include in the statement of truth or online application form, the true full name of the deponent, whether or not this is correctly stated in the will.

4.98 Where the discrepancy is very slight no further evidence is usually required—eg when the two names are identical in sound, as 'Bailey' and 'Bayley'; or, if 'George Smithson' is appointed and his full name is 'George William Smithson'. In such a case it must be sworn in the statement of truth 'George William Smithson, in the will called George Smithson'.

Affidavit of identity

4.99 The district judge or registrar may, in cases where he considers it necessary, require proof, in addition to an assertion in the executor's statement of truth, of the identity of the party applying for the grant (NCPR SI 1987/2024 r 6(1)). This proof may take the form of an additional statement in the executor's statement of truth, or a separate 'affidavit of identity' (*witness statement of identity*), which must refer to the facts as they were at the date of the will, and must dispose of the possibility of there being another person more nearly approaching the description given in the will. (Form of affidavit, No 14 (**A6.19.**))

4.104 Where the will appoints 'my wife', without giving the name of the wife, the statement of truth should include a statement (if it be the fact) that the deponent was the lawful wife of the deceased at the date of the will and until the date of his death; and corresponding wording used if 'my husband' be appointed.

Change of name

4.105 If an executor has changed his name since the date of the will, he should be described in the statement of truth as 'A.B., formerly and in the will called C.D.', and the statement of truth should include evidence in support of the change of name. If the change has been evidenced by a Deed Poll, particulars of this should be given, and the Deed Poll should be produced.

4.106 Where a change of name has been effected by constant use and repute but no Deed Poll has been executed, the statement of truth should state when the change occurred and establish that the deponent has permanently abandoned the old name and uses, and intends to continue to use, only the new name.

4.109 A title of an executor is not defeated if he or she has acquired, or is applying for, a gender recognition certificate under the Gender Recognition Act 2004. The statement of truth should describe the executor in a changed name, if any. An affidavit (*witness statement*) of identity confirming the facts should be filed with the application. The grant will issue to the executor in the changed name without any reference to his or her description in the will. Owing to the sensitive nature of the information, the affidavit (*witness statement)*) of identity will be sealed after inspection and not be open to public

disclosure or inspection unless the executor gives permission[1]. Such permission, if given, should ideally be included in the affidavit (*witness statement*) of identity. This paragraph does not apply where a decree of divorce or nullity of the marriage (in existence at the date of the will) between the executor and the deceased was in force at the date of death of the deceased.

[1] Gender Recognition Act 2004, s 22(4)(b).

Address of deponent

4.110 *The true place of residence* (even if only temporary) of every deponent to the statement of truth must be inserted. The full postal address (including the county and postcode) should be used. A *club* or *hotel* will not suffice unless it be the actual residence, in which case this must be stated.

4.111 When an address care of a bank or other accommodation address is given it must be stated in the executor's witness statement or certified by the probate practitioner that the deponent has no permanent or better address[1] or the reason why the permanent address cannot be disclosed. Leave to withhold a permanent address is not given lightly.

[1] Direction (1941) 22 July.

4.113 In the case of a grantee administering the estate in his professional capacity (eg a solicitor/probate practitioner/chartered accountant etc), the professional address of the grantee may be given in the statement of truth and in this event such address will appear in the grant.

4.114 The practice of requiring the occupation of every deponent to be given in the statement of truth is no longer rigidly enforced. However, the occupation of the deponent must be included in the statement of truth where title to the grant depends on his or her status.

4.115 Titles of honour and ecclesiastical titles of the applicant and the deceased may be included in the statement of truth. These will appear in the grant. The wife or widow of a Knight or Baronet may be described as 'Lady' or 'Dame' unless she has a higher title in her own right[1].

[1] Secretary's Circular, 2 March 1955.

Order of executors

4.116 Grants of probate normally name the executors in the order in which they appear in the executor's statement of truth.

Description of documents to be proved

4.117 Where two or more wills are together to be proved as the will they are described in the statement of truth as 'the true and original last will and testament as contained in the paper writings marked A, B and C' (as the case may be).

4.118 Where an official copy of a will is to be proved, it is referred to in the executor's statement of truth as 'a sealed and certified copy (*or* an official copy) of the last will and testament'.

4.119 Where the original will is not available and the court has ordered a copy of the document to be proved in its stead, this document is referred to in the executor's statement of truth as the will 'as contained in a copy (*or* draft) thereof', or 'as contained in the exhibit to the affidavit of sworn on the —— day of —— 19—', as the case may be, in accordance with the order of the court.

4.120 Where certain documents are to be incorporated with a will or codicil, the will or codicil is described in the statement of truth as 'contained in paper writings marked A, B and C' (as the case may be).

4.122 Where there is more than one codicil the number must be stated in the executor's statement of truth.

Codicil proved after probate of will

4.123 Where a codicil is to be proved after probate has been granted of the will, the executor's statement refers to it as 'a codicil to the will proved on the —— day of —— at the Registry'.

Exhibiting testamentary documents

4.124 The Non-Contentious Probate Rules 1987 were amended (SI 2018/1137) commencing on the 27 November 2018 and r 10, now headed 'Exhibition of Will', omits the previous requirement of the applicant and the person before whom the oath was sworn to mark the will or testamentary paper. Previously, the executor, and the person before whom the oath was sworn, 'marked' the will and codicils or other testamentary papers by signing their names upon these documents (NCPR SI 1987/2024 r 10). The exhibit clause, required on all other occasions when a document (including a will) is exhibited to an affidavit, should be endorsed.

4.125 There is no official requirement that any exhibiting mark be made on the testamentary document. In referring to the testamentary paper, the date of it should be quoted and confirmed that it is being produced to the court with the statement.

4.126 The proof of a foreign will, if it is not in English, must be made by production of the original or official copy together with the translation into English.

4.127 The district judge or registrar may give permission for a facsimile copy of the will and any codicil to be exhibited in lieu of the original (r 10(2)). Application for such permission should be made in advance to the district probate registrar. The facsimile copy is supplied by the applicant.

4.128 Where permission has been given for a copy to be marked, the executor's statement of truth should recite that the document is 'a facsimile copy of the true and original last will and testament'. Both the original will and the copy must be lodged with the papers to lead the grant.

4.129 The will must not be physically attached to the statement of truth or other papers by pins, paperclips or other fastening as this may call for evidence of plight and condition to explain the condition of the will.

Name of testator. Alias

4.130 A grant should always issue in the true name of the deceased. The inclusion of one or more alternative names (known as alias names) may be necessary because the deceased held assets in a name other than the true full name, or for some other sufficient reason.

> 'Where it is sought to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the application the true name of the deceased and shall specify some part of the estate which was held in the other name, or give any other reason for the inclusion of the other name in the grant.' (r 9).

Change of name

4.131 In the absence of evidence of a change of name, or of any discrepancy in the papers lodged, it is assumed that the name of the deceased given in the sworn documents or online application is the true name. A surname may, however, be abandoned, and another adopted or assumed, in various ways; eg by succession or elevation to a title of nobility, by change of name by Royal Licence, or simply by constant use and repute. Subject to any statutory restriction, the law of this country allows any person to assume and use any name, provided that its use is not calculated to deceive and inflict pecuniary loss[1].

[1] *Fendall v Goldsmid* (1877) 2 PD 263; *Cowley (Earl) v Countess of Cowley* [1901] AC 450, 70 LJP 83, HL.

4.133 Where a testator has changed his name since making the will and the change has been recorded by a Deed Poll, he should be described in the executor's statement of truth as 'AB, formerly CD', and it should be recited that he changed his name from CD to AB by Deed Poll, giving its date. The Deed Poll should be produced.

4.134 In the case of a change by use and repute where there has been no Deed Poll, the executor's statement of truth should show when the name was changed and establish that the change was complete and final, and amounted to a total abandonment of the former name and the permanent acquisition of the new name for all purposes. In cases of doubt whether there has been such a complete abandonment of the former name, it is considered in probate practice that the true name remains that in which the birth was registered or, in the case of the surname of a married woman, that of her husband, and the grant should issue in that name, the reputed name being shown as an alias, where necessary.

Will in incorrect name

4.135 If the heading of the will does not give the true full name, in order to deal with the discrepancy it should be stated in the executor's statement of truth that the true name of the deceased was AB, but that he made (and, if it be so, executed) his will in the name of CD.

4.136 Where the heading of a will gives the true and full name of the testator, but the signature omits names or initials, the grant is issued in the true name alone, unless it is shown in the executor's statement of truth or by affidavit

(*witness statement*) that an alias is required (eg for the purpose of administration of assets standing in another name).

4.137 If, apart from any question of such omission, the actual names or initials differ, the true name should be specifically stated in the executor's witness statement of truth and it should be stated that the signature is the usual signature of the testator or the discrepancy otherwise accounted for.

4.138 In each of the foregoing cases, the statement of truth must state specifically which is the true name[1].

[1] Registrar's Direction (1931) 27 March.

Alias name required in grant

4.139 In cases, whether of testacy or intestacy, where the deceased held property standing in a name other than his true full name, an alias may be included in the grant to facilitate the administration. The executor's statement of truth should confirm the true name and any alias name. While this is no longer insisted upon it is useful to identify the estate that the deceased held in the alternative name or names: at least one item of property in each alternative name should be given. If the inclusion of an alias is desired for some other reason, this must be stated.

Wording of executor's statement of truth

4.140 In all instances where the deceased died in the United Kingdom and the death has been recorded in the Register of Deaths:

(1) the names and dates of birth and death of the deceased as recorded in the Register shall be included in the executor's statement of truth; and
(2) in any case where the name of the deceased differs from that recorded in the Register, that name shall also be included in the executor's statement of truth[1].

This information is required to make an effective search for matching entries in the current computer system. Whenever an alias is necessary the statement of truth should describe the deceased by his true name, followed by the alternatives (ie 'AB otherwise CD'), and the requirements of NCPR SI 1987/2024 r 9 must be complied with.

[1] *Practice Direction* (1999) 12 January, [1999] 1 All ER 832, [1999] 1 WLR 259.

4.141 As an alternative to including the facts in the executor's statement of truth, a separate affidavit (*witness statement*) of alias may be lodged (Form No 15 (**A6.20**)).

Address of testator

4.143 The residential address of the testator at the time of his death should be given in the executor's statement of truth. The full postal address including the postcode[1] should be given. If the address given in the statement of truth is a hotel or club it should be confirmed in the statement of truth that it is a

residential hotel or club and the deceased resided there.

[1] *President's Direction* (22 March 2003).

4.146 If the will or codicil contains no address of the testator, the address at the date of death should be included in the executor's statement.

4.147 Otherwise, the best address available (including an accommodation address) is accepted. But in these circumstances, on an application for a grant, it should be stated that no better address can be given[1].

[1] Registrar's Direction (1925) 1 August.

Number of addresses allowed in grant

4.148 Normally only the last residential address of the deceased as shown in the executor's statement of truth will be inserted in the grant. If more addresses are required in the grant, the additional addresses must be stated in the executor's statement of truth and a sufficient reason for inclusion of such additional addresses must be given.

Description of testator

4.149 Titles of nobility and ecclesiastical titles stated in the executor's statement of truth will be included in the grant.

4.150 It is not necessary to include in the executor's statement of truth the marital status of the deceased except where this is relevant to the applicant's title to a grant (eg for the purpose of clearing off prior classes in administration cases).

Date of death

4.151 The exact date of death, where this is known, must be given in the executor's statement.

4.152 If the *fact* of death is certain, but the exact date unknown, the executor's statement of truth should state that the deceased 'died on or since the day of .'[1]

[1] *Re Long-Sutton's Estate* [1912] P 97, 81 LJP 28.

4.154 Where an order for leave to swear death has been obtained, the statement of truth should state that the deceased died 'on or since' the date specified in the order, and include particulars of the date and effect of the order and state by whom it was made. For form of statement of truth, see No 119 (**A6.124**), which should be adapted as necessary.

4.155 Orders for leave to swear death are retained in the registry and copies are not given out. The order may be inspected by the solicitor or probate practitioner, who may take notes to enable the particulars to be included in the statement of truth[1].

[1] Registrar's Direction (1952) 25 January.

4.157 The Presumption of Death Act 2013 came into force on the 1 October 2014 (SI 2014/1810). A declaration under the act of a missing person's presumed death is conclusive of the death and of the date and time of death (s 3(1)). The statement of truth should include details of the declaration where it is relied upon as proof of death of the testator[1].

[1] See para **A1.686**.

Evidence of death. Armed forces of the Crown

4.158 *Definite date.* When a certificate from the Ministry of Defence has been received by the next of kin stating death to have occurred on a specific date, on such date being sworn to in the executor's statement of truth no further evidence of death will be required.

Certificates under Merchant Shipping Acts 1970 and 1995

4.160 The address of the Registry of Shipping and Seamen is Anchor Court, Keen Road, Ocean Way, Cardiff CF24 5JW (tel: 02920 448813). Evidence of death is provided by the Registrar General of Shipping and Seamen and death certificates are issued in the following instances:

(a) known deaths or losses in United Kingdom ships;
(b) known deaths or losses of citizens of the United Kingdom and Colonies in other ships which call at United Kingdom ports;
(c) known deaths abroad of seamen employed in United Kingdom ships.

Place of death

4.174 The place of death is no longer included in a grant of representation, and it is unnecessary to state it in the statement of truth.

Age of testator

4.175 The age of the testator must be stated in the executor's statement of truth. If the exact age is not known, then a best estimate should be given[1].

[1] *Practice Direction* [1981] 2 All ER 832, [1981] 1 WLR 1185.

Domicile

4.176 Unless otherwise directed by a district judge or registrar, every statement of truth to lead a grant of representation must state where the deceased died domiciled[1].

[1] NCPR SI 1987/2024 r 8(2). *Note:* The notional domicile assumed in certain circumstances for the purposes of inheritance tax under s 267 of the Inheritance Tax Act 1984 (see para **A1.742**) is irrelevant for probate purposes: the domicile to be sworn to in the probate documents, and on which the application for the grant should be based, is the deceased's actual domicile at the time of death.

Settled land

4.180 Where the testator died on or after 1 January 1926, in every statement of truth the applicant must state to the best of his knowledge, information and belief whether there was land vested in the deceased which was settled previously to his death (and not by his will) and which remained settled land notwithstanding his death[1].

(It is anticipated that when revised rules take effect, the witness statement of the applicant will not be required to state whether there is settled land vested in the deceased unless the application is for a settled land grant.)

[1] NCPR SI 1987/2024 r 8(3).

Recitation of judgment in a probate claim

4.182 When a will has been pronounced for in a probate claim, an office copy of the judgment must be lodged with the papers. The following statement should be included in the statement of truth:

> 'That the Honourable Sir . . . , one of the Judges of the Chancery Division, by judgment dated the day of 20 , in an claim entitled "A against B" pronounced for the force and validity of the said will.'

4.183 Where the court has pronounced for a will or codicil as contained in a copy, draft or reconstruction thereof, the wording of the decree should be followed in the statement of truth: see Form No 68 (**A6.73**).

County court judge's order

4.186 When a probate claim has been determined in a county court, the county court sends a certificate of the judgment to the Principal Registry or a district probate registry. The particulars and effect of the judgment should be recited in the statement of truth.

Relationship of the applicant

4.190 Except in cases where the relationship of the applicant to the deceased is relevant to the question of the former's identity or entitlement to a grant, it need not be stated in the executor's statement of truth.

4.193 If a testator appoints 'my wife' an executor, and does not name her in any part of the will, an addition should be made to the statement of truth, stating that the applicant was the lawful wife of the testator at the date of the will and remained so until the date of his death. If this has been omitted from the statement of truth, the registry will accept a certificate by the solicitor or probate practitioner if it includes a statement that he has seen the marriage certificate, and that it confirms the claim of marriage. This applies, with necessary modification, in the case of the appointment of 'my husband' or 'my civil partner'.

Executor: capacity in which application made

4.194 The 'capacity' in which proving executors claim the grant is worded, in the statement of truth, in the manner shown in the following list:

When one executor only appointed	'The sole executor.'
When one executrix only appointed	'The sole executrix.'
When executors are all males	'The executors.'
When executors are all females	'The executrixes.'
When some are male and some female	'The executors.'
When one or more of executors appointed has died	'The surviving executor(s)'[1].
When one or more of executors appointed renounces	'One (*or two etc*) of the executors'[2].
When power is reserved to any executors (*see para* **4.55** *as to notice to the executor or executors to whom power is reserved and the recital in the statement of truth*)	'One (*or two etc*) of the executors.'
When an executor is appointed on attaining the age of [21] years[3]	'The said A. B. having attained the age of [21] years.'
An appointment during life or widowhood, there being also a general executor.	'But as to the said A. B. during life or widowhood.'
When powers of executor are limited to dealing with English property	'The executor for England.'
When an executor is appointed during life, and on his death another is appointed, the latter is described as	'The executor substituted.'
When there is no limitation, for life or otherwise, in the appointment of an executor but other executors are substituted on death, the first-named executor, if he applies is described as	'An executor named in the said will'[4].
When there is no limitation in the actual appointment of executors, and there is also a substitution of executors on certain events	'The executors named in the said will as mentioned in it'[5].
When a codicil cites the death of an executor, or cancels an appointment in the will	'The executors named in the said will.'

1 Where this description applies, it should be so sworn in the executor's statement of truth.

2 The renunciation (see Form No 185 (**A6.190**)) must be filed.

3 It should be noted that although the age of majority was reduced to 18 with effect from 1 January 1970 (see Family Law Reform Act 1969, s 1 (para **A1.191**)), references in wills, whenever made, to a specific age are unaffected. As to the construction of expressions such as 'full age', 'minor', 'infancy', 'minority', etc when used in wills, see para **11.118**.

4 Registrar's Direction (1910) 20 June.

5 Registrar's Direction (1912) 25 April.

Individual and company executors

4.195 For procedure and wording of the statement of truth in cases where an individual and a company not being a trust corporation are appointed executors, see para **4.39**.

Partnership firm, incorporated practice or person holding official position

4.196 For practice, and wording for the statement of truth, see paras **4.41–4.48**.

Clearing off executors

4.199 Where a will contains an appointment of an executor, but in certain events (eg his predecease, or unwillingness to act etc) another is substituted, then, on an application for probate by the latter, the statement of truth should describe him as 'the executor named in the will, A. B. mentioned in the said will having died in the lifetime of the deceased' (*or* having renounced probate, etc as the case may be).

4.200 If power is to be reserved to one or more executors, a statement to that effect should be made in the statement of truth. The statement of truth must state that notice of the application for probate has been given to the executor or executors to whom power is to be reserved, unless the district judge or registrar directs otherwise or dispenses with the giving of such notice or the appointment is of partners in a firm and one (or more) of the other partners is applying (see paras **4.55** and **4.57**).

4.201 Where two or more persons are appointed as executors by a will and the identity of at least one of the executors is established but the identity of the other or others is not, on an application being made for a grant of probate by the properly identified executor it is not normally necessary to determine the identity of the remaining executors or their entitlement to a grant. Application may be made to the district judge or registrar, by letter, under r 27(3) to dispense with giving notice to the executor or executors to whom power is to be reserved. The executor applying for the grant must, however, include full details relating to the executors in the statement of truth, as this information could be material on an application for a subsequent grant to the estate[1].

[1] Registrar's Direction (1977) 6 December.

4.202 Where one executor is a minor the witness statement of truth should show that power is reserved to him on attaining the age of 18 (see also para **4.32**). As to grant where the sole executor is a minor, see paras **4.30–4.31** and **11.142** and **11.143**.

4.203 On an application for probate by an executor, the fact that another executor has renounced need not be sworn to in the statement of truth but it is of practical assistance to the registries if it is. The renunciation must be filed.

Amount of estate in statement of truth

4.204 Except in those cases where the need to deliver an account for the purposes of inheritance tax or capital transfer tax has been dispensed with[2], the statement of truth must state the actual *gross* value of the estate to be covered by the grant, as indicated by the HMRC account. The account summary in the new Form IHT421 must be filed with the papers to lead to the grant. This replaced the former requirement in applications made on or after 1 November 2004 where the deceased died after 5 April 2004 and Form D421 was stamped and authorised by the HMRC Inheritance Tax before being submitted with the application.

[2] Inheritance Tax (Delivery of Accounts) (Excepted Estates) Regulations 2004 (SI 2004/2543) (as amended) (see **A2.118**).

Death before 5 April 2004

4.205 In all cases in which an HMRC account is not required to be delivered, the statement of truth will recite the gross value of the estate as not exceeding the limit applicable to the date of death (see para **4.206**) and the net value rounded to the next whole thousand[1].

[1] *Practice Direction* 22 March 2002.

Death on and after 6 April 2004

4.208 Every executor's statement of truth must contain a statement by the applicant as follows:

> 'To the best of my knowledge, information and belief the gross estate passing under the grant does not exceed/amounts to* £ and that the net estate does not exceed/amounts to* £ [and that this is not a case in which an HMRC Inheritance Tax Account is required to be delivered]*.'

The alternatives marked with an asterisk should be deleted as appropriate[1].

[1] *Practice Directions* [1981] 2 All ER 832, [1981] 1 WLR 1185. In relation to a death prior to 13 March 1975, a sworn HMRC Inheritance Tax affidavit is still required (see NCPR SI 1987/2024 r 42).

4.210 The statement of truth may not, in any event, be signed with the amount of the estate left blank; nor may the amount subsequently be altered without re-verifying the statement of truth.

4.211 A grant in the estate of a person who died domiciled in England and Wales which includes a statement of such domicile is proof of title in Scotland and Northern Ireland as well as in England and Wales[1]. The amount to be sworn in the statement of truth is accordingly the gross value of the estate in the United Kingdom (ie in England and Wales, Scotland and Northern Ireland).

[1] Administration of Estates Act 1971, ss 2–3 (see para **A1.206–A1.207**).

4.212 Where the deceased died domiciled in Scotland or Northern Ireland or outside the United Kingdom, it is necessary to include in the HMRC account details of the estate in Great Britain (ie in England and Wales and in Scotland), but care must be taken to exclude the value of any Scottish assets in arriving at the figure to be stated in the statement of truth: this should state that the amount shown is the gross value of the estate 'in England and Wales'. As to the limitation which now appears in a grant made in England and Wales in the estate of a person dying domiciled in Scotland or Northern Ireland, see para **12.23**.

4.214 An alteration made by HMRC Trusts and Estates, Inheritance Tax in the amount of the estate shown in the HMRC Inheritance Tax account does not normally necessitate amendment of the figure sworn in the executor's statement of truth.

Estate not fully ascertained

4.217 Where it is desired to show the amount 'so far as can at present be ascertained', the figure sworn in the executor's statement of truth should so far

as possible be an estimate of the final value of the whole estate, and not merely the total of those assets whose value is known.

Nil estate

4.218 Where it is sought to obtain a grant of representation in respect of a deceased person who left no estate, the statement of truth must include a statement of the purpose for which the grant is required[1].

[1] Registrar's Direction (1932) 30 November.

Community of property

4.221 Where, by the law of the place of domicile of the deceased, community of property exists between the deceased and a surviving spouse, the grant will be in respect of the whole estate, but the court fee will be payable in respect of half of it only. The following concluding paragraph to the executor's statement of truth is appropriate and should be used: 'the whole of the estate in England and Wales (or in the United Kingdom, if appropriate) in respect of which a grant is required amounts to the sum of £—— to the best of my knowledge, information and belief; and that £—— (half) ——of that sum has accrued to the surviving spouse by reason of the existence of community of property under the law of the place of domicile of the said deceased at the date of the marriage'[1].

[1] Registrar's Direction (1953) 5 May (amended (1968) 11 April). It should be noted, however, that the question whether there is community of property between spouses is not invariably determined by the law of the place of domicile at the date of marriage: see Dicey and Morris, *Conflict of Laws*.

Civil servants' gratuities

4.224 A gratuity granted under the Superannuation Act 1972 on the *death* of a civil servant is, unless a nomination has been effected (see para **1.74**), included in the amount given in the statement of truth, although such gratuities are not liable to payment of inheritance tax or capital transfer tax or probate fees[1]. However, under the Principal Civil Service Scheme 1972, and Amendment Schemes and since 1 April 2015 a new Civil Service Scheme called 'alpha', the lump sum payable on a civil servant's *ordinary retirement* is receivable as of right. Therefore, in the rare case of a civil servant dying after retirement but before the lump sum has been paid, it will it seems be liable to inheritance tax or capital transfer tax as part of his estate. Gratuities to the personal representatives of deceased school teachers granted under the Teachers Superannuation Acts are part of the estate for the purposes both of inheritance tax or capital transfer tax[2] and of fees. On 1 October 1969 the employees of the Post Office ceased to be civil servants. Lump sums payable in respect of the death of such employees on and after that date are payable as of right under the Post Office Staff Superannuation Scheme, and not under the Superannuation Act 1972. Unless the employee had given a direction to the trustees of the Scheme that the sum should be applied at the absolute discretion of the trustees, the lump sum is part of his estate, and should be included both for the purpose of inheritance tax or capital transfer tax and of probate fees.

[1] Direction, 10 November 1910, as revised, 1958. See also NC Probate Fees Order 2004 (SI

2004/3120), art 4.

2 *A-G v Quixley* (1929) 98 LJKB 652.

Property not included

4.225 Since the executor's statement of truth relates only to property passing under the grant, the amount sworn to should not include property which, although part of the aggregated 'estate' for the purpose of inheritance tax or capital transfer tax, does not pass under the will or intestacy of the deceased, eg property passing under a nomination, property passing under a settlement (even if the deceased had, and exercised by his will, a special power of appointment), property held on joint tenancy, and gifts inter vivos. Even where the deceased had a *general* power of appointment, the property should be included only if (1) the power has been exercised by his will, or (2) the property belongs to the estate in default of appointment[1].

1 *O'Grady v Wilmot* [1916] 2 AC 231, HL.

4.226 Payments made under the Social Security Act 1975 in connection with the death of the deceased resulting from an industrial injury, and damages under the Fatal Accidents Act 1976[1], are not included in the amount shown in the executor's statement of truth, but damages awarded under the Law Reform (Miscellaneous Provisions) Act 1934[2] are part of the deceased's estate and liable to inheritance tax or capital transfer tax[3].

1 This Act is a consolidating measure and does not apply to any cause of action arising on a death before 1 September 1976: where a death occurs before that date, the similar provisions of the Fatal Accidents Acts 1846 to 1959, apply.

2 17 Halsbury's Statutes (4th edn) 312; see also para **A1.141**.

3 *Feay v Barnwell* [1938] 1 All ER 31.

4.227 The amount sworn to in the executor's statement of truth should not include property which was vested in the deceased as a trustee and not beneficially.

Notice to Government Legal Department (BVD) (formerly Treasury Solicitor)

4.229 In any case in which it appears that the Crown is or may be beneficially interested in the estate of a deceased person, notice of the intended application for a grant must be given by the applicant to the Government Legal Department. The district judge or registrar may direct that no grant shall issue within 28 days after such notice has been given[1]. The notice should be sent to: The Government Legal Department (BVD), PO Box 2119 Croydon, CR90 9QU (tel 020 7210 4700. Email: bvestates@governmentlegal.gov.uk).

1 NCPR SI 1987/2024 r 38.

Swearing of affidavits

4.230 An affidavit filed with the probate application should be sworn or affirmed, if in England and Wales, before a solicitor who holds a current practising certificate, a Commissioner for Oaths or other person authorised to administer oaths (see paras **22.35** ff as to the persons authorised to administer oaths in and at places outside England and Wales).

Statement of truth

4.231 *The executor's witness statement in support of the grant is verified by a statement of truth.*

Copies of wills

4.232 With effect from 1 January 2009, practitioners are responsible for preparing and submitting two copies each of the will and any codicils. The Probate Service has set out the following requirements for copies of wills and codicils:

(a) the copies must be made in good quality A4-size white paper from the original will and codicil after the statement of truth has been signed;
(b) the copies should be true and complete but it is not necessary to copy any covers or instructions for completion and signing of the will;
(c) the copies must be legible and clear and care should be taken to ensure that any faint typescript or writing or blue ink is clearly visible;
(d) the top and left-hand margins (at least 1 inch) should be left clear so that the grant can be attached; and
(e) if it is necessary to take the will apart in order to copy it, the practitioner should restore it to the same plight and condition that it was in before it was copied and further enclose a covering letter with the application confirming that this has been done and that nothing of a testamentary nature was attached or detached.

FEES

Fees on the grant

4.259A In 2016 the government issued a consultation paper setting out proposals for reforming fees payable on an application for a grant. The main proposals were to move from the current flat fee approach and introduce a banded structure where the fee increases in line with the value of the estate and to remove probate fees from the fees remission scheme. The senior judiciary, legal practitioners and representative groups, charities and members of the public responded to the consultation. The government announced it would proceed with all the proposals set out in the consultation. When the necessary statutory instrument takes effect, the threshold below which an application would not attract a fee will rise from £5,000 to £50,000. A draft Non-Contentious Probate Fees Order 2018 now awaiting approval by both Houses of Parliament introduces fees on a sliding scale ranging from £250 for estates valued between £50,000 to £300,000 net to £6,000 at the top end for estates valued more than £2,000,000. Additionally, the Fees Order removes an application for a grant of probate from the generally applicable remission scheme for court and tribunal fees while retaining the Lord Chancellor's power to reduce or remit fees in exceptional circumstances. See Appendix III, 'Fees' for further details of the fees increase.

4.261 At the Principal Registry, all fees in respect of non-contentious business are paid to the cashier in cash or by solicitor's or probate practitioner's crossed

cheque or by debit/credit card; cheque are made payable to 'HMCTS' or 'HM Court & Tribunal Service'. Payment is denoted by a machine impression on the relevant document or on a fee sheet obtained at the Registry. An alternative facility is now available for practitioners to pay fees by account (PBA). Practitioners open a Fee Account by contacting Liberata/Phoenix at: M iddleOffice.DDServices@liberata.gse.gov.uk

4.263 Similarly, in the district probate registries and sub-registries all fees are paid by cheque, or in cash (preferably by crossed cheque payable to 'HMCTS' or 'HM Court & Tribunal Service'). Payment by debit/credit card is now in place by phone (see para **2.09** for card payment telephone numbers of the probate registries and see para **4.261** for payment by account).

Remission of probate fees

4.264A See para **4.259A**. The remission of fees scheme for probate applications will be removed when the proposed fee changes come into force.

Estate on which fees are assessed

4.267 The fees payable for the issue of a grant of probate or administration (or resealing of a grant, as to which, see Chapter 18) are assessed on the 'assessed value' being the value of the net real and personal estate (excluding settled land if any) before payment of inheritance tax passing under the grant as shown either in the HMRC Inheritance Tax account or Capital taxes affidavit, or, where an IHT 205 is delivered, in the statement of truth to lead the grant[1]. This provision is not applicable in the case of those applications specified in Fee No 3 of the Non-Contentious Probate Fees Order 2004 (SI 2004/3120) as amended by the Non-Contentious Probate Fees (Amendment) Order 2011 (SI 2011/588), for which a fixed fee of £20 is provided.

[1] NC Probate Fees (Amendment) Order 2014 (SI 2014/876), Fee 1, as interpreted by para 2(b).

Property excluded in assessing fees

4.271 Gratuities granted to the personal representatives of civil servants are exempt from fees[1] but the amount should be included in the amount of the estate sworn in the statement of truth.

[1] NC Probate Fees Order 2004 (SI 2004/3120), para 4.

Filing documents

4.274 No fee is charged for filing the will, codicils, statement of truth, or the HMRC account summary (if any), or for filing affidavits and other documents to lead an order of the district judge or registrar.

Chapter 5

LETTERS OF ADMINISTRATION WITH THE WILL ANNEXED

Note.—This chapter deals only with grants of administration (with will) in cases where the deceased died **domiciled** in England and Wales. For the practice in cases where the deceased died domiciled elsewhere, see Chapter 12. For interpretation of wills (including codicils), see Chapter 3.

Note: The Non-Contentious Probate Rules 1987 were amended by SI 2018/1137, which came into force on 27 November 2018. The amended rules replace the oath application for a grant of representation with a statement of truth. In anticipation of further revision of the Non-Contentious Probate Rules the expressions 'witness statement' and 'statement of truth' where they are used in this work refer to the form of application or evidence required with reference to any rule in force at the time of the application.

ORDER OF PRIORITY

5.05A As to the effect of a disclaimer by a beneficiary under the will, see para 5.99.

Executors to be cleared off

5.09 On any application for letters of administration (with will), the statement of truth must show in what way executors are cleared off (eg that no executor was named in the will; that the executor died in the lifetime of the testator, or subsequently but without having proved the will; that the executor has renounced probate; etc). The court will not grant administration (with will) to some other person on the mere consent of the executor: it can do so only on his renunciation or after he has been cited to accept or refuse a grant and has not appeared[1].

[1] *Garrard v Garrard* (1871) LR 2 P & D 238.

Limited gift of residue

5.23 A bequest of residue limited to the residue of the testator's estate 'in England' (or 'the United Kingdom', or 'Great Britain') constitutes a right to a grant to the beneficiary as residuary legatee or devisee. The beneficiary should be described in the statement of truth as the 'residuary legatee in England', or as the case may be.

Adopted persons

ADOPTIONS ORDERS MADE BEFORE 30 DECEMBER 2005

5.46 A relationship existing by virtue of these provisions may be referred to as an adoptive relationship; a male adopter as the lawful adoptive father; a female adopter as the lawful adoptive mother, and any other relative of any degree under an adoptive relationship as the lawful adoptive relative of that degree[1].

[1] Adoption Act 1976, s 41.

5.60 Jurisdiction to grant Convention adoption orders in England and Wales is restricted to the High Court. An adoption under the Convention (whether granted in the United Kingdom or in a Convention country), or the revocation or annulment of such an adoption, will be recognised without further formality in all the countries in which the Convention is in force. From 23 October 1978, the Convention applied only to the United Kingdom, Austria and Switzerland, but its scope has been extended and its provisions now applies to several other countries. A complete list of countries may be found at: www.gov.uk/intercountry-adoption-information-for-adoption-agencies. See also para **6.268**.

ADOPTION ORDERS MADE ON AND AFTER 30 DECEMBER 2005

5.81 The scope of the Convention extends to several countries a complete list of which may be found at: www.gov.uk/intercountry-adoption-information-for-adoption-agencies or linked sites (see also para **6.269**).

PERSONS INTERESTED IN THE RESIDUARY ESTATE

Gift to charities

5.86 Under the Charities Act 2011, the trustees of any charity for religious, educational, literary, scientific or public charitable purposes may apply to the Charity Commissioners for a certificate of registration as a corporate body. If the certificate is granted, the trustees become a corporate body able to hold and acquire property, and thereafter all gifts of property to the charity or the trustees or otherwise for the purposes thereof take effect as if made to the incorporated body for the like purposes. The Charities Act 2011 came into force on 14 March 2012; it is a consolidating Act and replaces previous Charities Acts (including the Charitable Trustees Incorporation Act 1872, which governed this matter formerly).

5.87 Where a gift of residue is made to charity generally, or for charitable purposes or objects without specifying particular institutions, the Attorney General, by royal prerogative, has the sole right to represent the beneficial interest of charity. The Treasury Solicitor acts on his behalf in charity matters. On application to him the Attorney General will make a direction nominating a particular charity or charities so that a residuary beneficiary may be constituted to take a grant of letters (with will annexed). Enquiry or application to the Attorney General should be addressed to: The Government

Legal Department, One Kemble Street, London WC2B 4TS or DX 123242. Tel. 020 7210 4700. Email treasurysolicitor@governmentlegal.gov.uk

Clearing off

Clearing off prior classes

5.97 All persons having a prior right to a grant under NCPR SI 1987/2024 r 20 must be cleared off before a grant can be made to a person with a lower title; and the statement of truth must show in what manner the persons with a prior right are cleared off[1].

[1] NCPR SI 1987/2024 r 8(4).

Disclaimer

5.99 In respect of deaths on or after 1 February 2012 where a person disclaims an inheritance either under a will or under the law of intestacy the inheritance devolves as if that person has died immediately before the deceased. The Estate of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011 amends the Wills Act 1837 and Administration of Estates Act 1925 to this effect; see para **5.194** ff below. For an example of a disclaimer, see Form No 52B (**A6.57B**). On application for a grant of representation the statement of truth should clear off the person disclaiming by citing the facts and the probate papers should include the original disclaimer. If the disclaimer is required for some other purpose an examined copy should be should also be filed and the reason for the return of the original should be set out in writing. For forms of statement of truth for letters of administration (with will) see Nos 155 and 162 (**A6.160** and **A6.167**). These may be adapted to suit the particular circumstances of the application. See also para **8.166** as to the effect of a disclaimer with regard to inheritance tax.

TO WHOM GRANTED

Rule 20, Class (c)

Any other residuary legatee or devisee, including one for life, or a person entitled to share in undisposed-of estate

5.111 Subject to the preference of vested to contingent interests and of persons of full age to guardians of minors (see the following paragraphs) all persons in this class are equally entitled to a grant. Thus:

(a) a residuary legatee and a residuary devisee have an equal right to the grant, irrespective of the nature of the estate[1];

(b) if there is a residuary gift of personalty but not of the immoveable estate, persons entitled to share in the estate not disposed of have an equal title to that of the residuary legatee, and similarly in the converse case;

(c) if the residuary estate was given to two or more persons in specified shares (and not as joint tenants) and the share of one of them has lapsed by his pre-decease, the surviving residuary legatees have a title equal to that of the persons entitled to share in the undisposed-of estate. (As to lapse of gifts, see paras **5.164** ff).

[1] In the event of a dispute, however, if other considerations are equal the practice is to prefer the person having the predominating interest (see paras **14.25** and **14.26**).

Preference of persons of full age

5.130 Under NCPR SI 1987/2024 r 27(5), unless otherwise directed by a district judge or registrar, administration (with will) is to be granted to a person not under disability in preference to a guardian of a minor entitled in the same degree. When it is desired that a grant should be made to guardians of a minor residuary legatee or devisee (having attained a vested interest notwithstanding the minority) in preference to a person of full age entitled in the same degree, the facts should be placed before the district probate registrar or the probate manager. It is advisable to do this before the preparation of the papers to lead the grant.

Residuary legatee or devisee

To substituted residuary legatees or devisees

5.154 If the residuary legatee or devisee for life has died (either in the lifetime or after the death of the testator) the ultimate residuary legatee or devisee should be described in the statement of truth as the residuary legatee or devisee substituted in the will.[1] (For form of statement, see No 153 (**A6.158**)).

[1] If any life interest subsists, or any minority interest arises, the grant will not normally be made to a sole individual administrator (see para **5.03**).

Effect of forfeiture of gift on right to a grant

5.185 Where, because of the forfeiture of a gift under this provision, a grant has to be made to a person entitled in a lower degree, the statement of truth should clear off the disqualified person (eg by reciting 'that the residuary bequest and devise in the said will to AB is void by reason that he is an attesting witness to the said will' *or* 'that at the date of the said will he was the lawful husband of CB, an attesting witness to the said will').

Death by murder or manslaughter

DEATHS AFTER 31 JANUARY 2012

5.196 The Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011[1] gives effect to the Law Commission's recommendations. Where a testator dies on or after 1 February 2012, s 2 of the Act which deals with disclaimer or forfeiture of a gift under a will amends the Wills Act 1837 by inserting a new s 33A. This provides in part that where the forfeiture rule precludes a person from taking a devise or bequest made in a will that

person is, unless a contrary intention is expressed in the will, to be treated as having died immediately before the testator. Accordingly such person should be cleared off in the statement of truth to lead the grant of letters of administration (with will) by setting out the facts and the details of the conviction of murder or manslaughter and confirming that: the conviction remains in force, no appeal is pending nor in the case of manslaughter was an application made within three months from the date of conviction to modify the effect of the forfeiture rule. For form of statement of truth, see No 163 (**A6.168**) which may be adapted to suit the circumstances of the application. An official copy of the conviction certificate should be filed with the probate papers.

[1] See para **A1.685A**.

Persons entitled to share in undisposed-of estate

Where deceased left a surviving spouse or (after 5 December 2005) surviving civil partner

5.205 Where the net value of the estate not disposed of, arrived at as aforesaid, exceeds the appropriate statutory figure applicable for a death occurring after 1952, or the sum of £1,000 where the death occurred before 1953, a grant may be made to any person entitled to share in the residue[1] not disposed of. Where the deceased died after 1952 leaving a spouse or (from 5 December 2005) civil partner and issue, or before 1953 leaving a spouse, a life interest arises in these circumstances, and the grant must accordingly be made to not less than two individuals or to a trust corporation with or without an individual, unless the court thinks it expedient in all the circumstances to appoint a sole administrator[2]. (As to grants to trust corporations, see Chapter 9.)

[1] This is the wording of the rule, but in practice the normal order of priority would operate, and, for example, a grant would not be made to children of the deceased without clearing off the surviving spouse or civil partner.

[2] Supreme Court Act 1981, s 114(2) (see para **A1.333**).

5.207 If the spouse or civil partner had acquired an absolute interest in the whole of the undisposed-of estate (ie if the testator left no other surviving relative within the degrees mentioned in paras **6.55–6.86**, in case of death before 1 January 1953; or in the case of death before 1 October 2014, no issue, parent, brother or sister of the whole blood or issue of brother or sister of the whole blood; or in case of death on or after that date, no issue), a grant may be made to the personal representative of the spouse or civil partner. In such event the classes who would have been entitled to share with the spouse or civil partner must be specifically cleared off in the statement of truth.

No surviving spouse or civil partner

5.209 Where the residuary estate is wholly or partly not disposed of, or has lapsed, and the deceased died leaving no spouse or civil partner, the order of priority of right to a grant is that applicable in cases of total intestacy (see para **6.40** Table B), and is not affected by the amount of the estate not disposed of. The grant may be made to any person entitled to share in the estate not

disposed of, or, if every such person has since died or is otherwise cleared off, to the personal representative of any such person who has since died. (Form of statement of truth, No 154 (**A6.159**)).

Disposition of residue not ascertainable

5.215 Where the residuary estate is not wholly disposed of by the will, a grant may be made to any person entitled to share in the residue not disposed of, or, if every such person has since died or is otherwise cleared off, to the personal representative of any such person who has died.

Notice to Treasury Solicitor

5.217 Where the residuary estate is wholly or partly undisposed of and the deceased died without kin entitled to share in the estate not disposed of, or without known kin entitled to share, notice of the application for the grant must be given to the Treasury Solicitor in accordance with NCPR SI 1987/2024 r 38, and an acknowledgment of such notice filed with the papers to lead the grant. Under the same rule the district judge or registrar may direct that no grant shall issue within 28 days after the notice has been given. Notice of the application should be sent to: The Government Legal Department (BVD), PO Box 2119, Croydon CR90 9QU, *or* DX 123240 Kingsway. Tel 020 7210 4700. Email bvestates@governmentlegal.gov.uk

Virtual disposition of residue

5.219 This provision does not derogate from the right of a person entitled to the estate not disposed of to obtain a grant if he applies for it, but it frequently facilitates the issue of a grant to a legatee or devisee who has the sole, or a substantial, interest under the terms of the will where the deceased left kin who, although having little or no interest in the estate, would otherwise have to be cleared off.

5.220 In the simplest type of case, where the whole of the estate has been left by enumeration to one or more legatees, and a legatee having a substantial interest applies for the grant, it is sufficient for the statement of truth, in addition to clearing off executors, to include, after the gross amount of the estate, the words 'all of which is disposed of by the said will'. The applicant should be described merely as 'a legatee named in the said will'. Such applications are normally granted as of course without reference to a district judge or registrar. (Form of statement of truth, No 157 (**A6.162**)).

5.221 Where not the whole, but substantially the whole, estate is disposed of, the wording of the estate value clause in the statement of truth should conclude with 'of which £ is disposed of by the said will'. It will be for the district judge or registrar, having regard to the size of the estate and the amount disposed of, to decide whether the facts bring the case within the relevant terms of the rule, and, if so, whether the grant should be made to the applicant. In cases of doubt he may call for more detailed evidence, and may require notice to be given to the persons entitled to the undisposed-of estate.

5.222 If it is clear from the papers that there are kin who would be entitled to share in any estate not disposed of, the Crown need not be regarded as interested. Unless this is clear, however, the applicant should either provide evidence that there are such kin, or give notice to the Treasury Solicitor (see para **5.211** for address) in accordance with NCPR SI 1987/2024 r 38 (even though the whole of the ascertained estate is disposed of). Where such notice is to be given, the district judge or registrar may direct that no grant shall issue within 28 days after notice has been given in order to give the Treasury Solicitor the opportunity of opposing the making of the grant if he wishes.

5.223 If any person who would be entitled to, or to share in, any estate not disposed of is a minor it is necessary (unless the court thinks it expedient in all the circumstances to appoint a sole administrator) for the grant to be made to not less than two individuals or to a trust corporation with or without an individual, even though the whole of the known estate has been disposed of.

5.224 In the event of a dispute between a legatee and a person entitled to the estate not disposed of, the matter is one for decision upon issue of a summons under NCPR SI 1987/2024 r 27(6) (see paras **14.08** ff).

Rule 20, Class (e)

Estate wholly disposed of by the will

5.227 Where the residuary estate is wholly disposed of by the will, the residuary legatee and devisee (or, if he has since died, his personal representative) must be cleared off by renunciation or citation before a grant can be made to a legatee, a devisee or a creditor. For form of statement of truth, see No 149 (**A6.154**).

Estate not wholly disposed of by the will

5.228 Where the residuary estate is partly or wholly undisposed of, all persons taking any part of the residue disposed of by the will, and in addition, all persons entitled to share in the undisposed-of estate, or the personal representatives of any that have died, must be similarly cleared off before the grant can be made to a legatee, devisee or creditor.

Estate not disposed of vested in spouse who has since died

5.230 Where the whole of the estate not disposed of has vested in the surviving spouse of the deceased, who has since died intestate, a child of the deceased who is also the child of the spouse should constitute himself personal representative of the surviving spouse by taking a leading grant in that estate, and then apply in that capacity for a grant in the estate of the first to die.

5.235 *Letters of administration with the will annexed*

Rule 20, Class (f)

Persons having no interest under the will

5.235 It should be noted that the NCPR SI 1987/2024 r 20, unlike the previous rules, do not include provision for a grant to be made to a member of the nearest class of kin of the deceased having no interest under the will (except where that class is entitled to the estate undisposed of by the will, in respect of which see paras **5.110** ff).

Miscellaneous grants of administration (with will)

Nominee or attorney of a corporation (not a trust corporation) appointed executor or trustee or a beneficiary, or being a creditor

5.240 The nominee or attorney must state in the statement of truth that the corporation is not a trust corporation as defined by rule 2(1) of the Non-Contentious Probate Rules 1987.

Grant to assignee

5.253 The Finance Act 2003 introduced Stamp Duty Land Tax which came into effect on 1 December 2003. The effect of this tax does away with the requirement of the Stamp Duty Act 1891 to original deeds unless they relate to the transfer of shares and securities. The Stamp Taxes enquiry line (tel. 0300 200 3510) will provide assistance about particular deeds or transactions.

Deeds of assignment executed before 1 December 2003

5.256 Form of statement of truth for grant of administration (with will) to assignees, No 164 (**A6.169**).

To trustee in bankruptcy or under a deed of arrangement

5.261 Where an Official Receiver is acting as trustee, his official title (eg the Senior Official Receiver, *or* the Official Receiver, *or* the Assistant Official Receiver of the High Court of Justice, *or* the Official Receiver of the County Court District of) should be stated in the statement of truth.

Death before 1 January 1926

5.268 *Where the deceased left no real estate the right of the heir-at-law, or of his personal representative, should be cleared off in the statement of truth, where necessary, by the statement that the deceased died not possessed of real estate.*

REQUIREMENTS ON OBTAINING ADMINISTRATION (WITH WILL)

Practice as to will

5.269 The Non-Contentious Probate Rules define 'statement of truth' as a statement made for purposes of confirming the truthfulness of statements made in the application for a grant and the true nature of any documents served in support of the application. The practice as to proof of the will and codicils, alterations, incorporation, etc is the same as in applications for probate. (See Chapter 3 and Chapter 4.)

5.269A The current programme for modernisation of the courts has led to the Non-Contentious Probate (Amendment) Rules 2016 and 2017 (SI 2016/972 and SI 2017/1034 respectively). These amend the Non-Contentious Probate Rules 1987 to provide new rules 4A and 5A. A personal applicant (SI 2016/972 with effect from 1 November 2016) or a solicitor or probate practitioner (together referred to as a probate practitioner in this work) (SI 2017/1034 with effect from 20 November 2017) could apply for a grant of probate or administration online at any registry if invited to do so by that registry. The amendment rules for the new alternative online process have been introduced on a pilot basis. The Non-Contentious Probate Rules 1987 were further amended (SI 2018/1137) to bring the pilot to an end so that a personal applicant may now make an application online through an online portal set up for this purpose. The NCPR 1987 as further amended are set out in Appendix II.

5.269B In due course the procedure for making online applications will extend and be trialled for applications from solicitors and probate practitioners. At present the criteria for online applications are as follows:

- applications for probate by up to four executors;
- the original will and codicils are in existence; and
- the deceased died domiciled in England and Wales.

The criteria in applications for letters of administration (with will) should be broadly similar. When invited to do so, a probate practitioner makes the application by completing and sending an online application form in accordance with instructions given by the registry. The applicant must verify the application by a statement of truth in the online application form. As well as completing the online form, the will and any codicils, inheritance tax forms and any supporting documents such as renunciations must be posted to the registry. At the present time the online project is in its infancy and the amendment rules have not been supplemented by any explanatory practice direction. It would seem that in individual cases the registry gives directions about the provision of evidence to support the application in matters such as evidence of identity or in support of execution of a will or codicil. This online process will begin in other probate registries for applications for grants of letters of administration as the pilot scheme works out difficulties and improves the online process.

5.269C The following paragraphs set out the requirements in an order corresponding to the former form of oath for persons entitled to the estate of the deceased. When it becomes available, similar care should be taken when completing an online application form together with any modifications

required by the registry. In this work references to executor's witness statement include a statement of truth contained in an online application form.

Administration (will) statement of truth

Clearing off

5.270 The statement of truth for administration (with the will annexed) should be so worded as to clear off all persons having a prior right to the grant (see NCPR SI 1987/2024 r 8(4)), and show the capacity in which the intended administrator is entitled. Thus, it must always be stated that no executors were appointed, or that they are dead or have renounced, as the case may be, in an application for a grant by a person interested in the residue. See also para 5.229, as to clearing off where a beneficiary has subsequently died, but no personal representative of such person has been constituted. Forms of statement of truth) (with will annexed), Nos 149–177 (**A6.154–A6.182**).

Minority or life interest

5.271 In every statement of truth to lead a grant of administration (with the will annexed), the deponent must state whether there is a life interest or a minority interest, and the district judge or registrar may call for such further evidence as he may require. See NCPR SI 1987/2024 r 6(1) and 8(4). See also Chapter 7.

5.273 A life interest in favour of a spouse or civil partner does not arise where the deceased died on or after 1 October 2014 (Administration of Estates Act 1925, s 46 as substituted by the Inheritance and Trustees' Powers Act 2014, s 1).

5.274 If no minority or life interest arises under the terms of the will, and the gross value of the undisposed-of estate does not exceed the relevant figure, it may be stated that no minority or life interest arises, and a grant may be made to a sole individual administrator. Where the deceased died from 1 October 2014, undisposed of residuary estate is distributed to a spouse or civil partner on the footing that a life interest does not arise (Administration of Estates Act 1925, s 46 as substituted by Inheritance and Trustees' Powers Act 2014, s 1). For deaths prior to 1 October 2014, if the gross value of the undisposed-of estate is in excess of the appropriate figure but the net value after allowing the permissible deductions (which are set out in para 6.107) does not exceed this figure, the statement of truth should contain the wording indicated in para 6.107 in order to justify the statement that no minority or life interest arises.

Settled land

5.276 In every statement of truth to lead a grant of administration (with the will annexed) where the deceased died on or after 1 January 1926 the deponent must state, to the best of his knowledge, information and belief, whether there was land vested in the deceased which was settled previously to his death (and not by his will) and which remained settled land notwithstanding his death (NCPR SI 1987/2024 r 8(3)).

(It is anticipated that when revised rules take effect, the statement of truth of the applicant will not be required to state whether there is settled land vested in the deceased unless the application is for a settled land grant.)

Signing, descriptions, proof of identity

5.278 The practice as to signing, description and age of testators (including names and dates of birth and death as recorded in the entry of death) and description of deponents, proof of identity of the deceased, amount of estate, etc is the same as in applications for probate. See Chapter 4.

Chapter 6

LETTERS OF ADMINISTRATION

Note: The Non-Contentious Probate Rules 1987 were amended by SI 2018/1137, which came into force on 27 November 2018. The amended rules replace the oath application for a grant of representation with a statement of truth. In anticipation of further revision of the Non-Contentious Probate Rules, the expressions 'witness statement' and 'statement of truth' where they are used in this work refer to the form of application or evidence required with reference to any rule in force at the time of the application.

IN WHAT CIRCUMSTANCES GRANTED

Letters of administration after citation to propound paper writing

6.04 In such a case it must be confirmed in the statement of truth, and the grant will recite, that the deceased died intestate. The order of the court following the citation (*notification*) is based on the contention that the deceased died intestate and the order confirms this contention, the default of appearance by the persons cited (*notified*) to propound (*prove in solemn form*) the document referred to in the citation (*notification*) being tantamount to an admission that the document cannot be set up[1]. Form of statement of truth, No 137 (**A6.142**).

[1] See also NCPR SI 1987/2024 r 48(2).

Letters of administration after judgment pronouncing against a will

6.05 On an application for a grant of letters of administration following a judgment in a probate claim pronouncing against the validity of a document purporting to be the last will, the details of the judgment must be recited in the statement of truth, and an office copy of the judgment must be lodged with the papers. The order of the court will be recited in the grant[1]. The practice should follow that set out in para **4.182**, in cases where a will is pronounced for, with appropriate modifications.

[1] Registrar's Direction (1950) 16 January.

Preference of living interests

6.08 The statement of truth must, where possible, clear off living interests, ie it should be confirmed, as the case may be, either that the person whom the

applicant represents was the only person entitled to the estate or that all the persons entitled to share in the estate have since died or have renounced. Their respective names, relationships and dates of death should be specified, and it should be stated, where appropriate, that they died without taking a grant in the estate of the deceased.

Representative grants

6.12 The statement of truth should state that the applicant is the sole executor (or one of the executors) of the will, or the administrator of the estate, as the case may be, of the person entitled, and should recite the date of the grant and the registry from which it issued. The leading grant, or an official copy of it, should be lodged with the papers: it will be returned with the new grant.

6.14 In such cases there is no objection to both sets of papers being filed, anticipating the title which will be conferred on the applicant by the leading grant. If this course is adopted, the applicant should be described in the statement of truth application to lead the grant in the estate of the first to die as 'the sole executor named in the will of the said A. B. deceased' or 'the proposed administrator of the estate of the said A. B. deceased', as the case may be.

6.15 The papers in respect of both applications may be lodged at the registry simultaneously, a note that this has been done being made in the statement of truth. If the applications are in order the grants will be made successively, usually on the same day.

Application by attorney administrator for representative grant

6.16 An attorney administrator may obtain a grant in another estate to which he is entitled as personal representative of the deceased without any further authority from the donor of the power being necessary[1]. If it is known that a further grant will be required, the power of attorney may, if so desired, be so worded as to authorise the attorney to obtain both grants (see para **11.76** and Form No 190 (**A6.195**) for a precedent for such a power of attorney).

[1] Registrar's Direction (1974) 11 October.

TO WHOM GRANTED

6.17 The general rule applicable to the grant of letters of administration is that where possible administration is granted to one or more of the persons taking a beneficial interest in the estate of the deceased, but the court may also exercise discretion to pass over the rights of these persons in suitable circumstances (see the reference to the probate rules in s 116(1) of the Senior Courts Act 1981[1] and NCPR SI 1987/2024 r 22(1)[2]).

[1] See para **A1.335**.
[2] See para **A2.61**.

Assignment of life interest or reversion

6.27 In a consultation paper entitled the Forfeiture Rule and the Law of Succession [2003] EWLC 172(1) (30 September 2003) and subsequent Report No 295 the Law Commission in reviewing the problems associated with disclaimers recommended a reform of the law so that where a person has disclaimed an interest whether under a will or intestacy the property is distributed as if that person had died immediately before the deceased. The Estate of Deceased Persons (Forfeiture Rule and the Law of Succession) Act 2011[1] gives effect to the Law Commission's recommendation. The Act amends the Administration of Estates Act 1925 so that where the deceased dies on or after 1 February 2012 intestate and the person who would be entitled to the residuary estate disclaims it, that person is treated as having died immediately before the intestate. Accordingly, issue of the person disclaiming acquire title to the estate to which the disclaimer would otherwise be entitled. For an example of a disclaimer on intestacy, see Form No 52A (**A6.57A**). Form of statement of truth, No 115 (**A6.120**).

[1] See para **A1.685A** ff.

6.28 On application for a grant as sole administrator by a spouse or civil partner (or other life tenant who is the first person entitled to a grant) to whom the reversioners have assigned all their interests, no renunciation by the reversioners is necessary. On the other hand, if a life tenant has assigned his interest his renunciation is necessary before a grant can be made to a person of lower title. The facts and the date of the deed must be recited in the statement of truth[1]. Forms of statement of truth, Nos 87 and 93 (**A6.92** and **A6.98**).

[1] Registrar's Directions (1950) 19 December and (1951) 16 July.

Marriage same sex couples

6.31A The Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 (SI 2014/3181) sets out the procedure for converting a civil partnership into a same sex couple's marriage.

Civil partnership

6.33A The Civil Partnerships, Marriages and Deaths (Registration) Act 2019 received royal assent on 26 March 2019. The Act provides:

> '2(1) The Secretary of State may, by regulations, amend the Civil Partnership Act 2004 so that two persons who are not of the same sex are eligible to form a civil partnership in England and Wales (provided they are eligible to do so apart from the question of sex).
>
> 2.2 The Secretary of State must exercise that power so that the regulations are in force no later than 31 December 2019.'

The Act follows the decision of the Supreme Court in *R (on the application of Steinfield) v Secretary of State for International Development* [2018] UKSC 32, [2018] 4 All ER 1 regarding a different (opposite) sex couple who wish to enter into a legally recognised relationship. The judge at first instance and on appeal the Court of Appeal dismissed an application for judicial review of the government's failure to extend civil partnerships to different sex couples. The

Supreme Court concluded that ss 1 and 3 of the Civil Partnerships Act 2004, to the extent that they precluded a different sex couple from entering into a civil partnership, were incompatible with the Human Rights Act 1998, Sch 1, arts 8 and 14.

DISTRIBUTION OF AN INTESTATE'S ESTATE WHERE THE DEATH HAS OCCURRED ON OR AFTER 1 JANUARY 1926

Husband or wife or civil partner: (a) Death on or after 1 January 1953[1]

Note.—

See note under heading above table A in para **6.40** *about deaths on or after 1 January 1996.*

[1] Section 46, Administration of Estates Act 1925, as amended by the Intestates' Estates Act 1952 and the Family Provision Act 1966 and Civil Partnership Act 2004, Sch 4, Pt 2: see paras **A1.119** and **A1.615**.

6.48 The several amendments to the Administration of Estates Act 1925 introduced by the Intestates Act 1952, the Family Provision Act 1966 and the Civil Partnership Act 2004 affect the distribution of an intestate's estate as follows:

(1) If the intestate dies leaving a husband or wife or civil partner, but no issue[2] or parent[3], or brother or sister of the whole blood[4], or issue of brother or sister of the whole blood[4], he or she is entitled to the whole estate, whatever its value.

(2) If the intestate dies leaving a husband or wife or civil partner and issue[2], the husband or wife or civil partner is entitled to the personal chattels absolutely[5] and a charge on the residuary estate for a fixed net sum (£250,000 with effect from 1 February 2009[6]) free of death duties and costs, with interest thereon at the appropriate rate per annum from the date of death until paid or appropriated[7].

(3) If the intestate dies on or after 1 October 2014 leaving a husband or wife or civil partner but no issue, he or she is entitled to the whole estate[7A].

(4) If the intestate dies before 1 October 2014 leaving a husband or wife or civil partner and one or more of the following: a parent[3], brother or sister of the whole blood[4], or issue of brother or sister of the whole blood[4], but leaves no issue[2], the husband or wife or civil partner is entitled to the personal chattels and a charge on the residuary estate for a fixed net sum (£450,000 with effect from 1 February 2009[8]), free of death duties and costs; and
   (i) *where death was before 1 October 2014*, with interest thereon at the rate of 6% per annum;
   (ii) *where death was on or after 1 October 2014*, with simple interest at the Bank of England rate that had effect at the end of the day on which the deceased died;
   from the date of death until paid or appropriated[7].

(5) And as to the residue of the estate the husband or wife or civil partner is entitled to:

(a) a life interest in one half *where there is issue*[2] *surviving* (on failure of the statutory trusts[9] as to the issue[2] the residue and any statutory accumulations go as though the intestate had left no issue);

(b) an absolute interest in one half *where there is no issue*[2], but there is a parent[3], or brother or sister of the whole blood[4], or issue of a brother or sister of the whole blood[4], surviving.

2 See para **6.54** ff for meaning of the expression 'issue'.

3 In relation to deaths occurring on or after 1 January 1970, the expression 'parents' includes natural parents (Family Law Reform Act 1969, s 14: see para **A1.195**). See also para **6.73** ff.

4 See para **6.43**.

5 *Death before 1 October 2014:* Personal chattels mean carriages, horses, stable furniture and effects (not used for business purposes), motor cars and accessories (not used for business purposes), garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but do not include any chattels used at the death of the intestate for business purposes nor money or securities for money.

Death from 1 October 2014: Personal chattels means tangible movable property, other than any such property which consists of money or securities for money, or was used at the death of the intestate solely or mainly for business purposes, or was held at the death of the intestate solely as an investment (Administration of Estates Act 1925, s 55(1)(x), (as amended), para **A1.134**).

6 See para **6.42** for earlier figures and dates.

Intestate Succession (Interest and Capitalisation) Order 1977 (SI 1977/1491) (Amendment) Order 1983 (SI 1983/1374); but see fn 3 to para **6.40**, as to the need to calculate the interest payable at different rates for different periods, and the Inheritance and Trustees' Powers Act 2014, s 1.

7A As amended by the Inheritance and Trustees Powers Act 2014, s 1.

8 See para **6.42** for earlier figures and dates.

9 See 'Statutory trusts for issue', paras **6.66** ff.

Additional rights of surviving spouse or civil partner

6.50A Where death has occurred on or after 1 October 2014, a life interest in favour of the surviving spouse or civil partner does not arise. With effect from that date s 47A has no application and is omitted from the Act[1].

1 Inheritance and Trustees' Powers Act 2014, Sch 4, art 1(3).

Statutory trusts for issue

6.67 If the intestate dies leaving issue, then, subject to the rights of the husband or wife or civil partner of the intestate (if any), the residuary estate is to be held in trust, in equal shares if more than one, for all or any of the legitimate or illegitimate children of the intestate, living at the death of the intestate, who attain the age of 18 years or marry under that age, and for all or any of the issue of such children who predeceased the intestate (ie lawful issue where the intestate died before 4 April 1988 or lawful or illegitimate issue where he died on or after that date) who are living at the death of the intestate and who attain the age of 18 years or marry under that age, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is living at the death of

the intestate and so capable of taking[1]. However this is subject to s 46A of the Administration of Estates Act 1925 as amended by the Estates of Deceased Persons (Forfeiture Rule and Law of Succession) 2011[2]. The effect of this is that in respect of the intestate who dies on or after 1 February 2012 a person who is entitled to the residuary estate but disclaims it or is a person who would be entitled if he was not excluded by the forfeiture rule (unlawful killing of the intestate) is to be treated as having died immediately before the deceased so that his issue takes in his place. See statement of truth forms Nos 52A, 95 and 115 (**A6.57A**, **A6.100** and **A6.120**). In cases of this type the applications papers should include an official copy of the conviction certificate or deed of disclaimer as is appropriate. Further if any issue fail to attain an absolutely vested interest because such issue has died without having reached the age of 18 years, without having married or forming a civil partnership and left a child, such issue is to be treated as having died immediately before the intestate. See statement of truth form No 123 (**A6.128**).

[1] Administration of Estates Act 1925, s 47(1)(i), as amended by Family Law Reform Act 1969, s 3(2) (para **A1.192**) and Family Law Reform Act 1987, s 18; para **A1.418** and see fn 2 below.

[2] See paras **A1.114** ff.

Parents of illegitimate child

6.75 It is, however, provided by s 14(4) of the Family Law Reform Act 1969 that for the purposes of s 14(2), and of Pt IV of the Act of 1925, an illegitimate child is to be presumed not to have been survived by his father unless the contrary is shown. A statement of truth by the child's father confirming that he is the father is a sufficient contrary indicator for the purposes of an application for a grant of administration.

6.79 As to an application for letters of administration of the estate of an illegitimate person, see paras **6.300** ff.

Failure of statutory trusts

6.90 In its report entitled 'Intestacy and Family Provision Claims on Intestacy' (Law Com No 331) dated 17 November 2011, the Law Commission recommended that if immediately before adoption a child has any contingent interest in the estate of his or her deceased parent, other than an interest in remainder, that interest shall not be affected by the adoption. This recommendation was given effect in respect of death on or after 1 October 2014 by the Adoption and Children Act 2002, s 69(4)(c), as amended by the Inheritance and Trustees' Powers Act 2014, s 4(2). Accordingly, a child being a minor preserves the interest he has in his deceased parent's estate prior to his adoption.

RIGHT TO THE GRANT

Grant to surviving spouse or civil partner

Right of husband or widow or civil partner

6.97 A surviving spouse or civil partner may take a grant alone where the whole estate of the deceased passes absolutely to the spouse or civil partner[1], or where, although other persons share with the spouse or civil partner, no life interest or minority interest arises. As to assignment by the other persons entitled to share in the estate in favour of the surviving spouse or civil partner, see paras **6.25** and **6.26**[2].

[1] Except where the spouse or civil partner is himself or herself a minor.

[2] Where, in an probate claim concerning the validity of a will, the court pronounced against the will, and terms of compromise, whereby the estate was to be distributed in accordance with the terms of the will, were filed and made a rule of court, letters of administration were granted to the widow alone on its being confirmed in the statement of truth that there was no life interest by reason of the provisions of the terms of settlement, notwithstanding that the net estate exceeded the amount of the widow's statutory legacy (*Re Cranfield* (12 June 1950, unreported)). See now the discretionary power vested in the court to appoint a sole administrator where it considers it expedient in all the circumstances to do so, notwithstanding the existence of a life or minority interest; s 114(2) of the Senior Courts Act 1981 (para **A1.333**).

6.99 The surviving spouse or (with effect from 5 December 2005) a civil partner is entitled to the whole estate:

(a) *where the deceased dies after 1 October 2014* without issue, the statement of truth should describe the applicant as 'the lawful husband/wife (or lawful civil partner) and only person entitled to the estate';

(b) *where* the net value of the estate, after making the permitted deductions (see para **6.106**) does not exceed:

  (i) *where the deceased dies on or after 1 February 2009:* £250,000 where the deceased left issue, or £450,00 where the deceased left no issue[1];

  (ii) *where the deceased died on or after 1 December 1993*: £125,000 where the deceased left issue, or £200,000 where the deceased left no issue[1];

  (iii) *where the deceased died on or after 1 June 1987*: £75,000 where the deceased left issue, or £125,000 where the deceased left no issue[1];

  (iv) *where the deceased died on or after 1 March 1981*: £40,000 where the deceased left issue, or £85,000 where the deceased left no issue[1];

  (v) *where the deceased died on or after 15 March 1977, but before 1 March 1981*: £25,000 where the deceased left issue, or £55,000 where the deceased left no issue[1];

  (vi) *where the deceased died on or after 1 July 1972 but before 15 March 1977*: £15,000 where the deceased left issue, or £40,000 where the deceased left no issue[1];

  (vii) *where the deceased died after 31 December 1966, but before 1 July 1972*: £8,750 where the deceased left issue, or £30,000 where the deceased left no issue[1];

(viii) *where the deceased died after 31 December 1952, but before 1 January 1967*: £5,000 where the deceased left issue, or £20,000 where the deceased left no issue;

(ix) *where the deceased died after 31 December 1925, but before 1 January 1953*: £1,000.

In these cases, the statement of truth should describe the applicant as 'the lawful husband/wife (*or* lawful widow/widower, *as the case may be*) or lawful civil partner and only person now entitled to the estate'[2]. The words 'only person now entitled' is an implicit recognition that other persons may be entitled in the event of an accretion to the estate. As to the wording to be included where the gross estate is in excess of the appropriate amount stated above, but the permitted deductions reduce the net estate below this figure, see paras **6.107** ff (Form of statement of truth, No 81 (**A6.86**));

(c) *where the deceased died before 1 October 2014* and left no kin within the degrees entitled to share with the spouse, ie down to the issue of brothers or sisters of the whole blood, where the death occurred on or after 1 January 1953 (see Table A, para **6.40**); or down to the issue of uncles or aunts of the half blood where the death occurred before 1 January 1953 (see Table B, para **6.40**) the kin should be specifically cleared off in the statement of truth in such cases. The statement of truth should describe the applicant as 'the lawful husband (or lawful widow, as the case may be) (or lawful civil partner) and only person entitled to the estate'.

[1] In the case of death on or after 1 January 1970 as well as lawful issue, illegitimate children of the intestate and the lawful issue of any who have predeceased the intestate (and, as regards (i) above) in the case of death on or after 4 April 1988 illegitimate as well as lawful issue of any who have predeceased the intestate) are within the definition of 'issue' for this purpose: see fn 2 to para **6.48**.

[2] Where the net estate exceeds £125,000, but does not exceed £200,000 (or the corresponding lower figures where the date of death was before 1 December 1993), and the deceased died without issue, the statement of truth should state that the deceased died 'without issue or any other person entitled to share in the estate by virtue of any enactment'. Should these words not be included, the statement of truth will be accepted if the applicant's solicitor is prepared to certify to the effect that he is instructed that the deceased died intestate without issue or any other person entitled to share in the estate by virtue of any enactment (Registrar's Circular, 29 July 1977, as amended).

6.101 In every case, whatever the date of death, the statement of truth must state specifically whether any minority, or any life, interest arises under the intestacy (NCPR SI 1987/2024 r 8(4)).

Changes in valuation of estate

6.104 This consideration is more likely to arise in relation to an application for a grant de bonis non after the death of the surviving spouse or civil partner, and is discussed in this connection in paras **13.38** and **13.39**; but in any case where a significant change in the value of an estate, occurring since the death of the intestate, has affected the position as to entitlement to the grant (eg where, owing to a fall in value, the spouse is beneficially entitled to the whole of the known estate notwithstanding that the net value at the date of death as shown in the HMRC Inheritance Tax account suggests the contrary; or where, owing to an increase in value, the converse is the case), a paragraph should be

added to the statement of truth stating the circumstances in which it is claimed that the spouse or lawful civil partner is (or is not) entitled to the whole of the known estate.

Joint grant to spouse or civil partner and nearest of kin

6.105 A surviving spouse or civil partner, as the 'only person now entitled to the estate' (the net value not exceeding the amount of the fixed net sum taken by the surviving spouse or civil partner (see para **6.42**), may, in appropriate circumstances and if desired, and subject to leave having been obtained under NCPR SI 1987/2024 r 25(2) (see paras **7.17** ff), obtain a grant jointly with a person who may be beneficially entitled if further estate falls in. The latter should be described as 'the administrator joined by leave of the district judge or registrar given on . . . '. It should be stated that no minority or life interest arises, and if the value of the gross estate exceeds the fixed net sum the net estate should be stated to be below that amount, after making the permitted deductions (see below).

Deductions to be stated to in statement of truth

6.107 Where the gross amount of the estate exceeds the fixed net sum of £250,000 (or the appropriate amount in the case of earlier death, as the case may be) but it is reduced below the appropriate amount by these deductions, the statement of truth, after stating the gross value of the estate, should continue 'but that after deduction of the value of the personal chattels, debts, inheritance tax/capital transfer tax/estate duty, costs amounting to £——, probate fees, and (*where the death occurred before 1953*) interest on the sum of £1,000 amounting to £——, the net value of the estate is £——.'

6.108 Only such of these items as are necessary to establish that the net estate is below the relevant figure need be recited.

6.109 The actual amounts of items (4) and (6) in para **6.106** must be stated. The amount permitted to be deducted for solicitors' costs is such sum as is fair and reasonable having regard to the considerations set out in the Solicitors' (Non-Contentious Business) Remuneration Order 2009. The Law Society issues notes for guidance on solicitors' costs for obtaining grants of representation and administering estates[1].

[1] *Law Society's Gazette*, 15 October 1980. See also *Maltby v DJ Freeman & Co* [1978] 2 All ER 913, [1978] 1 WLR 431 and *Jemma Trust Co Ltd v Liptrott* [2003] EWCA Civ 1476, [2004] 1 All ER 510, [2004] 1 WLR 646 (see fn 2 to para **4.276**).

Renunciation etc, of spouse or civil partner entitled to whole estate

6.112 Where the net value of the estate (after making the deductions referred to in para **6.106**) does not exceed the fixed net sum taken by the surviving spouse or civil partner (see para **6.42**), then if the spouse or civil partner is cleared off by renunciation or citation[1] or by death before taking a grant and his or her personal representative has renounced, the following are equally entitled to a grant:

(i) *where the intestate dies on or after 1 October 2014*, the issue of the deceased (to be described as the 'son *or* daughter of the deceased and the person who may have a beneficial interest in the event of an accretion');

(ii) *where the deceased died before 1 October 2014*, the nearest of kin[2] of the deceased (to be described in the statement of truth as 'the lawful[3] . . . of the said deceased, and a person who may have a beneficial interest in the estate in the event of an accretion thereto') (Form of statement of truth, No 86 (**A6.91**)); and (ii) creditors (NCPR SI 1987/2024 r 22(3)). As to grants to creditors, see para **6.343**.

[1] As to citations, see Chapter 24.

[2] Where the death occurred after 1925, but before 1953, 'nearest kin' includes all persons in their order under NCPR SI 1987/2024 r 22. But where the death occurred after 1952, it is limited to issue, parents, brothers or sisters of the whole blood, and issue of brothers or sisters of the whole blood who predeceased the intestate. See Administration of Estates Act 1925, s 46, as amended by Intestates' Estates Act 1952, pp 767 ff, and NCPR SI 1987/2024 r 22(1)(a)–(d).

[3] Or, in the case of death on or after 1 January 1970 but before 4 April 1988, the natural son or daughter or natural father or mother (see paras **6.57** ff and **6.73** ff). In the case of death on or after 4 April 1988 the relationship of the kin need not be lawful and the word 'lawful' may be omitted.

Death of surviving spouse or civil partner entitled to whole estate

6.114 By virtue of NCPR SI 1987/2024 r 22(4), the personal representative of a surviving spouse or civil partner who was entitled to the whole estate (as ascertained at the time of application for the grant) has the same right to a grant as was possessed by the spouse or civil partner whilst alive. A grant may therefore be made to the executors or administrators of such spouse or civil partner. (Form of statement of truth, No 88 (**A6.93**)). As to representative grants, see also paras **6.11–6.15**.

Joint grant

6.120 Where the net value of the estate, after making the permitted deductions (see para **6.106**) exceeds the amount of the fixed net sum taken by the surviving spouse or civil partner (see para **6.42**) and there is a life or minority interest, a grant will not normally be made to one individual. The surviving spouse or civil partner should normally apply jointly with one of the persons entitled to share in the estate (Form of statement of truth, No 84 (**A6.89**)): alternatively a trust corporation may be joined as second administrator, or a grant may be made to a trust corporation alone, on filing the requisite consents (and, where necessary, renunciations). As to joint grants, see also Chapter 7, and as to grants to trust corporations, see Chapter 9.

Death of spouse or civil partner not entitled to whole estate

6.123 On the death of a surviving spouse or civil partner who was not beneficially entitled to the whole estate, a grant may be made to one of the other persons beneficially entitled (or, unless the court allows a sole administrator, to not less than two, if there is any minority interest). (Form of

statement of truth, No 91 (**A6.96**)). A grant may be made to the personal representative of the spouse or civil partner only on clearing off all other persons entitled to share in the estate[1].

[1] NCPR SI 1987/2024 r 22(4), proviso.

Death of spouse or civil partner and all other persons entitled to share

6.124 Where the surviving spouse or civil partner and all the kin entitled to share with him or her have died, the personal representative of the spouse or civil partner is normally entitled to a grant in priority to the personal representatives of the other persons who took a beneficial interest, and must be cleared off before the latter can obtain a grant[1]. However, if it is recited in the statement of truth that the spouse's or civil partner's beneficial interest in the estate has been wholly satisfied, administration may be granted to the personal representative of one of the other persons having a beneficial interest without clearing off the personal representative of the spouse[2].

[1] NCPR SI 1987/2024 r 22(4); Registrar's Direction (1955) 7 November.
[2] Registrar's Direction (1971) 15 November.

Child 'en ventre sa mère'

6.127 In such a case it should be recited in the statement of truth that the deceased died leaving an unborn child.

Divorce

6.131 A divorced person should be described in the statement of truth as a 'single man' or 'single woman'[1]. The details (including the name and place of the court) and date of the decree absolute must be recited; it must also be sworn that the intestate did not re-marry or form a civil partnership and, if the decree was not made in England and Wales, an office copy of the decree absolute must be lodged with the papers[2]. (Form of statement of truth, No 96 (**A6.101**)).

[1] The expression feme sole is not accepted in these circumstances.
[2] Registrar's Direction (1972) 18 April and Registrar's Direction (1988) 9 May.

Decree of nullity of marriage

6.133 If the marriage of the deceased has been annulled the deceased should be referred to by the status possessed immediately prior to the ceremony, ie as a bachelor, spinster, lawful widower, lawful widow, etc, as the case may be. The statement of truth should, however, include particulars of the nullity decree (eg 'That the marriage in fact had and solemnised between the deceased and . . . was annulled by final decree of the High Court of Justice in England and Wales [*or* of the . . . County Court or as the case may be] dated the . . . ') and, if the decree was made outside England and Wales, an official copy of the decree absolute should be lodged with the papers[1].

[1] Registrar's Direction (1972) 18 April and Registrar's Direction (1988) 9 May.

Dissolution order (civil partnership)

6.135 A deceased person whose civil partnership has been dissolved should be described in the statement of truth as a 'single man' or 'single woman' and the details of the dissolution order should be recited; it should also be shown that the deceased did not form another civil partnership or marry another person. If the dissolution order was not made in England and Wales an office copy of the order should be submitted with the papers for consideration as to sufficiency (form of statement of truth No 102 (**A6.107**)).

Nullity order (civil partnership)

6.137 The statement of truth should describe the title of the deceased as it existed before the date of the formation of the civil partnership eg 'a bachelor', 'spinster', 'widow' etc and recite the particulars of the nullity order as set out in para **6.133** with appropriate modifications. A copy of the nullity order should be submitted with the papers if it was not made in England or Wales.

Practice

6.154 The practice in unopposed probate applications where the validity of a divorce granted in a country other than England and Wales is material is as follows:

(a) A decree of divorce granted by a court in Scotland, Northern Ireland, the Channel Islands or the Isle of Man will be recognised in the same way as a decree granted in England and Wales, irrespective of the domicile of the deceased.

(b) A decree of divorce, whenever granted, by a court in an overseas country will be recognised if the statement of truth shows that at the date of commencement of the proceedings resulting in the decree:
   (i) either spouse was habitually resident in that country, or was domiciled in that country, or was a national of that country;
   (ii) or exceptionally if one of these facts is recorded in the decree itself.

Separation order or decree

6.160 Grants limited to a portion of the estate in case of separation by court order or decree are accordingly not appropriate where the death occurred on or after 1 August 1970. For form of statement of truth for administration in the estate of a spouse who has been judicially separated, see Form No 140 (**A6.145**).

Grant to children or other issue

Exception: person of unsound mind on 1 January 1926

6.167 *Where, however, the intestate was of full age and unsound mind on 1 January 1926, and thereafter died without recovering his testamentary capacity*[1]*, any beneficial interest in real estate*[2]*, other than chattels real, to which he was entitled at the commencement of the Act and at his death, devolves in accordance with the general law in force before 1926*[3]*. These circumstances would, of course, be extremely rare today, but the old law applies equally to an undivided share in real estate held immediately before 1 January 1926 by such a person, his interest being for this purpose a 'beneficial interest in real estate' notwithstanding that on that date it became subject to a trust for sale*[4]*. The personal estate, subject to any settlement by the court, devolves in accordance with the present law. In such circumstances, where there is a preponderance of real estate, the heir-at-law is preferred in an application for a grant. Should such a case still arise, the usual evidence as to heirship (see Forms 20, 21 in the 30th edn of this work) is required, and it is required to be shown in the statement of truth, and is stated in the grant: 'That the intestate was of full age but of unsound mind on 1 January, 1926, and died, without recovering his testamentary capacity, possessed of real estate'. The grant issues to 'A B, the heir-at-law'*[5]*.*

1 *He is not deemed to have recovered his testamentary capacity unless his receiver is discharged (Administration of Estates Act 1925, s 51(2)).*

2 *The term includes, for this purpose, not only freehold land but also heritable estates or interests in copyholds (Re Sirett, Pratt v Burton* [1968] 3 All ER 186, [1969] 1 WLR 60).

3 *Administration of Estates Act 1925, s 51(2), para* **A1.130**.

4 *Re Bradshaw, Bradshaw v Bradshaw* [1950] Ch 582, [1950] 1 All ER 643, *CA distg. Re Donkin, Public Trustee v Cairns* [1948] Ch 74, [1947] 2 All ER 690.

5 *Registrar's Direction (1928) 20 April.*

6.168 *In the case of preponderance of personal estate the grant issues to the person entitled under the present rules, on showing in the statement of truth: 'That the intestate was of full age but of unsound mind on 1 January 1926 and died, without recovering his testamentary capacity, possessed of real estate, and that C D is the heir-at-law'. No consent of or notice to the heir-at-law is necessary.*

Grant to children or other issue

6.169 If the intestate has left no spouse or civil partner, as the case may be, the children or other issue of the intestate are entitled to administration—such other issue being children, living at the death of the intestate, of any child, or more remote issue, who predeceased the intestate, and so taking per stirpes their parent's share in the estate: see NCPR SI 1987/2024 r 22(1)(b). The statement of truth must clear off the spouse or civil partner by stating that the intestate died a bachelor or spinster, or a widower or widow, or (if divorced or civil partnership dissolved) a single man or single woman. As to divorce or dissolution of civil partnership, see also paras **6.130/6.134** ff. Form of statement of truth, Nos 89 and 90 (**A6.94** and **A6.95**).

6.172 When the intestate died on or after 1 January 1970 but before 4 April 1988 an illegitimate child should be described in the statement of truth to lead

the grant as 'the natural son (*or* daughter) and only person entitled to (*or* one of the persons entitled to share in) the estate', as the case may be. Form of statement of truth, No 89 (**A6.94**).

6.176 Under s 21 of the Family Law Reform Act 1987[1], for the purpose of determining the person or persons who would in accordance with probate rules be entitled to a grant of probate or administration in respect of the estate of a deceased person dying on or after 4 April 1988, the deceased is presumed, unless the contrary is shown, not to have been survived by any person related to him whose father and mother were not married to each other at the time of his birth or by any person whose relationship with him is deduced through a person whose father and mother were not married to each other at the time of his birth. In this context references to 'father' are to be treated as references to a woman who is a parent by virtue of s 43 of the Human Fertilisation and Embryology Act 2008. The applicant's title, as confirmed in the statement of truth, will be taken as sufficient to rebut any such presumption[2].

[1] See para **A1.421**.

[2] Registrar's Direction (1988) 19 April.

Evidence of paternity

6.186 Where the intestate died before 4 April 1988 and the applicant's title to letters of administration depends upon the establishing of an illegitimate relationship (except that with his or her mother), evidence in support of the claim to the relationship, normally in the form of affidavits (*witness statements*), must be lodged at the registry. If a birth certificate is produced which gives the name of the father and shows that the birth was registered on his information or on the authority of a statutory declaration made by him, or if an affiliation order is produced containing a finding of paternity, further evidence as to paternity additionally recited in the statement of truth is not normally necessary[1]. Where the intestate died on or after 4 April 1988 evidence of paternity will be called for only in exceptional circumstances[2].

[1] As from 1 January 1977 a mother may apply for the registration of the father of an illegitimate child on production of an affiliation order naming that person as the putative father (together with the child's consent where he is 16 years or over): Children Act 1975, s 93, amending Births and Deaths Registration Act 1953, s 10. See also Civil Evidence Act 1968, s 12, as amended by Family Law Reform Act 1987, s 22, from 4 April 1988 which allows an adjudication of paternity made in the course of proceedings brought under the Guardianship of Minors Act 1971 and of proceedings brought by public bodies to constitute prima facie evidence of paternity.

[2] Registrar's Direction (1988) 19 April.

Right of illegitimate child to succeed to mother's estate (death before 1 January 1970)

6.193 *The right to letters of administration arises only where under the relevant statutes the applicant has a beneficial interest. Thus, if the deceased died on or after 1 January 1927, but before 1 January 1970, a spinster (or a widow or divorced woman without any lawful issue) leaving an illegitimate child, a grant may be made to such child. The statement of truth should describe the applicant as the natural son (or daughter) and only person entitled to the estate (or one of the persons entitled to share therein, if the deceased left*

more than one such child). In the case of a widow or divorced woman it must be stated that she died without lawful issue.

Legitimated persons

Legitimation on marriage of parents

6.199 The parents of a legitimated person are under a duty to furnish to the Registrar-General within a specified time information with a view to obtaining the re-registration of birth[1].

[1] Legitimacy Act 1926, s 1(4) and Sch which provisions are since repealed and re-enacted by the Legitimacy Act 1976, s 9; see also fn 1 to para **6.235**.

Children of void marriages

6.231 A child who, by virtue of s 1 of the Legitimacy Act 1976 (formerly s 2 of the Legitimacy Act 1959), is entitled to be treated as the legitimate child of his parents may be described as a lawful child in the statement of truth[1].

[1] Registrar's Circular, 24 April 1967.

Children of voidable marriages

6.234 It is proper to describe such a child in the statement of truth as a lawful child.

Practice where title depends on legitimation

6.235 In cases where the right of the applicant to a grant depends upon his legitimation, or that of any other person, the following practice should be observed:

(1) If a declaration of legitimation has been obtained from a court of competent jurisdiction, or if the birth has been re-registered under the Legitimacy Act 1926 (since repealed and re-enacted by the Legitimacy Act 1976), the applicant should produce a copy of the declaration or of the amended birth certificate.

(2) If a declaration has not been made or a re-registration effected and it appears that it is open to the applicant to obtain such a declaration or re-registration, he should be required to do so (subject to paragraph 3 below)[1].

(3) If
   (a) re-registration is impossible, and
   (b) either it is not open to the applicant to obtain a declaration, or to insist on his obtaining a declaration would impose undue hardship,

the evidence in support of the contention of legitimation should be submitted to a district judge of the Principal Registry, or if the application is to be made in a district probate registry, to the district registrar, for his decision as to its sufficiency. Any case of doubt will be referred by a district registrar to a district judge of the Principal Registry in accordance with NCPR SI 1987/2024 r 7(1)(b). If a district judge or

registrar is not satisfied he may direct that an application be made by summons to a High Court judge in chambers or open court, with notice to the Attorney General, any such reference by a registrar needing to be confirmed by a district judge.

(4) In any case in which the Crown is or could be beneficially concerned, notice to the Treasury Solicitor must be given under NCPR SI 1987/2024 r 38.

(5) Where the applicant produces a declaration or certificate of re-registration, the statement of truth must state that the person who it is claimed has been legitimated is the person referred to in the declaration or re-registration[2].

[1] The provisions as to re-registration of the births of legitimated persons are contained in s 14 of the Births and Deaths Registration Act 1953, as amended (see para **A1.161**). Re-registration may be effected only where information is furnished by both parents, unless: (a) the name of a person acknowledging himself to be the father has been entered in the register of births; (b) the paternity of the legitimated person has been established by an affiliation order or a decree of a competent court; or (c) a legitimacy declaration has been made. Section 1(1) of the Legitimation (Re-registration of Birth) Act 1957 (since repealed and replaced by para 6 of Sch 1 to the Legitimacy Act 1976) extends the provisions of s 14 of the Births and Deaths Registration Act 1953 and the Sch to the Legitimacy Act 1926 (since repealed and re-enacted by the Legitimacy Act 1976, s 9) relating to the re-registration of births of persons legitimated by the subsequent marriage of their parents, to all persons recognised by the law of England and Wales as having been so legitimated, whether or not their legitimation or the recognition thereof was effected under any enactment.

[2] *Practice Direction* [1965] 2 All ER 560, [1965] 1 WLR 955.

Description of legitimated persons and persons claiming through them

Deaths intestate before, or wills or codicils made before, 4 April 1988

6.239 It is in appropriate to describe a legitimated person, or a person related to such a person, in the same way as an ordinary applicant. Where the title to a grant depends on a legitimation which has been properly proved, either in the statement of truth or a separate affidavit, the applicant should be described in the *statement* of truth as 'the lawful legitimated son (*or* daughter)' or, in the case of other relationships 'the lawful . . . by legitimation'.

6.240 The foregoing applies only in cases where the applicant's title depends on a *legitimation*. A person claiming to have been legitimate at birth who has obtained a declaration of legitimacy under s 45(1) of the Matrimonial Causes Act 1973 or earlier Acts, may be regarded as legitimate or lawful in the fullest sense, and may be so described in the statement of truth[1].

[1] Registrar's Circular, 24 April 1967.

Deaths intestate on or after, or wills or codicils made on or after, 4 April 1988

6.241 Where the deceased dies intestate on or after 4 April 1988 or where a will or codicil is made on or after that date, the rights of intestate succession dependent upon the relationship between two persons and references to any relationship between two persons in dispositions by will or codicil are construed, unless the contrary intention appears, without regard to whether or

not the father and mother of either of them, or the father and mother of any person through whom the relationship is deduced, have or had been married to each other at any time. Consequently it is not necessary to refer in the statement of truth to the applicant as 'the lawful legitimated . . . ' or 'the lawful . . . by legitimation'; reference to the relationship is sufficient.

Adopted persons

Requirements on obtaining grant

6.285 Other degrees of relationship should be described in similar terms. All persons may be described (if so entitled) as being 'entitled to (share in) the estate'. Forms of statement of truth, Nos 99 and 100 (**A6.104** and **A6.105**).

6.286 Where it is necessary to clear off a person who, because of his adoption, has no interest in an estate in which he would otherwise have participated, the Forms of statement of truth Nos 97 (**A6.102**) or 98 (**A6.103**) may be used. It is not necessary to exhibit or produce the adoption order, and the adopted person should be referred to throughout the documents by the name under which he was known prior to the adoption[1].

[1] Registrar's Circular, 2 March 1966.

'Overseas adoptions'

6.292 Adoptions effected in, and in accordance with the law[1] of, the following places have been specified as 'overseas adoptions'. This applies to any adoption effected before 1 February 1973 in any place which, at that date, formed part of a country or territory listed below. It applies also to any adoption effected on or after that date, in a place which forms part of a country or territory so listed[2].

[1] The expression 'law' in this context does not include customary or common law (Adoption (Designation of Overseas Adoptions) Order 1973, art 3(3)).

[2] Adoption (Designation of Overseas Adoptions) Order 1973, art 3(2) and Adoption (Recognition of Overseas Adoptions) Order 2013 (SI 2013/1801), art 2 and Sch.

COMMONWEALTH COUNTRIES AND UNITED KINGDOM DEPENDENT TERRITORIES:

Australia	Bahamas	Barbados
Bermuda	Botswana	British Honduras
British Virgin Islands	Canada	Cayman Islands
The Republic of Cyprus	Dominica	Fiji
Ghana	Gibraltar	Guyana
Hong Kong	Jamaica	Kenya
Lesotho	Malawi	Malaysia
Malta	Mauritius	Montserrat
New Zealand	Nigeria	Pitcairn
St Christopher, Nevis and Anguilla	St Vincent	Seychelles

Singapore	Southern Rhodesia (now Zimbabwe)	Sri Lanka
Swaziland	Tanzania	Tonga
Trinidad and Tobago	Uganda	Zambia

Other countries and territories

Albania	Finland	The Netherlands (including the Caribbean part of the Netherlands (the islands of Bonaire, Sint Eustatius and Saba) New Zealand
Andorra	Fiji Finland France	Norway
Armenia	Georgia	Panama
Austria	Germany	Paraguay
Azerbaijan	Greece	Peru
Belarus	Guinea	Philippines
Belgium	Hungary	Poland
Belize	Iceland	Portugal
Bolivia	India	Romania
Brazil	The Republic of Ireland	Rwanda
Bulgaria	Israel	San Marino
Burkina Faso	Italy	Senegal Seychelles
Burundi	Kazakhstan Kenya	Slovakia
Cape Verde	Latvia	Slovenia
Chile	Lesotho	South Africa
The People's Republic of China	Liechtenstein	Spain Sri Lanka Swaziland
Colombia	Lithuania	Sweden
Costa Rica	Luxembourg	Switzerland
Cuba	The Former Yugoslav Republic of Macedonia	Thailand
The Republic of Cyprus	Madagascar	Togo
Czech Republic	Mali Malta Mauritius	Turkey
Denmark (including the Faroe Islands and Greenland)	Mexico	The United States of America
Dominican Republic	The Republic of Moldova	Uruguay
Ecuador	Monaco	Venezuela
El Salvador	Mongolia	Vietnam
Estonia	Montenegro	

Grant to parents

Father and mother

6.299 If the intestate has left no spouse or civil partner, and no issue[1], then administration will be granted to one or both of the parents: if only one parent survives, then to that one. For form of statement of truth, see No 103 (**A6.108**). As to description of the applicant, see para **6.390**.

[1] The position is the same if the intestate left issue surviving, but all such issue died without attaining an absolutely vested interest: see paras **6.67** and **6.71**. As to the meaning of 'issue' in relation to deaths occurring on or after 1 January 1970, see para **6.54**.

Presumption in relation to natural father and other relatives

6.305 The applicant's title to a grant of representation, as stated in the statement of truth, is sufficient to rebut any of the presumptions referred to in the preceding paragraph[1].

[1] Registrar's Direction (1988) 19 April.

6.306 On an application for letters of administration by the natural mother where the death occurred on or after 1 January 1970, it is necessary for her to state in the statement of truth in the normal way whether she is the only person entitled to the estate of the child or one of the persons entitled to share in the estate. Unless she is aware that the child's father is alive it would appear that the presumptions above would entitle her to claim to be the only person entitled to the estate.

Evidence of paternity

6.308 If the deceased died before 4 April 1988, evidence in support of the paternity claim (normally in the form of an affidavit) must be lodged at the probate registry. However, if a birth certificate is produced which gives the name of the father and shows that the birth was registered on his information or on the authority of a statutory declaration by him under s 27 of the Family Law Reform Act 1969, or if an affiliation order is produced containing a finding of paternity, further evidence of paternity additional to the statement in the statement of truth is not normally necessary.

Interest of mother in estate of illegitimate person: death before 1 January 1970

6.309 *Where an illegitimate person dies intestate before 1 January 1970, leaving no spouse or issue (and in the case of a female, no natural child) the mother of the intestate is entitled to a grant of administration. It is sufficient for the applicant to depose in the statement of truth that the deceased died intestate a bachelor or spinster, or to clear the spouse and issue, and for the applicant to swear she is 'the natural mother and only person entitled to the estate'. It is unnecessary to describe the deceased as illegitimate*[1].

[1] *Registrar's Direction (1952) 11 March.*

Adoptive parents

6.310 In the case of death on or after 1 January 1950, and after the making of an adoption order, s 16(1) of the Adoption Act 1958, or s 39 of the Adoption Act 1976, or s 67 of the Adoption and Children Act 2002 (as the case may be, depending upon the date of death) has the effect of placing an adoptive parent or, in the case of a joint adoption, both the adoptive parents, in the position of lawful parents for the purpose of succession on intestacy to the real and personal estate of the adopted person; accordingly, the adoptive parent has the same priority of right under NCPR SI 1987/2024 r 22 to a grant of administration of the estate of an adopted child who dies intestate on or after 1 January 1950 as if he had been a child of the adoptive parent born in lawful wedlock. See paras **6.282–6.285**, as to the practice in obtaining a grant where the entitlement arises by virtue of an adoption. Form of statement of truth, No 100 (**A6.105**).

Personal representative of parents

6.311 On the death of an only surviving parent, there being no surviving husband or wife, or issue, of the intestate, a grant will be made to the personal representative of such parent. In a like case, where both parents have survived and died, a grant may be made to the personal representative of either of them. For form of statement of truth, see No 104 (**A6.109**). As to preference of living interests, and grants to personal representatives, see paras **6.07–6.15**.

Grant to brothers and sisters or their issue

Brothers and sisters of the whole blood or their issue

6.312 If the intestate *dies before 4 April 1988* and leaves no spouse or civil partner, issue or parent, a grant will be made to the brothers and sisters *of the whole blood*, or to the issue of deceased brothers and sisters of the whole blood, taking per stirpes. For form of statement of truth, see Nos 105 and 106 (**A6.110** and **A6.111**).

6.313 If the deceased *dies on or after 4 April 1988* the relationships need not be lawful, illegitimate relatives having the same rights of succession to property on intestacy as lawful relatives[1], but there is a rebuttable presumption that an illegitimate person was not survived by his father or by any person related to him only through his father[2] and there is a rebuttable presumption that, as regards entitlement to a grant, the deceased left no surviving illegitimate relatives or relatives whose relationship is traced through an illegitimate person[3] (see para **6.304**). The applicant's title to a grant of representation, as stated to in the statement of truth, is sufficient to rebut any of these presumptions[4].

1 Family Law Reform Act 1987, s 18(1).
2 Family Law Reform Act 1987, s 18(2).
3 Family Law Reform Act 1987, s 21.
4 Registrar's Direction (1988) 19 April.

6.314 If the deceased *died before 4 April 1988* only lawful brothers or sisters of the whole blood (or their issue per stirpes) may succeed and apply, and their lawful status must be stated in the statement of truth.

6.315 As regards their rights to a grant, the issue of predeceasing brothers and sisters, taking per stirpes, have an equal claim with surviving brothers and sisters, but it is necessary to show in the statement of truth how their beneficial interest arises (see form of statement of truth, No 105 (**A6.110**)).

6.316 The practice in making these grants follows in all respects the practice given with regard to children and their issue. As to description of the applicant in the statement of truth, see para **6.390**.

Brothers and sisters of the half blood or their issue

6.317 If the intestate leaves no brother or sister of the whole blood or issue of any deceased brother or sister of the whole blood, administration is granted to the brothers and sisters *of the half blood*, or to the issue of deceased brothers and sisters of the half blood, taking per stirpes. If the deceased died before 4 April 1988 the relationships must be lawful but if the deceased died on or after that date they need not be, in the same way as brothers and sisters of the whole blood (see paras **6.312** to **6.315**). The practice in making these grants is the same as when granting to the whole blood. For forms of statement of truth, see Nos 107 and 108 (**A6.112** and **A6.113**).

6.318 In any application for a grant by the half blood it must be stated in the statement of truth that the deceased died without brother or sister of the whole blood or their issue.

Grant to grandparents

Grandparents

6.323 As to description of the applicant in the statement of truth, see para **6.390**.

Grant to uncles and aunts or their issue

Uncles and aunts of the whole blood or their issue

6.324 If the intestate has died leaving no spouse or civil partner, issue, parent, brother or sister of the whole or half blood or their issue, or grandparent, administration will be granted to his uncles or aunts *of the whole blood*, being brothers or sisters of the whole blood of a parent of the intestate, or to the issue of any deceased uncle or aunt of the whole blood who predeceased the intestate, the issue taking per stirpes their parent's share in the estate. Such issue have an equal right to the grant with surviving uncles and aunts. If the deceased died before 4 April 1988 the relationships must be lawful but if the deceased died on or after that date they need not be, in the same way as brothers and sisters of the whole blood (see paras **6.313** and **6.314**). For forms of statement of truth, see Nos 110 and 111 (**A6.115** and **A6.116**).

6.326 As to description of the applicant in the statement of truth, see para 6.390.

Uncles and aunts of the half blood or their issue

6.328 In an application for a grant by uncles or aunts of the half blood or their issue, it is necessary to show in the statement of truth that the intestate died leaving no uncle or aunt of the whole blood nor issue of such uncle or aunt. Second cousins have no interest in an estate or claim to a grant.

Grant to Crown, Duchy of Lancaster, or Duchy of Cornwall

The Crown

6.332 On application for a grant, the Treasury Solicitor, or Solicitor for the Duchy of Lancaster, is not required to deliver any affidavit (*witness statement*), statutory declaration, account, certificate, or other statement of truth[1]. As to the documents filed in lieu, see para **9.53**. This does not apply to the Solicitor for the Duchy of Cornwall.

[1] Administration of Estates Act 1925, s 30(3) (see para **A1.108**).

Deceased an illegitimate person

6.337 To enable the Treasury or Duchy Solicitor, or a creditor, to obtain letters of administration it must be stated that the deceased died intestate 'a bachelor [spinster] [widower] [widow] [surviving civil partner] [single man] [single woman] (as the case may be) without issue, parent, or any other person entitled in priority to share in his/her estate by virtue of any enactment'[1].

[1] As to additional wording required where there has been a divorce, see para **6.131**.

Grant to a creditor

Creditor

6.343 On clearing off by renunciation or citation all persons entitled to share in the estate, a grant may be made to a creditor of the deceased (NCPR SI 1987/2024 r 22(3)). Form of statement of truth, No 113 (**A6.118**).

Deceased having no kin

6.347 Where the Crown has an interest owing to the failure of all kin in the classes entitled to share, the renunciation of the Treasury or Duchy Solicitor is necessary unless there is sufficient evidence that he does not wish to claim bona vacantia on behalf of the Crown. All kin in such classes must be cleared off specifically in the statement of truth by a positive statement that the deceased died 'intestate a bachelor (*or* spinster, widow, widower, surviving civil partner single man or single woman, *as the case may be*) without issue, parent, brother or sister of the whole or half blood or issue thereof, grandparent, uncle or aunt of the whole or half blood or issue thereof or any other person entitled to share

in the estate by virtue of any enactment'[1].

[1] The words from 'or any other person' to the end are necessary only where the date of death was on or after 1 January 1970.

6.348 If, as is the usual case, the applicant is able to state only that the deceased died without any known kin, a citation may be issued against the kin in general and all persons having or claiming any interest in the estate (for practice, see para **24.24**). Notice must also be given to the Treasury Solicitor (see para **6.393**).

Specialty or simple contract

6.351 It is a matter of indifference whether the creditor be a creditor by specialty or on simple contract; the amount of the debt is also immaterial, as is the question whether it is statute-barred[1]. These questions become relevant only where there is a contest between two or more creditors for the grant. No special affidavit (*witness statement*) by the creditor is necessary; he merely swears in the statement of truth that he is 'a creditor of the deceased'.

[1] *Coombs v Coombs* (1866) LR 1 P & D 288; *Re Coombs' Goods* (1866) LR 1 P & D 193.

Firm as creditor

6.362 A partnership firm, as distinct from a company, has no separate entity at English law. Each partner acts as agent for the other, or others. In the case of a creditor firm it must be shown in the statement of truth that the individuals named therein are members of the firm. Where application is made by one or more of several partners, it is usually sufficient to confirm in the statement of truth that all the remaining partners have been consulted and that they each consent to the application being made.

Grant to assignee

6.371 On every application for a grant to an assignee or assignees the original instrument of assignment must be produced at the registry for inspection and a copy of the instrument for filing at the registry is also required (r 24(3)). Form of statement of truth, No 114 (**A6.119**). As to the practice of the registry on the production of an original instrument, see paras **5.252** and **5.255**.

REQUIREMENTS ON OBTAINING ADMINISTRATION

Administrator's statement of truth

6.379 The Non-Contentious Probate Rules define 'statement of truth' as a statement made for purposes of confirming the truthfulness of statements made in the application for a grant, and the true nature of any documents served in support of the application. Every application for a grant of letters of administration must be supported by a statement of truth in the form applicable to the circumstances of the case, and by such other papers as the district judge or registrar may require (NCPR SI 1987/2024 r 8(1) as amended SI 2018/1137). The statement of truth must state whether, and if so in what

manner, all persons having a prior right to a grant have been cleared off (see 'Clearing off', para 6.382). For forms of statement of truth, see Nos 83 ff (A6.88 ff).

6.379A The current programme for modernisation of the courts has led to the Non-Contentious Probate (Amendment) Rules 2016 and 2017 (SI 2016/972 and SI 2017/1034 respectively). These amend the Non-Contentious Probate Rules 1987 to provide new rules 4A and 5A. A personal applicant (SI 2016/972 with effect from 1 November 2016) or a solicitor or probate practitioner (together referred to as a probate practitioner in this work) (SI 2017/1034 with effect from 20 November 2017) may apply for a grant of probate or administration online at any registry if invited to do so by that registry. The amendment rules for the new alternative online process have been introduced on a pilot basis. Further amendments to the Rules have ended the pilot for personal or unrepresented applicants (SI 2018/1137), who may make an application through an online portal set up for this purpose (r 5ZA). The Non-Contentious Probate Rules 1987 as amended are set out in Appendix II.

6.379B In due course the procedure for making online applications will extend and be trialled for applications from solicitors and probate practitioners. At present the criteria for applications are as follows:

- applications for probate by up to four executors;
- the original will and codicils are in existence; and
- the deceased died domiciled in England and Wales.

The criteria in applications for letters of administration should be broadly similar. When invited to do so, a probate practitioner makes the application by completing and sending an online application form in accordance with instructions given by the registry. The applicant must verify the application by a statement of truth in the online application form. As well as completing the online form, the inheritance tax forms and any supporting documents such as renunciations must be posted to the registry. At the present time the online project is in its infancy and the amendment rules have not been supplemented by any explanatory practice direction. It would seem that in individual cases the registry gives directions about the provision of evidence to support the application in matters such as evidence of identity. This online process will begin in other probate registries for applications for grants of letters of administration as the pilot scheme works out difficulties and improves the online process.

6.379C The following paragraphs set out the requirements for statements of truth by persons entitled to the estate of the deceased. When it becomes available, similar care should be taken when completing an online application form together with any modifications required by the registry. In this work references to an executor's witness statement include a statement of truth contained in an online application form.

6.380 The practice as to the name, address, and description or status of the deponent, the name, age and address of the deceased, and the dates of birth and death is the same as in the case of an executor's statement of truth. (See paras **4.96** ff.)

6.381 When an unnecessary renunciation has been lodged with the papers, it is returned to the practitioner. The statement of truth may have to be amended and re-verified if such a renunciation has been referred to in it.

6.382 Where a person, who would have had a prior right to a grant, has died without having taken upon himself administration of the estate, this fact must be stated to in the statement of truth. See also 'Representative grants', paras **6.11** ff.

Domicile

6.383 Unless the district judge or registrar directs otherwise, the statement of truth must state where the deceased died domiciled (NCPR SI 1987/2024 r 8(2)). See 'Domicile', paras **4.176–4.179**.

Minority or life interest

6.384 In every statement of truth to lead a grant of administration, the deponent must state whether any minority or life interest arises under the intestacy (NCPR SI 1987/2024 r 8(4)).

Settled land

6.385 In every statement of truth to lead a grant of administration, where the deceased died on or after 1 January 1926, the deponent must swear to the best of his knowledge, information and belief whether there was land vested in the deceased which was settled previously to his death and which remained settled land notwithstanding his death (NCPR SI 1987/2024 r 8(3)). As to grants in respect of settled land, see Chapter 10.

(It is anticipated that when revised rules take effect, the witness statement of the applicant will not be required to state whether there is settled land vested in the deceased unless the application is for a settled land grant.)

Alias

6.386 Where it is sought to obtain a grant in which the deceased is described by a further name in addition to his true name, the statement of truth, or a supplemental affidavit (*witness statement*), must depose to the facts, setting out the true name and any alias name. It must identify estate that the deceased held in the alternative name or names: at least one item of property in each alternative name must be specified. If the inclusion of the alternative name is required for any other reason details of this should be set out (NCPR SI 1987/2024 r 9). For the practice, see paras **4.130–4.134** and **4.139–4.142**. Form of affidavit, No 16 (**A6.21**).

Judgment or order of High Court judge or district judge or registrar

6.387 Where any judgment or order of a High Court judge, district judge or registrar has been obtained in connection with a grant of administration, eg a judgment in a probate action pronouncing against a will; an order under s 116 of the Senior Courts Act 1981; or an order for leave to swear to the death, particulars of the date of the judgment or order, its effect and by whom it was made, must be included in the statement of truth. The judgment (or an office copy of it) or order (if not made in the probate registry where the application is submitted) and, in without notice applications, the supporting evidence, must be lodged with the papers.

Clearing off

6.388 Where the death of the intestate occurred on or after 1 January 1970, the alterations in the law of succession under Pt II of the Family Law Reform Act 1969 and s 18 of the Family Law Reform Act 1987 necessitate a more extensive form of clearing off of prior classes than was previously required in many applications for letters of administration. The following table sets out the appropriate wording to be used in the statement of truth:

Clearing off	*Wording*	
	Confirm that deceased died:	
Spouse or civil partner	a bachelor a spinster a widower a widow a surviving civil partner a single man[1] a single woman[1]	
Children or other issue	without issue	
Parents	[or] parent	
Brothers or sisters and their issue	[or] brother or sister of the whole [or half] blood or issue thereof	or any other person entitled in priority to share in his [her] estate by virtue of any enactment
Grandparents	[or] grandparent	
Uncles and aunts and their issue	or uncle or aunt of the whole [or half] blood or issue thereof	

[1] As to the additional wording required in the statement of truth in case of a decree of divorce or nullity or a dissolution or nullity order (of a civil partnership), see paras **6.131** and **6.133**.

Description of applicant

Death on or after 5 December 2005

6.390 The following persons applying for administration are to be described as follows:

A husband as	'the lawful spouse'*
A wife as	'the lawful spouse'*
A civil partner as	'the lawful civil partner'*

Where the deceased dies on or after 1 October 2014 and the deceased left no issue, the spouse or civil partner should be described as 'the only person entitled to the estate'[1]; otherwise if the net estate, after allowing the permissible deductions, does not exceed £250,000[2] (£450,000[2] if the deceased left no issue), the spouse or civil partner should be further described as 'the only person now entitled to the estate' or where it is confirmed that there are no issue nor parent nor brother nor sister of the whole blood nor issue of a brother or sister of the whole blood, the spouse is to be described as 'the only person entitled to the estate'. Applicants in other classes entitled to a grant of administration are described as set out in para **3.370.**

* Section 46 Administration of Estates Act 1925 as amended with effect from 1 October 2014 by the Inheritance and Trustees' Powers Act 2014.

[1] Section 46 Administration of Estates Act 1925 as amended with effect from 1 October 2014 by the Inheritance and Trustees' Powers Act 2014.

[2] When the deceased died on or after 1 February 2009. For the relevant amounts for earlier dates of death, see para **6.39**.

6.391 Otherwise than as described in para **3.390** persons applying for administration, where the death occurred after 5 April 1988, are to be described as follows:

A husband	'the lawful husband'
A wife	'the lawful widow and relict (*or* (if she has remarried) the lawful relict)'. (Where the net estate, after allowing the permissible deductions, does not exceed £250,000 (or £450,000 if the deceased left no issue)[1] the husband or relict should be further described as 'the only person *now* entitled to the estate'. It is only where it is confirmed that there are no kin within the degrees mentioned in the tables in para **6.40** (no issue nor parent nor brother nor sister of the whole blood nor issue of a brother or sister of the whole blood), that the spouse can be described as 'the only person entitled to the estate'.
Issue of marriage	'the son (or daughter), and only person entitled to the estate'; or

Note: A child or other issue who has acquired an alternative gender under the Gender Recognition Act 2004 at the death of the deceased is described as a child or issue in the acquired gender	'the son (or daughter), and one of the persons entitled to share in the estate'; 'the lawful adopted son *or* daughter' or 'the lawful legitimated son *or* daughter', as the case may be[2]. 'the grandson (or granddaughter), and only person entitled to the estate'; or
	'the grandson (or granddaughter), and one of the persons entitled to share in the estate'[3]. (In the case of grandchildren or more remote issue, the statement of truth should establish that the applicant has a beneficial interest, ie it should show either that the deceased died without child, or that the applicant is 'the [*or* lawful adopted *or* lawful legitimated] son (or daughter) of A. B., the [lawful] [*or* natural *or* lawful adopted *or* lawful legitimated] son (or daughter) of the said intestate, who died in the lifetime of the said intestate.')
A father	'the father (or mother), and only person entitled to the estate'; or
or	'the father (or mother), and one of the persons entitled to share in the estate.'
a mother	
	Note: a parent who has acquired an alternative gender under the Gender Recognition Act 2004 retains the original status as father or mother of the intestate.
A brother	'the brother (or sister) of the whole blood, and only person entitled to the estate'; or
or	
a sister	'the brother (or sister) of the whole blood, and one of the persons entitled to share in the estate'. *If there be no brother or sister of the whole blood, nor any issue of such brother or sister*, then the half blood is described as 'the brother (or sister) of the half blood, and' etc.
	Note: a sibling who has acquired an alternative gender under the Gender Recognition Act 2004 at the death of death of the deceased is described as a sibling of the acquired gender.
Issue of a brother or sister	'the nephew, or great-nephew (or niece), of the whole blood, and only person entitled to the estate'; or
	'the nephew, or great-nephew (or niece), of the whole blood, and one of the persons entitled to share in the estate'.
	(The statement of truth must also establish that the applicant has a beneficial interest, in a similar manner to that given under 'Issue of marriage', above.)

	If there be no brother or sister of the whole blood, or any issue of such brother or sister, then the half blood, if entitled to take a beneficial interest in the estate, is described as 'the nephew, or great-nephew (or niece), of the half blood, and' etc.
	Note: a person in this class who has acquired an alternative gender under the Gender Recognition Act 2004 at the death of death of the deceased is described as of the acquired gender.
A grandparent	'the grandfather (or grandmother), and only person entitled to the estate'; or
	'the grandfather (or grandmother), and one of the persons entitled to share in the estate'
	Note: A person in this class who has acquired an alternative gender under the Gender Recognition Act 2004 at the date of death of the deceased is described as of the acquired gender.
An uncle	'the uncle (or aunt) of the whole blood, and only person entitled to the estate'; or
or	
an aunt	'the uncle (or aunt) of the whole blood, and one of the persons entitled to share in the estate'
	If there be no uncle or aunt (being brother or sister of the whole blood of a parent), or any issue of such uncle or aunt, such person shall be described as 'the uncle (or aunt) of the half blood, and', etc.
	Note: a person in this class who has acquired an alternative gender under the Gender Recognition Act 2004 at the death of death of the deceased is described as of the acquired gender.
Issue of an uncle	'the cousin german of the whole blood, and only person entitled to the estate'; or
or aunt	
	'the cousin german of the whole blood, and one of the persons entitled to share in the estate'.
	(The statement of truth must also establish that the applicant has a beneficial interest: see above.)
	If there be no uncle or aunt (being brother or sister of the whole blood of a parent), or any issue of such uncle or aunt, such person shall be described as 'the lawful cousin german of the half blood, and' etc.

[1] The values are applicable when the intestate died on or after 1 February 2009. For the relevant amounts for earlier dates of death, see para **6.42**.

[2] As to a grant in the case of illegitimacy, adoption or legitimation, see paras **6.191** ff, **6.247** ff and **6.197** ff, respectively.

[3] As to the practice under which, on the renunciation of the surviving spouse, the issue or other kin may apply as persons 'who may have a beneficial interest in the estate in the event of an accretion thereto', see para **6.112**.

Deaths after 1925 but before 5 April 1988

6.392 Where the death occurred after 1925 but before 5 April 1988 the description of the applicant is given as follows[1]:

A husband	'the lawful husband'
A wife	'the lawful widow and relict (*or* (if she has remarried) the lawful relict)'. (Where the net estate, after allowing the permissible deductions, does not exceed £75,000 (or £125,000 if the deceased left no issue)[2] the husband or relict should be further described as 'the only person *now* entitled to the estate'. It is only where it is confirmed that there are no kin within the degrees mentioned in the tables in para 6.33 (no issue nor parent nor brother nor sister of the whole blood nor issue of a brother or sister of the whole blood), that the spouse can be described as 'the only person entitled to the estate'.
Issue of marriage	'the lawful son (or daughter), and only person entitled to the estate'; or
	'the son (or daughter), and one of the persons entitled to share in the estate';
	'the lawful adopted son *or* daughter' or 'the lawful legitimated son *or* daughter', as the case may be[3].
	'the lawful grandson (or granddaughter), and only person entitled to the estate'; or
	'the lawful grandson (or granddaughter), and one of the persons entitled to share in the estate'[4]. (In the case of grandchildren or more remote issue, the statement of truth should establish that the applicant has a beneficial interest, ie it should show either that the deceased died without child, or that the applicant is 'the [*or* lawful adopted *or* lawful legitimated] son (or daughter) of A. B., the [lawful] [*or* natural or lawful adopted or lawful legitimated] son (or daughter) of the said intestate, who died in the lifetime of the said intestate.')
A father	'the lawful [or natural] father (or mother), and only person entitled to the estate'; or
or	
a mother	'the father [or natural] father (or mother), and one of the persons entitled to share in the estate.'
A brother	'the lawful brother (or sister) of the whole blood, and only person entitled to the estate'; or
or	
a sister	'the lawful brother (or sister) of the whole blood, and one of the persons entitled to share in the estate'. *If there be no brother or sister of the whole*
	blood, nor any issue of such brother or sister, then the half blood is described as 'lawful the brother (or sister) of the half blood, and' etc.

Issue of a brother or sister	'the nephew, or great-nephew (or niece), of the whole blood, and only person entitled to the estate'; or
	'the nephew, or great-nephew (or niece), of the whole blood, and one of the persons entitled to share in the estate'.
	(The statement of truth must also establish that the applicant has a beneficial interest, in a similar manner to that given under 'Issue of marriage', above.)
	If there be no brother or sister of the whole blood, or any issue of such brother or sister, then the half blood, if entitled to take a beneficial interest in the estate, is described as 'the nephew, or great-nephew (or niece), of the half blood, and' etc.
A grandparent	'the grandfather (or grandmother), and only person entitled to the estate'; or 'the grandfather (or grandmother), and one of the persons entitled to share in the estate'.
An uncle	'the uncle (or aunt) of the whole blood, and only person entitled to the estate'; or
or	
an aunt	'the uncle (or aunt) of the whole blood, and one of the persons entitled to share in the estate'.
	If there be no uncle or aunt (being brother or sister of the whole blood of a parent), or any issue of such uncle or aunt, such person shall be described as 'the uncle (or aunt) of the half blood, and', etc.
Issue of an uncle	'the cousin german of the whole blood, and only person entitled to the estate'; or
or aunt	
	'the cousin german of the whole blood, and one of the persons entitled to share in the estate'.
	(The statement of truth must also establish that the applicant has a beneficial interest: see above.)
	If there be no uncle or aunt (being brother or sister of the whole blood of a parent), or any issue of such uncle or aunt, such person shall be described as 'the lawful cousin german of the half blood, and' etc.

[1] President's Direction (1925) (Non-Contentious Probate).

[2] When the intestate died on or after 1 December 1993. For the relevant amounts for earlier dates of death, see para **6.42**.

[3] As to a grant in the case of illegitimacy, adoption or legitimation, see paras **6.191** ff, **6.247** ff and **6.197** ff, respectively.

[4] As to the practice under which, on the renunciation of the surviving spouse, the issue or other kin may apply as persons 'who may have a beneficial interest in the estate in the event of an accretion thereto', see para **6.112**.

[5] As to grant to a natural parent, see paras **6.299** ff.

Amount of estate and verifying the facts

6.395 For the practice as to 'amount of estate' and verifying the facts, see 'Executor's statement of truth', paras 4.204 ff and 4.228.

INTESTACIES—PRE-1926 BUT POST-1897

Description of grantee. Death occurring before 1926

6.426 *Persons applying for administration, where the death occurred before 1926, are to be described in the statement of truth as follows:*

A husband as	*'the lawful husband'.*	
A wife	*'the lawful widow and relict' or (if remarried) 'the lawful relict'.*	
A child	*'the lawful child, and only next-of-kin', or 'the lawful child, and one of the next-of-kin'.*	
A father	*'the lawful father and next-of-kin'.*	
A mother	*'the lawful mother and only next-of-kin'.*	
A brother	*'the lawful brother'.*	
A sister	*'the lawful sister'.*	
	If there be no parents living, the brother or sister is further to be described as 'one of the next-of-kin', or the 'only next-of-kin'.	
An uncle	*'the lawful uncle'*	
An aunt	*'the lawful aunt'*	*'only next-of-kin'.*
A nephew[1]	*'the lawful nephew'*	*and 'one of the' or*
A niece[1]	*'the lawful niece'*	*'only next-of-kin'.*
A grandparent, grandchild[1]*, cousin, etc, is to be described as 'lawful' and 'one of the next-of-kin', or 'only next-of- kin'.*		
An heir-at-law	*'the heir-at-law'.*	
An heiress-at-law as	*'the heiress-at-law', or 'one of the co-heiresses-at-law'.*	
An heir according to the custom of gavelkind	*'one of the heirs according to the custom of gavelkind.'*	

[1] *A nephew, niece or grandchild who is entitled to take, in a higher class than his own, his deceased parent's share, is further described as 'and one of the persons entitled in distribution', and not as 'next-of-kin'.*

Chapter 7

MINORITY OR LIFE INTERESTS AND SECOND ADMINISTRATORS

Note: The Non-Contentious Probate Rules 1987 were amended by SI 2018/1137, which came into force on 27 November 2018. The amended rules replace the oath application for a grant of representation with a statement of truth. In anticipation of the further revision of the Non-Contentious Probate Rules, the expressions 'witness statement' and 'statement of truth' where they are used in this work refer to the form of application or evidence required with reference to any rule in force at the time of the application.

7.03 The age of majority having been reduced from 21 to 18 years with effect from 1 January 1970[1], the statement of truth as to the existence or otherwise of a minority must be made with reference to the age of 18.

[1] Family Law Reform Act 1969, s 1 (para **A1.191**).

7.05 The statement of truth must state definitely that *there is or is not a minority interest*, and that *there is or is not a life interest*, or that *there is a minority and a life interest* (when such is the case). A general statement that there is a minority *or* life interest or that there may be a minority or life interest is not accepted. Where, however, two or more persons apply jointly for a grant and it is sworn either that there is a life interest but it is not stated whether or no there is a minority interest, or that there is a minority interest, but it is not stated whether or no there is a life interest, the statement of truth may be accepted without requiring an amendment, provided that a certificate is endorsed thereon stating that there is, or is not, a minority interest, or a life interest, as the case may be[1].

[1] Registrar's Direction (1951) 9 July.

FOREIGN DOMICILE

7.08 Where the deceased died domiciled elsewhere than in England and Wales, the statement of truth as to minority or life interests should be based on the law applicable to the circumstances of the particular case, which law may not necessarily or exclusively be that of the place where the deceased was domiciled (eg where the estate consists of, or includes, immovable property situated in a country other than that of the domicile).

DISPENSING WITH SECOND ADMINISTRATOR

7.11 The probate rules do not prescribe any formal mode of application for the purpose of obtaining the district judge's or registrar's dispensation. Where the district judge or registrar is to be asked to exercise his discretion under s 114(2) of the Senior Courts Act 1981, the facts should be placed before the probate manager or the district registrar, as the case may be, and his directions obtained. It is advisable to do this before preparing the papers to lead the grant, although the reasons for the dispensation should be stated in the statement of truth to lead the grant or in a separate affidavit (*witness statement*)[1].

[1] Registrar's Direction (1982) 16 March.

SECOND ADMINISTRATOR

7.15 The statement of truth must include the necessary clearings showing that the second applicant is the person next entitled.

APPLICATION FOR ORDER JOINING CO-ADMINISTRATOR

7.19 The Human Rights Act 1998 (HRA 1998) came into force on 2 October 2000. Hearings in chambers are subject to the overriding considerations of the HRA 1998. In particular art 6 in Sch 1 to the Act allows everyone the right to a public hearing. This places on the district judge or registrar a duty to allow public access to any hearing or to a transcript of a judgement in chambers. CPR 39.2 and PD 39.1/39A.1 set out the matters which the court must have regard to in deciding whether to hold a public or private hearing. A hearing may be in private if it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate (CPR 39.2(3)(g)).

WHEN DISTRICT JUDGE'S OR REGISTRAR'S ORDER NOT REQUIRED

7.22 Where a life or minority interest arises and the only person immediately entitled to the grant lacks capacity within the meaning of the Mental Capacity Act 2005 to manage his/her affairs and there is only one person competent and willing to take a grant for his/her use and benefit under the provisions of NCPR SI 1987/2024 r 35(2), then, unless the district judge or registrar otherwise directs that person may nominate a co-administrator in accordance with r 35(3). The priority under r 35(2) is as follows:

(a) the person authorised by the Court of Protection;
(b) the lawful attorney of the person who lacks capacity acting under a registered enduring power of attorney or registered lasting power of attorney; and
(c) where there is no such attorney entitled to act or the attorney has renounced administration for the use and benefit of the person who lacks capacity, the person entitled to the residuary estate of the deceased.

For form of statement of truth, see Nos 168–170 (**A6.173–A6.175**), and for form of nomination, see No 57 (**A6.62**).

SURVIVING SPOUSE OR CIVIL PARTNER AND MINOR CHILDREN

7.25 In the case of an intestacy, where the deceased left a surviving spouse and children (all of whom are minors) entitled to share in the estate, if the surviving spouse is the parent of the minors with parental responsibility for them under s 2(1) of the Children Act 1989 and there is no other person or body mentioned in NCPR SI 1987/2024 r 32(2) with qualifying parental responsibility for any of them, the surviving spouse may nominate a fit person as co-administrator under NCPR SI 1987/2024 rr 25(3)(a) and 32(3). The various persons or bodies mentioned in NCPR SI 1987/2024 r 32(2) are with the appropriate qualification defined in the rule: parent (including adoptive parent), a person in whose favour the court has made a residence order, step parent, a guardian, a special guardian, an adoption agency or a local authority (see also para **7.29**). Equally, a surviving civil partner who is a lawful parent by adoption of a minor child of the deceased may in similar situation nominate a fit person as co-administrator. For form of statement of truth (*which may be adapted as a witness statement*) see Form 85 (**A6.90**) and, for nomination, see No 56 (**A6.61**). The right to nominate is confined to cases where, for the purpose of a grant, a second administrator is required. It does not extend to cases in which the purpose is other than to facilitate compliance with s 114(2) of the Senior Courts Act 1981.

ONLY ONE CHILD ETC OF FULL AGE

7.28 Where the deceased has left no spouse or civil partner, but several children, of whom only one is of full age, he or she is not entitled to nominate a co-administrator as this right is given only to a person who has parental responsibility for the minor children. An application without notice under NCPR SI 1987/2024 r 25(2), supported by affidavit (*witness statement*), should be made to the district judge or registrar for the appointment of the proposed second administrator for the purpose of joining with the child of full age in taking the grant. The consent of the proposed co-administrator may be either exhibited to the affidavit (*witness statement*) or submitted separately with the affidavit (*witness statement*). A person entitled to a grant in his own right may not and will not be appointed on behalf of the minor to enable him to nominate a co-administrator[1].

[1] Registrar's Direction (1955) 7 November.

ATTORNEY JOINED AS SECOND ADMINISTRATOR

7.31 A limited grant of administration (with or without will) may be made as of course to a person entitled and the attorney of another person equally or next entitled, provided that the person entitled consents to a limited grant being made. The grant will be limited until further representation be granted. The consent should be given in writing, and may take the form of specific wording included in the statement of truth. Form of statement of truth, No 96 (**A6.101**).

PRACTICE IN MINORITY OR LIFE INTERESTS AND SECOND ADMINISTRATORS

7.44 The application should be made without notice at the registry from which the grant issued by lodging an affidavit (*witness statement*) as to the facts, the consent of the proposed substituted or additional administrator and the original grant.

7.45 The affidavit (*witness statement*) in support of the application, in addition to giving the details of the grant, should show that there is still a minority or life interest, or, where the grant was originally made to a sole administrator, that such an interest has now arisen and give details of this.

7.46 Upon the making of the order, the grant and records are noted with the appointment of the substituted or additional administrator and the registry returns the grant.

Chapter 8

HMRC ACCOUNTS

NATIONAL PROBATE AND INHERITANCE TAX HELPLINE

8.01 A telephone number is available for all probate and inheritance tax enquiries. The number is 0300 123 1072 and lines are open from 9.00 am to 5.00 pm, Monday to Friday. For information on inheritance tax, the Inheritance Tax website may be found at: www.gov.uk/inheritance-tax.

NECESSITY FOR ACCOUNT

8.02 Section 109 of the Senior Courts Act 1981 provides that, subject to arrangements made between the President of the Family Division and the Commissioners of Her Majesty's Revenue and Customs, the High Court shall not make any grant or reseal any grant except on production of an account receipted or certified by the Commissioners to show that inheritance tax or capital transfer tax payable on delivery of that account has been paid or that no tax is payable. A Form IHT421 suitably completed and, if appropriate, authorised by HMRC Trusts and Estates, Inheritance Tax, is sufficient evidence to satisfy this necessity. The requirement to deliver an account to the Commissioners is provided by the Inheritance Tax Act 1984 (IHTA 1984), s 216[1].

[1] See para **A1.730**. The management and collection of inheritance tax, capital transfer tax and of the former British death duties are by statute vested in the Commissioners of Her Majesty's Revenue and Customs. The business relative to the tax and to these duties is transacted in a special office of Her Majesty's Revenue and Customs called HMRC Trusts and Estates, Inheritance Tax, and enquiries concerning the tax and any of the duties in question should be addressed to the Director of that office at Inheritance Tax, HM Revenue and Customs, BX9 1HT, United Kingdom. Tel: 0300 123 1072. The address for couriers to use is HM Revenue and Customs, Benton Park View, Newcastle-upon-Tyne, NE98 1ZZ, United Kingdom.
For some account of the pre-1894 duties payable to the ecclesiastical courts, see Ch II of *Soward and Willan's Taxation of Capital* (London, 1919).
A brief history of, and the practice relating to, the probate duty payable before 2 August 1894 will be found in earlier editions of this work. The appropriate forms of affidavit were form B where the gross estate did not exceed £300 and form A for all other cases.
The law and practice relating to estate duty will be found in the twenty-fourth edition of this work, while the transitional period between the introduction of capital transfer tax on 27 March 1974 and the abolition of estate duty on and after 13 March 1975 is covered by the second (cumulative) supplement to the twenty-fourth edition. Note: the rate at which interest accrues in respect of unpaid estate duty has been altered from time to time in uniformity with the rates of interest accruing on unpaid inheritance and capital transfer tax chargeable on death: see 'Assessment', para **8.198**.

8.03 The Inheritance Tax Account Form IHT400 and all completed appropriate supplementary pages should be sent to Inheritance Tax, HM Revenue and Customs, BX9 1HT, United Kingdom. If the form is being sent by courier, the address is HM Revenue and Customs, Benton Park View, Newcastle-upon-Tyne, NE98 1ZZ, United Kingdom. From 1 April 2016 that office ceased to use the Document Exchange [DX] system. This office was formerly known as the HMRC Inheritance Tax, IR Capital Taxes Office or the Capital Taxes Office and may be shown as such on some forms or accounts. The previous Form IHT200 will no longer be accepted by HMRC Inheritance Tax, Trusts and Estates.

Solicitor applications

8.04 Form IHT 400, all the necessary completed Schedules and Form IHT 421 should be sent to Inheritance Tax, HM Revenue and Customs, BX9 1HT. If all is in order and the required tax been paid, the Form IHT421 will be authorised in HMRC Trusts and Estates, Inheritance Tax and returned to the Solicitor. It should then be sent to the Probate Registry with any other necessary papers to enable a Grant to issue. The Form IHT 400 will be retained by HMRC Trusts and Estates, Inheritance Tax. If Inheritance Tax is payable, see the procedures at para 8.205 for methods of payment and appropriate addresses.

Personal applications

8.05 Form PA1 should be sent with the other papers necessary to apply for a Grant to the Probate Registry. Form IHT422 should be sent to HMRC Trusts and Estates, Inheritance Tax to obtain a reference and an IHT payslip at least three weeks prior to the submission of Form IHT400. Alternatively, it is possible to apply for a reference number online using the Inheritance Tax website. A reference number will be provided by post together with a pre-referenced payslip. Form IHT400, all the supplementary pages including Form IHT421 and any documents requested should then be sent to HMRC Trusts and Estates, Inheritance Tax, ideally at the same time as the form PA1 is sent to the Probate Registry. If the applicant has calculated the tax, the appropriate payment should also be sent in a separate envelope with the reference number and payslip obtained under the IHT422 procedure. If, however, the applicant wishes HMRC Trusts and Estates, Inheritance Tax to calculate the tax, a calculation will then be sent to the applicant. It is only necessary to apply for an Inheritance Tax reference if the estate is liable to Inheritance Tax. Where tax is payable and is being paid by cheque or money order, which should be crossed and made payable to 'HMRC' or 'Her Majesty's Revenue and Customs' followed by the Inheritance Tax reference number and with the full name of the deceased and date of death on the back of the cheque, the cheque or money order and the payslip should be sent in a separate envelope to HM Revenue and Customs, Cheque Banking Team, CAT1 Room B1-25/26, St Mungo's Road, Cumbernauld, Glasgow, G67 1YZ or by DX to HM Revenue & Customs, DX 550100, Cumbernauld 2. If payment is to be made by way of the Direct Payment Scheme, Form IHT423 should be sent to the bank or building society at the same time as the submission of the Form IHT400. See para 8.205 for details of the appropriate

methods of payments and relevant addresses. Once payment is received and all is in order, HMRC Trusts and Estates, Inheritance Tax will complete its part of the Form IHT421 and send it direct to the Probate Registry. The Probate Registry will normally issue the Grant within 10 days of the interview. The Form IHT400 will be retained by HMRC Trusts and Estates, Inheritance Tax. Form IHT400 Calculation or form IHT430 Reduced Rate of Inheritance Tax should also be submitted if the simple Inheritance Tax calculation on page 11 of the account cannot be used.

8.07 *Form IHT205[2011].* A revised version of the Form IHT205 is now available in respect of deaths on or after 6 April 2011, known as IHT205[2011]. The new form covers estates where the deceased had his or her main home in the UK and (a) the gross value of their estate was below the appropriate inheritance tax excepted estate limit, currently £325,000, or (b) the gross value of the estate was below £1,000,000 and no tax is payable due to spouse, civil partner or charity exemption only, or (c) below twice the excepted estate limit and form IHT217 'Claim to transfer unused nil rate band for excepted estates' is attached. There is a time limit of 24 months from the end of the month in which the death occurred to submit form IHT217 plus the important condition that none of the nil rate band was used by the earlier death. Other criteria are detailed in form IHT217. The Finance Act 2013 introduced revised ss 162A–C and 175A to IHTA 1984 relating to certain liabilities. These rules have been extended to excepted estates by way of the Inheritance Tax (Delivery of Accounts) (Excepted Estates) (Amendment) Regulations 2014 (SI 2014/488) in respect of deaths on or after 1 April 2014. It is important that joint assets passing by survivorship, whether to a spouse, a civil partner or otherwise should be included in the appropriate box. There are questions regarding changes or disposal of pension benefits in the two years prior to the date of death which affect the qualification for the estate to be considered within the 'excepted estate' legislation. A facility now exists for the form IHT205(2011) to be completed online. Details are online at 'Inheritance Tax: return of estate information' (IHT205(2011)). This facility is not available for solicitor applications.

INHERITANCE TAX AND CAPITAL TRANSFER TAX

Scope of the tax

8.20 The efficacy of the tax depends upon a tree of concepts at the root of which is the—undefined—'disposition'. A liability for tax becomes a possibility if a disposition is a 'transfer of value': that is to say it is made by a person and, as a result, the estate of that person is less than it otherwise would have been[1]. The amount by which the value of the estate is so decreased is known as the 'value transferred'[2]. Most dispositions are transfers of value but some are specifically provided not to be. Moreover no account is taken of 'excluded property'[3]. If a transfer of value is made by an individual (as distinct from a person) and is not an 'exempt transfer'[4] or a potentially exempt transfer[5] then it is a 'chargeable transfer' and tax is chargeable[6] upon the value transferred[7]. The 'exempt transfer' needs no elaboration here; but a 'potentially exempt transfer' would become a chargeable transfer upon the death of

the transferor within seven years thereafter.

[1] See fn 1 to para **8.16** as to the meaning of 'estate'.
[2] IHTA 1984, s 3(1) [FA 1975, s 20(2)].
[3] IHTA 1984, s 3(2) [FA 1975, s 20(3)]; IHTA 1984, s 6 [FA 1975, s 24(2) and Sch 7, paras 3(1), 5(1) and 6)].
[4] IHTA 1984, ss 18 ff [FA 1975, Sch 6].
[5] IHTA 1984, s 3A in relation to events on and after 18 March 1986.
[6] IHTA 1984, s 2 [FA 1975, s 20].
[7] IHTA 1984, s 1 [FA 1975, s 19] (see para **A1.723**).

Pension death benefits

8.44 On the death of an individual under the age of 75, a transfer of a lump sum payment of the remaining or eligible pension pot will be (income) tax-free if paid out within two years. The transfer of any remaining annuity or drawdown income will also be (income) tax-free if taken as an annuity or income drawdown (if designated within two years). If the individual is aged 75 or over as at the date of death, any lump sum payment will attract income tax at the rate of 45% during the year 2015/16 and, it is currently proposed, at the beneficiary's rate of income tax in following years. Following the transfer, any future drawdown or annuity income by the beneficiary will be taxed at the beneficiary's rate of income tax. Under the provisions of the Finance Act 2016, s 94, where a member or dependant's pension drawdown fund, or a money purchase arrangement under a corresponding scheme, has not been used up prior to death, a deemed distribution will not have been made. This legislation has effect in respect of deaths on or after 6 April 2011. Where the drawdown relates to a flex-access fund for the member, dependant or nominee, the effective date becomes 6 April 2015.

Lifetime transfers: exemptions

8.49 Tax is chargeable in respect of a person's lifetime chargeable transfers as and when they occur and on a limited cumulative basis. Tax is also chargeable by reason of the death of the transferor within seven years after making such a chargeable transfer and within seven years after making a potentially exempt transfer. Accordingly, a brief outline of exemptions is given for reference[1]:

(a) All transfers between spouses or, from 5 December 2005 following the Civil Partnership Act 2004, civil partners, other than where the donor is domiciled in the UK but his or her spouse or civil partner is not. In this case there is a limit to the exemption of £325,000[2], and it is also provided that this figure is to change in line with future alterations to the nil-rate band.

(b) Section 177 of the Finance Act 2013 inserted new sections 267A and 267B to the Inheritance Tax Act 1984 to provide in certain circumstances for a non-UK domiciled spouse to elect to be treated as domiciled in the UK so as to qualify for the full spouse exemption. An election may be made by the spouse during their lifetime or within two years of the UK domiciled spouse's death. The election may be backdated for up to seven years but not to a date before 6 April 2013. Once an election has been made, it may not be revoked other than by

the electing spouse being non-UK resident for four full tax years. A new section 267(5) provides that the deemed domicile rules under section 267 and an election to be treated as domiciled in the UK operate independently. There is no specified form for the election, but it must be made in writing by the person who is not domiciled in the UK and must include their full name and address, their date of birth, the date the election is to take effect from and the full name and date of birth of their UK domiciled spouse. It should be sent to WMBC Assets Risk Team (Elections), Inheritance Tax, HM Revenue and Customs, BX9 1HT.

(c) Annual transfers by a donor up to £3,000 (£1,000 before 6 April 1976; £2,000 after 5 April 1976 and before 6 April 1981), with the amount unused in one year available for carrying forward to the next year only. If a potentially exempt transfer becomes a chargeable transfer (because the transferor fails to survive it by seven years) it is treated as having been made later in the year than any (immediately) chargeable transfer made during the same year[3].

(d) Small outright gifts to any one person, if the total of all gifts made to that person by the transferor during the year does not exceed £250. Prior to 6 April 1981 the £250 small gifts exemption (£100 before 6 April 1980) applied to each donee regardless of the total amount given.

(e) Normal expenditure out of net income (ie after deduction of income tax) which leaves the donor sufficient income to maintain his usual standard of living.

(f) Marriage gifts. Maximum £1,000 per donor, but extended to £5,000 where the marriage took place before 13 March 1975, or the donor is a parent of either party to the marriage. The maximum limit of £1,000 is extended to £2,500 for a gift made by a more remote ancestor, or by one of the parties to a marriage to the other. From 5 December 2005, the same exemption applies in respect of civil partnerships.

(g) All transfers to United Kingdom charities. It should be noted however that, in relation to deaths before 15 March 1983, the exemption was limited, where the transfer occurred on or within one year before the death of the transferor, to £250,000 (£200,000 for deaths before 9 March 1982 and £100,000 for deaths before 26 March 1980).

(h) All transfers to political parties with two members elected to the House of Commons, or one such member and not less than 150,000 votes, at the general election before the transfer concerned. It should be noted, however, that in relation to deaths before 15 March 1988 the exemption was limited, where the transfer occurred on or within one year before the death of the transferor, to £100,000.

(i) Transfers to heritage bodies, local authorities, government departments and universities and transfers for the public benefit are exempt without limit.

[1] IHTA 1984, ss 18–29 [FA 1975, Sch 6 as amended].

[2] Prior to 27 October 1977 the limit was £15,000, which was raised to £25,000 as from 27 October 1977, to £50,000 as from 26 March 1980 and to £55,000 as from 9 March 1982. With effect from 6 April 2013, under the terms of the Finance Act 2013, s 178, the limit was increased to the nil-rate band figure, currently £325,000.

[3] IHTA 1984, s 19(3A) as inserted by the FA 1986, s 101(1) and Sch 19, para 5.

Rates of tax

8.50 Tax is chargeable if the total for rate exceeds the contemporary threshold, presently £325,000. The total for rate is found by aggregating the value transferred by the instant transfer with the cumulative total of the values transferred by any chargeable transfers made by the transferor within the previous seven years[1]. This does not involve a series of fixed seven-year periods but a moving seven-year cumulation period from which successive transfers fall away as time passes. The rate of tax chargeable can be summarised as follows:

(a) For deaths on and after 15 March 1988 the rate of tax on values in excess of the contemporary threshold is 40% but there is a taper relief in the form of a percentage reduction in the tax payable in respect of any chargeable transfer which occurred more than three years but less than seven years before the date of death[2]. If the transfer was a chargeable transfer immediately (as distinct from being a potentially exempt transfer) then any tax paid at that time is allowed as a credit against the tax payable in connection with the death. (A chargeable transfer made before 18 March 1986, however, is chargeable at the death rate only if made within three years before the transferor's death.)

(b) For deaths before 15 March 1988 but on or after 18 March 1986 the position is at (a) save that in place of the flat rate of 40% there was a progressively banded table of rates[3].

(c) For deaths before 18 March 1986 but on or after 10 March 1981 the cumulation period was ten years. There were two rate tables and tax in respect of the deceased's estate and any chargeable transfers made within three years before the death were charged according to the first table[4]. All other lifetime chargeable transfers were chargeable according to the second table. Any tax paid under the second table was allowed as a credit pro tanto against tax payable by reason of the transferor's death within three years after the transfer.

(d) For deaths before 10 March 1981 but on or after 13 March 1975 the position was as at (c) save that instead of a moving cumulation period of ten years there was a fixed period which commenced on 27 March 1974.

(e) Under the provisions of s 10 and Sch 4 to the Finance Act 2008, the transfer of any unused nil rate band of the estate of a spouse or civil partner who died before the deceased (the deceased must have died on or after 9 October 2007) may be made subject to the completion of the claim Form IHT402. The deceased's nil rate band is increased by the percentage of the nil rate band that was unused when his or her spouse or civil partner died. More detailed instructions are incorporated in the notes section on Form IHT402.

(f) Section 109 and Sch 33 of the FA 2012 provides with effect from 6 April 2012 a reduction in the rate of Inheritance Tax charged on a component part of the estate if at least 10% of that component part passes to a charitable body. The rate of tax becomes 36% instead of 40% for the component part of the estate, subject to apportionment calculations. This new legislation provides a new Sch 1A to IHTA 1984. Form IHT430 must be completed and sent to HMRC Trusts and Estates, Inheritance Tax within two years following the date of death.

(g) Section 9, Finance Act (No 2) 2015 and s 93 and Sch 15 of the Finance Act 2016 provide, with effect from 6 April 2017, a potential addition to the nil-rate band in respect of the deceased's residence, subject to certain criteria. This legislation allows an additional figure of up to £100,000 from 6 April 2017, rising annually to £175,000 for the year 2020/21 and then to increase in line with the Consumer Prices Index for the year 2021/22. To qualify for this extra nil-rate addition, the property must be left to a child (including step-child, adopted child or foster child) of the deceased and/or their lineal descendants and must be a residential property. The relief is tapered for estates exceeding £2,000,000 and there are provisions in respect of downsizing of property prior to the date of death. Forms IHT435 and/or IHT436 as appropriate should be completed and incorporated into form IHT400 to claim the relief.

[1] IHTA 1984, s 7 as amended by the FA 1986, s 101(1) and Sch 19, para 2 [FA 1975, s 37 as amended by the FA 1981, s 93(1)].

[2] IHTA 1984, s 7 as amended by the FA 1986, Sch 19, para 2.

[3] See Appendix IV, para **A4.01**.

[4] See Appendix IV, para **A4.01**.

CURRENT FORMS

Form IHT400

8.67 Any limitation to the grant (or reseal) for which application is made must be indicated in the declaration on pages 13 and 14 of the IHT400. Details of the boxes of the IHT400 which need to be completed in such circumstances are detailed on pages 4 and 5 of the IHT400 Notes. Examples of relevant limitations are:

(a) pending suit or ad colligenda bona;
(b) limited to prosecuting or defending a specified action;
(c) limited to, or excluding, a particular part of, or type of estate; such as, realty; personalty; immovable; movable; literary estate; estate in Wales; settled land; or exclusive of settled land.

8.68 In the case of an application for a grant of administration *with will* this should be expressly stated in the declaration on page 13 at box 121. No reference to codicils to be proved with a will is necessary.

Settled land[1]

[1] See Chapter 10.

8.72 If the grant is only required for land which was settled before the death and continues to be settled thereafter, the declaration on page 13 at box 121 should state 'limited to the settled land of which true particulars and value are given'. Schedule IHT418 should not be completed, but Schedule IHT405 should be used instead.

No estate (other than trust property)

8.73 IHT400 is also appropriate in the case of a person who left no estate in the jurisdiction (other than property of which he was a trustee only). Boxes 1 to 22 and the declaration on pages 13 and 14 only of the form need to be completed. This applies both to cases where a grant is required in order to deal with trust property, and also to other cases where the grant is sought notwithstanding that the deceased left no estate within the jurisdiction[1]. Where a grant limited to trust property is applied for under the Senior Courts Act 1981, s 113(1)[2], in a case where the deceased had property of their own in the jurisdiction, the form appropriate to the deceased's own estate should be used, and the applicant should give particulars and value thereof to the best of their knowledge and belief, even if they are not accountable for the relative tax.

[1] See Chapter 4—'Requirements on proving a will'—paras **4.91** ff.

[2] See para **A1.332**.

Double probate, de bonis non and cessate grants: Cap A5C[1]

[1] Cap A5C is obtainable on application to the Director, Inheritance Tax, HM Revenue and Customs, BX9 1HT, United Kingdom, Telephone 0300 123 1072.

Application for a subsequent grant in England and Wales (and Northern Ireland) including use of Cap A5C

8.74 Cap A5C is for use in cases whenever the deceased died—at any rate since 1 August 1894—and application is being made for a grant de bonis non, or for a grant of double probate, or for a cessate grant, where the estate to be covered by the new grant was within the operation of the previous grant. If the estate was not within the operation of the previous grant, the form of HMRC account or Inheritance Tax account as for an original grant should be used. Among the cases to which Cap A5C is *not* applicable are a full grant following a grant pending suit or ad colligenda bona, a grant caeterorum, and a fresh grant following the revocation of the previous grant.

In view of the different reporting requirements as a result of the changes to the Excepted Estates rules, clarification as to the appropriate forms to be used is provided below.

Cap A5C/Cap A5N

8.84 Cap A5C and Cap A5N are not available in an electronic format. Supplies of Cap A5C can be obtained from Inheritance Tax, HM Revenue and Customs, BX9 1HT, United Kingdom, Telephone 0300 123 1072. Supplies of Cap A5N can be obtained from HMRC Trusts and Estates, Inheritance Tax in Belfast.

When a personal applicant has to swear (or affirm) a Cap A5C/Cap A5N for deaths before 13 March 1975, the unsworn document is sent to the Probate Registry and is sworn at the interview.

PRACTICE IN HMRC ACCOUNTS

Where forms may be obtained

8.100 All current forms of account and the booklet of instruction, IHT 400 Notes, are available online at www.gov.uk/government/collections/inheritanc e-tax-forms, or alternatively from Inheritance Tax, HM Revenue and Customs, BX9 1HT, United Kingdom, Tel 0300 123 1072. The IHT400 integrated account (in PDF format) contains the full suite of IHT400 forms, which can be filled in but it is not possible to save the completed versions. More detailed instructions are available in the HMRC IHT400 Integrated account user guide. It is also possible to use individual versions of the forms.

Completion of account

8.102 The declaration on pages 13 and 14 should be considered and completed.

8.103 Where the account of the estate includes property with the instalment option the questions on pages 7, 8 and 12 should be answered to indicate whether or not the legal personal representatives wish to pay by instalments.

8.104 Enquiries are raised on pages 4 and 5 of the form regarding gifts and other lifetime dispositions, settled property in which by virtue of or before his or her death the deceased ceased to have a beneficial interest in possession and property in beneficial joint ownership. Nominated property should be detailed on pages 11 and 16. The applicant must disclose everything he or she could reasonably be expected to have ascertained by enquiring of the deceased's relatives, accountants, solicitors, etc and by investigating the deceased's records. Certain transfers of value (all of which would be exempt transfers—see pages 74 and 75 of IHT Notes 'Exemptions and reliefs') need not be reported. Where the answers disclose property on which tax is payable (or would be so payable if tax were payable on estates however small their principal value) such property should be included in the appropriate sections of the form and the relevant Schedules IHT402–420.

8.107 Pages 1, 2 and 3 include all factual details regarding the deceased and any professional agents. An authority for any repayment of overpaid tax is included on page 3. If a repayment of inheritance tax is claimed following the grant of representation, any such claim should be within four years from the date on which the last payment of tax was made.

Pages 3, 4, 5 and 6 cover basic elements regarding the estate and cross-references to supplementary pages which must necessarily be completed and attached to the IHT400.

Pages 7 and 8 cover the deceased's assets.

Pages 9 and 10 cover liabilities plus funeral expenses. See para 8.66 regarding restrictions on liabilities.

Pages 10 and 11 cover exemptions and reliefs.

Page 11 provides a summary of the chargeable estate and brings together details already included in the earlier pages of the IHT400 plus other details from the various schedules.

Page 12 deals with the calculation of the tax. Separate forms IHT400 Calculation, IHT400 Helpsheet and IHT 430 Reduced rate of Inheritance Tax are provided as worksheets to assist.

Page 13 (box 120) and form IHT 423 deal with the Direct Payment Scheme.

Pages 13 and 14 relate to the formal declaration together with details and signatures of the intending legal personal representatives.

Page 15 provides a checklist and page 16 provides relevant HMRC addresses and contact details, together with a space for any additional information.

8.108 If the deceased died domiciled outside the United Kingdom according to general law (notwithstanding that, by virtue of s 267 of the IHTA 1984 he or she might be treated for the purposes of the tax as having been domiciled in the UK – amended to 15 out of the previous 20 years by the Finance (No2) Act 2017 s 30 with effect from 6 April 2017), Schedule IHT401 must be annexed to the account[1]. An additional statement from one or two individuals who were related to or well acquainted with the deceased and who might speak with authority with regard to any domicile of choice outside the UK could usefully be furnished where the domicile of origin was in the UK or the deceased had lived there at the time of or before his or her death. The case of a married woman or civil partner (after 5 December 2005) has no distinguishing features save where a married woman had already acquired—and had retained—a domicile of dependence by reference to her husband's domicile before 1 January 1974[2]. In such a case it would be necessary to indicate the husband's domicile of origin and give brief particulars of his life in addition to those of the deceased married woman since January 1974.

[1] Domicile is explained in Chapter 12: ordinary residence outside the United Kingdom is relevant for the 'exclusion' of Government securities: see para **8.138**. The 'ordinary residence' rules were removed by the Finance Act 2013, s 219 and Sch 46, for deaths on or after 6 April 2013 in connection with non-residents' bank accounts. The test was also removed for Free of Tax for Residents Abroad (FOTRA) securities acquired on or after 6 April 2013, but remains in place for FOTRA securities acquired before that date.

[2] Domicile and Matrimonial Proceedings Act 1973, s 1: see para **A1.230**.

8.110 If the gross value of any assets passing to beneficiaries other than listed above, plus the value of any other assets chargeable on death, and the chargeable value of any gifts made within seven years of the date of death is less than or equal to the inheritance tax threshold, then the reduced form of account may be used. The account is the standard Form IHT400, but only the following details need to be completed:

- boxes 1 to 28 – in full;
- boxes 29 to 48 – answer all questions, but it may not be necessary to fill in all of the schedules. If the answer to any of boxes 29, 30, 31, 35, 36, 44, 45 or 47 is affirmative, the relevant schedules must be completed, though where an asset passes to an exempt beneficiary, an estimated value may be included, but not a purely nominal value. If an affirmative answer is appropriate to any other questions, there is no necessity to fill

in the relevant schedule if those assets pass to exempt beneficiaries. Instead, the value of those assets should be inserted in the boxes on pages 7 and 8 of the IHT400;

- pages 7–10 – fill in the appropriate boxes for the various assets and liabilities[1]. Again, where an asset is passing to an exempt beneficiary, an estimate may be included, but not a purely nominal value;
- list all assets passing to exempt beneficiaries in boxes 92 and 93 as appropriate. Leave out boxes 109 and 110, but fill in boxes 111 to 119 to make sure no tax is payable;
- leave out box 120 but complete the declaration at box 121;
- use the checklist on page 15.

[1] See para 8.66 above regarding the limitation for some liabilities.

Valuation

Lifetime gifts on transfers of value

8.115 Questions regarding gifts made by the deceased within seven years of death and gifts with reservation made after 18 March 1986 must be answered and the relevant details included on Schedule IHT403 and box 113 on page 12 of the IHT400 and box 4 on page 1 of the IHT400 Calculation, as appropriate. The value of each gift is calculated as the loss to the estate caused by the transfer.

Assets

8.117 Quoted shares and securities are normally valued at one-quarter up from the lower to the higher of the quotations for the date of death. Where no prices are available for the date of death, the list for the nearest business day, either before or after the death, may be used at the option of the accounting party. If prices are taken from newspapers, it should be borne in mind that morning newspapers usually give the prices for the previous day. If bargains, other than bargains at special prices, are recorded however, the valuation may be based on the price at which business was done, if there is only one price, or a price midway between the lowest and the highest of the different prices. Where quotations are ex-dividend, the dividend should be included separately. Where there is no quotation or record of dealings, the value of the stocks or shares should be estimated on the best evidence available. Units of a unit trust should be valued at the manager's bid price. Stocks, shares and other securities which are quoted (listed in the order of appearance in the official list) or traded on the Unlisted Securities Market should be shown separately from other securities which are not quoted. All such securities should be listed on Schedule IHT411 (quoted) or IHT412 (unlisted or control holdings) and incorporated on page 8 of the IHT400.

8.119 IHT407 should be completed in respect of household and personal goods, the details to include individual values of items valued at £1,500 and over. It is not essential that a professional valuation be obtained, though this may be advisable in respect of any more valuable items. It is essential to complete Schedule IHT420 for any articles for which conditional exemption is

claimed as of national, scientific, historic or artistic interest, as to which see para 8.138, in connection with exemptions from tax.

Liabilities

8.132 The option to pay tax by instalments has already been considered. Page 12 of the IHT400 provides a simple Inheritance Tax calculation if all the tax is being paid on or before the last day of the sixth month after the death occurred. If the instalment option is to be utilised in respect of some or all of the instalment option property, page 3 of IHT400 Calculation provides a template for calculating the tax due on the instalment option property. Details of all real and leasehold property, including any such property which is an asset of a business or partnership, should be given by completing Schedule IHT405. IHT405 provides for inclusion of particulars, such as lettings, which might affect the value of the property concerned.

8.133 If the estate includes a business or an interest in a partnership, trading accounts should be provided, showing the position at the date of death, and supplemented by an inventory and valuation of stock and implements. If the goodwill (if any) of such a business is not to be taken over at a price reached in a bargain struck at arm's length, it should be valued according to the custom of the trade or on the basis of the average profits. If there was no goodwill, or goodwill was valueless, a brief explanatory statement should be appended. The value of the deceased's interest in a business or partnership should be included on page 8 of the IHT400 and any claim for business relief should be included on page 11. IHT413 must also be completed.

Exemptions from tax

8.138 Where property, which forms part of the estate passing under the grant of probate or administration, is exempt from tax, its value should be included in the Inheritance Tax account, in order that the true value for the purpose of the grant may be shown, and detailed in the spaces provided in the account on pages 10 and 11 as property on which tax is either not payable at all or is not at present payable. In addition to the exemptions in respect of transfers between spouses or civil partners (from 5 December 2005)[1], to charities[2] and political parties, and gifts for national purposes, considered in para 8.49, in connection with lifetime transfers, this applies, inter alia, to the following types of property, which are variously 'exempt', 'conditionally exempt', or 'excluded' from being included for the purpose of ascertaining the tax payable on the rest of the estate—in certain cases with the reservations stated:

(a) Heritage property. Objects of national, scientific, historic or artistic interest, land of scenic, historic or scientific interest; and historic buildings with their adjoining land and associated contents. A claim for conditional exemption must be made using Schedule IHT420 and accepted by the Commissioners of HMRC[3]. In addition, transfers to approved maintenance fund settlements for certain heritage property are exempt transfers[4]. Under the provisions of the Finance Act 2016,

s 97, the estate duty conditional exemption afforded by the FA 1930, s 40 and the Finance Act (Northern Ireland) 1931, s 2, is cancelled if the objects under this section are lost or destroyed.

(b) Gifts of property of any kind to national heritage bodies such as national or local art galleries or museums, local authorities, government departments and universities. Under the provisions of the Finance Act 2016, s 96, the approval function for such bodies reverts to the Treasury, having previously transferred to the Commissioners of Inland Revenue under the FA 1985, s 95.

Gifts for public benefit to bodies not run for profit where the Treasury approves exemption. Such gifts are limited to objects and land as at item (a). In addition, a reasonable maintenance fund may be included[5].

(c) Property situate in the UK by UK law but treated as situate elsewhere by virtue of a double taxation convention or agreement where the deceased was domiciled outside the UK.

(d) Certain British Government securities which are excluded property where the deceased was domiciled and ordinarily resident abroad[6].

Under s 161 of the Finance Act 1998 which is effective for transfers on or after 6 April 1998, the excluded Government securities were expanded to include any gilt-edged security issued before 6 April 1998. Such securities are treated as if they were securities issued with the post-1996 Act conditions. The one exception to this exclusion relates to 3½% War Loan 1952 or after.

Under s 154 of the Finance Act 1996, with effect from 29 April 1996, provided the deceased was ordinarily resident outside the UK, the Treasury was empowered to issue securities which were excluded from the charge to Inheritance Tax. The Domicile qualification previously required for such exclusion was negated for such securities. The securities issued within this qualification are 8% Treasury Stock 2000, Floating Rate Treasury Stock 2001, 7% Treasury Stock 2001, 7% Treasury Stock 2002, 6½% Treasury Stock 2003, 7¼% Treasury Stock 2007, 8% Treasury Stock 2015, 8% Treasury Stock 2021 and 6% Treasury Stock 2028.

Details of the Government securities which were regarded as excluded property for earlier transfers are detailed below.

(e) Property of which the deceased was life tenant is exempt from tax if it would have been exempt from estate duty under the Finance Act 1894, s 5(2), duty having been paid thereon in connection with the death of the deceased's spouse, such death having occurred before 13 November 1974. Any apportionment of income received after his or her death to which the estate may be entitled is treated as covered by the exemption[7].

(f) Reversionary interests which have not been acquired by the deceased or by a person previously entitled to it for a consideration in money or money's worth are excluded property.

[1] The restricted exemption to spouses or civil partners was increased to the equivalent of the nil-rate band threshold (currently £325,000) for deaths on or after 6 April 2013 and is to rise in line with future changes to the threshold.

[2] For which form IHT408 is required in respect of household or personal goods.

[3] Undertakings are required, inter alia, as to maintenance and retention of the objects in the UK. Reasonable access for the public must also be provided in all cases: IHTA 1984, s 30 [FA 1976, s 76 replacing, in relation to deaths on and after 7 April 1976, FA 1975, s 31]. A general requirement is that the access to the public must be on an open basis on a prescribed number

of days and will be discussed and agreed with HMRC. Tax will be chargeable when sold (unless the sale is by private treaty to a national heritage body or similar public body) or on failure to observe the terms of the undertaking imposed as a condition of relief. Claims for exemption or enquiries relating thereto are dealt with by HMRC Trusts and Estates, Inheritance Tax. Any claim for exemption is investigated after the issue of the grant, and inspection of the objects by Officers of the National Collections is usually necessary. The objects should therefore not be dispersed before inspection has taken place, without adequate notice to HMRC Trusts and Estates, Inheritance Tax. If any objects were exempted on the ground of national, etc, interest in connection with a previous death, further inspection of those objects may be waived, but the name and date of death of the former owner and, if known, the HMRC Trusts and Estates, Inheritance Tax reference to his or her estate should be mentioned. Help and advice may be obtained from Heritage Team, Ferrers House, SO842, Newcastle, NE98 1ZZ, Tel: 03000 580058.

[4] IHTA 1984, s 27 (see also Sch 4) [FA 1982, s 95 replacing, in relation to deaths on and after 9 March 1982, the FA 1976, s 84 which applied to deaths on and after 3 May 1976 as amended with effect from 1 August 1980 by the FA 1980, s 88. (See also the FA 1982, s 93 and 94 and Sch 16 replacing, in relation to deaths on and after 9 March 1982, the FA 1976, s 84, amended as aforesaid.)]

[5] IHTA 1984, ss 25 and 26 [FA 1975, Sch 6, paras 12 and 13]. There is no limit in value, but, as regards gifts for public benefit, undertakings are required, inter alia, as to maintenance, use or disposal and as to reasonable access for the public.

[6] Viz 3½% War Loan; 13% Treasury Stock 1990; 8% Treasury Convertible Stock 1990; 8¼% Treasury Loan 1987–90; 11% Exchequer Loan 1990; 10% Treasury Convertible Stock 1991; 5¾% Funding Loan 1987–91; 2% Index Linked Treasury Stock 1992; 8% Treasury Loan 1992; 10½% Treasury Convertible Loan Stock 1992; 12¾% Treasury Loan 1992; 10% Treasury Loan 1993; 6% Funding Loan 1993; 12½% Treasury Loan 1993; 13¾% Treasury Loan 1993; 9% Treasury Loan 1994; 10% Treasury Loan 1994; 14½% Treasury Loan 1994; 12¾% Treasury Loan 1995; 9% Treasury Loan 1992–96; 13¼% Exchequer Loan 1996; 15¼% Treasury Loan 1996; 8¾% Treasury Loan 1997; 13¼% Treasury Loan 1997; 7% Treasury Convertible Loan 1997; 6¾% Treasury Loan 1995-98; 4⅛% Index-linked Treasury Stock 1998; 7¼% Treasury Stock 1998; 15½% Treasury Loan 1998; 6% Treasury Stock 1999; 9½% Treasury Loan 1999; 8½% Treasury Loan 2000; 9% Conversion Stock 2000; 9½% Conversion Loan 2001; 8% Treasury Stock 2003; 9¾% Conversion Loan 2003; 8% Treasury Loan 2002–06; 4⅛% Index-linked Treasury Stock 2004, 6¼% Treasury Stock 2004; 8½% Treasury Stock 2005; 7½% Treasury Stock 2006; 7¾% Treasury Stock 2006; 8½% Treasury Loan 2007; 9% Treasury Loan 2008; 6¼% Treasury Stock 2010; 9% Conversion Loan 2011; 5½% Treasury Stock 2008–12; 9% Treasury Stock 2012; 8% Treasury Stock 2013; 7¾% Treasury Loan 2012–15; 8¾% Treasury Stock 2017; 2½% Index-Linked Treasury Stock 2024; 4⅛% Index-linked Treasury Stock 2030.

[7] IHTA 1984, Sch 6, para 2 [FA 1975, s 22(4)].

Reliefs

8.139 The several relieving provisions operate for the most part in one of two ways. Most reliefs are given against capital: they reduce the value of the property concerned to produce a net figure to reckon towards the total value of the estate for the purpose of charging tax. But two, the reliefs for double taxation and for successive charges, take the form of reducing the amount of tax chargeable. As with exemptions, reliefs against capital should be recorded on pages 10 and 11 of the account. The principal reliefs against capital are as follows.

Variations: changes in the distribution of the estate on death

8.172 *Settlements with no beneficial interest in possession*[1]—s 144. The legislation provides not only for taxation in connection with transfers between individuals and transfers on death but also in connection with transfers by

trustees of settlements[2]. Provisions are made for a chargeable event to occur in relation to a settlement with no beneficial interest in possession when, inter alia, funds are dealt with by the trustees so that an individual becomes entitled to those funds absolutely or takes a qualifying interest in possession[3] in them. The scheme of relief in this case postulates that the funds have been settled under the deceased's will on trusts under which no beneficial interest in possession subsists; and it secures relief from the charge to tax under those provisions[4] provided that the event concerned occurs within two years after the death of the testator. Also, it provides that tax is to be charged in connection with the death as though the testator's will had provided for the property so dealt with to be held as it was after the event concerned[4]. Under the provisions of s 14 of the FA (No2) 2015, section 144 is amended in respect of deaths on or after 10 December 2014, so that where property is settled by will and an appointment is made before an interest in possession subsists in the property, the provisions of s 65(4) are ignored.

[1] Ie, broadly, discretionary trusts.
[2] IHTA 1984, Pt III.
[3] IHTA 1984, s 102(1).
[4] IHTA 1984, s 144(2).

ASSESSMENT, PAYMENT AND DELIVERY

8.196 As already explained, the Inheritance Tax account is arranged to show, on pages 7 and 8, the property in respect of which the grant is to be made. Except for liabilities specifically charged on property with the instalment option or incurred in respect of a business with the instalment option, funeral expenses and debts for which the estate is liable are deducted against the non-instalment option property. If there is a deficit in the non-instalment property, this is deducted against the total of the instalment option property and vice versa.[1]

[1] See para 8.66.

8.197 For most estates, completing the details for the simple Inheritance Tax calculation on page 12 of the IHT400 or, by following the directions on the pages of the IHT400 Calculation, the value of the property on which the assessment is to be based may be ascertained. The value of the estate in respect of which the grant is to be made may be carried through to Form IHT421. These two amounts are not necessarily the same[1].

[1] See para 8.199 below as to the calculations which may be necessary where part only of an estate is entitled to relief in respect of gifts to a surviving spouse etc.

Assessment

8.198 As tax must be paid on delivery of the Inheritance Tax account on all property not entitled to the instalment option and any instalments due on instalment option property (in each case for which the personal representatives are liable), the simple Inheritance Tax calculation on page 12 of the IHT400 may be used in most circumstances. For estates that do not fall within the criteria detailed on page 12 of the IHT400, full details must be transferred to Form IHT400 Calculation, and the form should be fully completed to arrive at the correct figures on page 8 of that form.

8.199 Where exemption being claimed on pages 10 and/or 11 under one or more of ss 18 and 23 to 26 of the IHTA 1984 [FA 1975, Sch 6, paras 1 and 10 to 13], (gifts to surviving spouse, civil partner etc) extends to part only of the estate, the calculation of that exemption must have regard to the incidence of the tax. Where the death occurred on or after 7 April 1976[1], 'specific gifts' not bearing their own tax are added together and grossed-up to the tax appropriate to their total value, ignoring all other gifts and residue. If no other part of the estate is chargeable that grossed-up value determines the tax payable. In such circumstances, more detailed information is available on the Inheritance Tax website (www.gov.uk/inheritance-tax).

[1] Originally, 'specific gifts' (FA 1975, Sch 6, para 23(1)) not bearing their own tax had to be grossed-up at an 'assumed rate' which was the average rate of tax calculated on the basis that no exemption was due. For the same net benefit to a beneficiary this produced a different tax liability as between a legacy which was grossed-up and one which, because it bore its own tax, was not. To ameliorate this, FA 1976, s 96 introduced a different approach.

8.202 Interest on tax on property not entitled to the 'instalment option' is payable from the end of the sixth month after the date of death to the date of payment. The rates of interest for all outstanding tax and effective periods are tabled below. The adjustments after 1989 until 12 August 2009 were made in accordance with the Finance Act 1989, s 178(1). The Taxes and Duties (Interest Rate) (Amendment) Regulations 2009 (SI 2009/2032), took effect on 12 August 2009 and contained provisions that replaced the single rate of interest of Inheritance Tax, Capital Transfer Tax and Estate Duty with one rate for charging interest on unpaid tax and another, lower, rate for the repayment interest supplement that is added to repayments. The interest rates so calculated are linked to the Bank of England base rate and will move with base rate changes announced by the Bank's Monetary Policy Committee (MPC).

Interest rate	*Effective dates*	*Authority*
6%	Up to 31 December 1979	FA 1974, Sch 4, para 19
9%	1 January 1980 to 30 November 1982	SI 1979/1688
6%	1 December 1982 to 30 April 1985	SI 1982/1585 and Inheritance Tax Act 1984, s 233
9%	1 May 1985 to 15 December 1986	SI 1985/560
8%	16 December 1986 to 5 June 1987	SI 1986/1944
6%	6 June 1987 to 5 August 1988	SI 1987/887
8%	6 August 1988 to 5 October 1988	SI 1988/1280
9%	6 October 1988 to 5 July 1989	SI 1988/1623
11%	6 July 1989 to 5 March 1991	Board's Order June 1989
10%	6 March 1991 to 5 May 1991	Board's Order 18 February 1989
9%	6 May 1991 to 5 July 1991	Board's Order April 1991
8%	6 July 1991 to 5 November 1992	Board's Order 21 June 1991
6%	6 November 1992 to 5 December 1992	Board's Order 22 October 1992
5%	6 December 1992 to 5 January 1994	Board's Order 20 November 1992
4%	6 January 1994 to 5 October 1994	Board's Order 15 December 1993
5%	6 October 1994 to 5 March 1999	Board's Order 20 September 1994
4%	6 March 1999 to 5 February 2000	Board's Order 18 February 1999
5%	6 February 2000 to 5 May 2001	Board's Order 20 January 2000
4%	6 May 2001 to 5 November 2001	Board's Order 23 April 2001

3%	6 November 2001 to 5 August 2003	Board's Order 19 October 2001
2%	6 August 2003 to 5 December 2003	Board's Order 21 July 2003
3%	6 December 2003 to 5 September 2004	Board's Order 17 November 2003
4%	6 September 2004 to 5 September 2005	Board's Order 10 August 2004
3%	6 September 2005 to 5 September 2006	Board's Order 5 September 2005
4%	6 September 2006 to 5 August 2007	Revenue and Customs (Interest Rates) Order 2006, dated 22 August 2006
5%	6 August 2007 to 5 January 2008	Revenue and Customs (Interest Rates) Order 2007, dated 20 July 2007
4%	6 January 2008 until 5 November 2008	Revenue and Customs (Interest Rates) Order 2007, dated 7 December 2007
3%	6 November 2008 until 5 January 2009	Revenue and Customs (Interest Rates) Order (No 2) 2008, dated 21 October 2008
2%	6 January 2009 until 26 January 2009	Revenue and Customs (Interest Rates) Order (No 3) 2008, dated 16 December 2008
1%	27 January 2009 until 23 March 2009	Revenue and Customs (Interest Rates) Order 2009, dated 12 January 2009
3% for late payments; 0.5% for overpayments	29 September 2009 until 22 August 2016	HMRC announcement dated 29 July 2009. Recalculation of interest rates following September Monetary Policy meeting of Bank of England.
2.75% for late payments: 0.5% for overpayments	23 August 2016 until 20 November 2017	HMRC guidance announcement dated 15 August 2016.
3% for late payments; 0.5% for overpayments	21 November 2017 until 20 August 2018	HMRC guidance announcement dated 13 November 2017
3.25% for late payments; 0.5% for overpayments	21 August 2018 onwards	HMRC guidance announcement dated 17 August 2018.

8.203 Interest on the tax on real property and other property entitled to the 'instalment option' is charged in the same way, except that in the case of business assets and unquoted shares in companies (excluding certain investment and dealing companies) and, in the case of deaths after 9 March 1981, property afforded agricultural relief, interest is only charged on each instalment as from the date it falls due (as regards chargeable transfers made before 10 March 1981 a limit of £250,000 is imposed on the value by reference to which tax may be paid by interest free instalments)[1]. Land and buildings held as business assets are entitled to this interest relief. The FA (No2) 2015, s 15, further defines the extent and start dates of interest charged, particularly regarding instalment option property and where tax becomes payable under the provisions of the IHTA 1984, s 147(4).

[1] IHTA 1984, s 234 [FA 1975, Sch 4, para 16 as amended by FA 1981, ss 95 and 96].

Payment of tax

8.205 Where tax is payable, the assessed Inheritance Tax account IHT400 and the Form IHT421 should first be sent to Inheritance Tax, HM Revenue and Customs, BX9 1HT, United Kingdom for the Form IHT421 to be authorised and impressed by that office once payment has been made. A receipt will not be issued by Inheritance Tax, HM Revenue and Customs as part of their normal practice. See also paras **8.02** and **8.17** above.

8.206 If payment is being made electronically (which is the recommended method) by BACS Direct Credit, Internet, telephone banking or CHAPS, the account to be used for paying inheritance tax is HMRC Inheritance Tax, account number 12001136 with the sort code of 08-32-10, using the Inheritance Tax reference number as the payment reference. If a bank giro credit method of payment is being used at the applicant's bank, the cheque should be made payable to 'HM Revenue & Customs' followed by the Inheritance Tax reference and should be accompanied by the payslip. The Inheritance Tax reference number may be obtained as detailed above.

8.207 Where tax is payable and is being paid by cheque or money order, which should be crossed and made payable to 'HMRC' or 'Her Majesty's Revenue and Customs', the cheque or money order and the payslip should be sent in a separate envelope to HM Revenue and Customs, Cheque Banking Team, CAT1 Room B1-25/26, St Mungo's Road, Cumbernauld, G67 1YZ. DX 550100, Cumbernauld 2. The cheque should be made payable to 'HM Revenue and Customs only' followed by the Inheritance Tax reference and should be crossed 'Account payee'. The full name of the deceased and the date of death should be written on the back of the cheque. The Inheritance Tax reference number may be obtained online using the Inheritance Tax website, or by completing the Form IHT422 which is a supplementary form to the Inheritance Tax account. The Form IHT422 should be submitted to the HMRC Trusts and Estates, Inheritance Tax office at least three weeks before the expected submission of the Form IHT400. Alternatively, it is possible to apply for a reference number online using the HMRC website. A reference number will be provided by post together with a pre-referenced payslip. It is only necessary to apply for an Inheritance Tax reference if the estate is liable to Inheritance Tax.

8.210 It is also possible for Inheritance Tax to be discharged using the deceased's Government Stock. In the first instance, write to the registrars for British Government Stock and let them know that it is desired for funds to be transferred from British Government Stock to pay Inheritance Tax on the deceased's estate and let them know how much it is desired to transfer. The registrars are: British Government Stocks (Gilts), Computershare Investor Services plc, The Pavilions, Bridgwater Road, Bristol, BS99 6ZW. Telephone number 0370 703 0143. E-mail: gilts@computershare.co.uk. Computershare may require the stock reference number to help them find a particular investment. This number appears on the stock certificate and correspondence from the Bank of England. They aim to deal with requests within five days.

8.211 Once this has been done, the Form IHT400, the Form IHT421 and a letter stating how much of the tax is to be paid out of the British Government Stock should be sent to Inheritance Tax, HM Revenue and Customs,

BX9 1HT, United Kingdom. Once this is received, HMRC will contact Computershare and ask for the money to be transferred. This may take up to four weeks. If the amount so transferred is sufficient to cover the tax due, HMRC will then send the authorised Form IHT421 direct to the Probate Registry (personal applicant) or to the practitioner so that a grant can be applied for.

Examination of account before the grant and delivery

8.217 A duplicate Inheritance Tax account, if delivered to Inheritance Tax, HM Revenue and Customs, BX9 1HT, United Kingdom at the time of payment with a letter of request, will be endorsed with a certificate of payment as on the original.

CORRECTIVE ACCOUNTS

Practice as to corrective accounts

8.219 Where any correction of the tax paid upon an Inheritance Tax account becomes necessary after the grant of representation has issued, details should be provided to the Director of HMRC Trusts and Estates, Inheritance Tax using form C4 Corrective Account when it is believed that all amendments to the estate have been finalised or 18 months have elapsed since the date of death, whichever is earlier, subject to certain other criteria. It is possible for HMRC Trusts and Estates, Inheritance Tax to be advised as and when amendments arise before the timescale detailed above ends, if desired, but it may be more time and cost effective for small amendments to be grouped together. Interest will still be charged on any unpaid tax but this can be mitigated by way of a payment on account.

Clearance letters

8.221 With effect from 30 April 2007, this practice changed. After that date, a stamped and signed letter will be sent by HMRC Trusts and Estates, Inheritance Tax to provide the necessary confirmation that all enquiries are settled and that either:

(a) no tax is due;
(b) all the tax has been paid; or
(c) all the tax has been paid except for any tax being deferred (eg on timber) or otherwise being paid later (by instalments).

The letter will have exactly the same effect as a formal certificate. So, for example, if HMRC Trusts and Estates, Inheritance Tax had sent such a closure letter to both the executors and the trustees of a chargeable will trust and the latter discover an additional asset thereby increasing the value of the will trust and consequently the chargeable estate, the executors will still be protected by their letter and no additional tax will be sought from the estate. The letter will be issued at the appropriate time in every estate, whether or not a liability arises. These clearance letters will not apply to lifetime transfers, whether potentially exempt transfers or immediately chargeable transfers, given that a

(further) liability may arise should the transferor die within seven years of making the gift. It is important to advise HMRC Trusts and Estates, Inheritance Tax about subsequent changes which alter the amount of inheritance tax payable.

8.222 With effect from April 2018, this practice has reverted back to the use of form IHT30 for a formal clearance certificate which should only be applied for when it is certain that there are no other amendments to the estate. By way of guidance, if Inheritance Tax, HM Revenue and Customs does not propose to examine and account in straightforward cases, a letter to that effect will be provided or, if further enquiries are necessary, an indication of timescale (usually 12 weeks) will be provided. This guidance does not have the formal effect of a clearance certificate on IHT 30.

Pre-owned assets

8.229 Under the provisions of the Finance Act 2016, s 95, a relief is now available for payments to victims of persecution during World War II in respect of deaths on or after 1 January 2015 where a payment has been received by an appropriate person or their personal representatives. The relief takes the form of a reduction in the tax which would have been charged on the qualifying payment or the equivalent of the relevant percentage of the qualifying payment, the relevant percentage being the rate of tax over the nil-rate threshold.

Chapter 9

TRUST CORPORATIONS

Note: The Non-Contentious Probate Rules 1987 were amended by SI 2018/1137, which came into force on 27 November 2018. The amended rules replace the oath application for a grant of representation with a statement of truth. In anticipation of further revision of the Non-Contentious Probate Rules the expressions 'witness statement' and 'statement of truth' where they are used in this work refer to the form of application or evidence required with reference to any rule in force at the time of the application.

DEFINITION OF TRUST CORPORATION

Particulars required in statement of truth

9.18 The officer must confirm in the statement of truth that the corporation is a trust corporation as defined by r 2(1) of the Non-Contentious Probate Rules 1987, and has power to accept a grant: NCPR SI 1987/2024 r 36(1).

9.19 The statement of truth must also show how the corporation is entitled to apply, ie:

(a) on an application for probate, it must state that the corporation is the sole executor, or one of the executors etc (as the case may be), as on an application for probate by an individual;

(b) on an application for administration (with will) or administration, it must contain the necessary clearings, and refer to any renunciations and the consents of the persons entitled to a grant and to the residuary estate, as shown in paras **9.37** ff;

(c) on application for a grant as attorney, it must contain a similar wording to that required on application for a grant by an individual appointed as attorney (see paras **11.82** ff); and

(d) if reliance is made on a certified copy of a resolution authorising an officer or officers to make the application, which has already been filed with the Senior District Judge, the oath must state that such a certified copy of the resolution of the trust corporation authorising the officer to make the application has been filed with the Senior District Judge, that the officer is therein identified by the position he holds, and that such resolution is still in force[1].

[1] NCPR SI 1987/2024 r 36(2)(b).

9.20 All renunciations and consents, or the power of attorney, referred to in the statement of truth must be lodged with the papers. Forms of statement of truth, Nos 61 and 112 (**A6.66** and **A6.117**).

9.21 Where on an application for a grant by a trust corporation, that corporation has been appointed as executor of the will on terms and conditions specifically referred to as being in existence at the date of the will or of its republication, as the case may be, then, provided that the statement of truth confirms that nothing in those terms and conditions limits the corporation's power to take a full grant, it will not normally be necessary to produce them to the registry on the application[1].

[1] *Practice Direction* [1981] 2 All ER 1104.

9.23 Where a trust corporation applies for a grant using in its name any of these alternatives, it will not be necessary for the statement of truth to account for any change in the suffix which may have been used in the corporation's appointment, nor will it normally be necessary for the probate registries to require evidence to be produced that the corporation has registered or re-registered under the Act[1].

[1] *Practice Direction* [1982] 1 All ER 384, [1982] 1 WLR 214.

Trust corporation as executor

9.26 Form of statement of truth for probate to a trust corporation, No 61 (**A6.66**).

Administration (with will): consents required

9.37 Where the deceased left a will, to enable a grant to be made to a trust corporation (other than one appointed as executor) all executors named in the will must be cleared off, eg by death, renunciation or citation (*or notification in the proposed rules revision*); and, subject to the power of the district judge or registrar to dispense with any consent, the consents of the following to the making of a grant to the corporation must be obtained, where the trust corporation is not applying as a beneficiary or the attorney of some person, and recited in the statement of truth:

(a) any residuary legatees or devisees holding in trust;
(b) any residuary legatees or devisees for life;
(c) the ultimate residuary legatees and devisees (including those entitled on the happening of any contingency), and if the whole or part of the residuary estate is not disposed of by the will, all persons entitled to share in the undisposed-of estate.

Form of consent, No 52 (**A6.57**).

Administration: consents required

9.39 Similarly, where the trust corporation is not applying as the attorney of some person, where the deceased died intestate, the consents of all persons sharing beneficially in the estate should be obtained and recited in the

statement of truth, which must also include the necessary clearings of prior classes as on application by a beneficiary himself. Form of consent, No 52 (**A6.57**). Form of statement of truth, No 112 (**A6.117**).

Company in liquidation

9.55 The proper course would seem to be not to revoke the grant, which becomes ineffective and inoperative on the winding up of the company. An applicant for a subsequent grant should confirm in the statement of truth to lead that grant that the grant to the company has become inoperative by reason of the winding up of the company on the day of, and that the file of the company has been marked by the Registrar of Companies 'Company dissolved'; and this statement should be recited in the grant, which will be a grant of the unadministered estate (de bonis non).

Grants under s 6 of the Public Trustee Act 1906

9.60 *As administrator with will.* When the Public Trustee applies for letters of administration (with will) he must clear off executors in the usual way; and notice should be given by him to the residuary legatees and devisees, or their representatives, as the case may be, or (if there are no residuary legatees or devisees) to the person or persons entitled to the undisposed-of residue or their representatives, or such of them as can, without delay, be communicated with, intimating that the application for a grant is being made by the Public Trustee, and that unless application for a grant be made, or a caveat be entered, within eight days from the date of the posting of the notices he will proceed with his application without further notice; but, if a person to whom notice is sent is not in the United Kingdom, the period of eight days should be increased by the addition of time sufficient for a reply, by return of post in ordinary course of post, from the place to which the notice is sent[1]. For form of statement of truth, see No 158 (**A6.163**). The consents of all such persons should, if possible, be obtained and filed.

[1] President's Instructions, 27 March 1908.

Statement of truth on behalf of Public Trustee

9.71 Under s 11(3) of the Public Trustee Act 1906 such person as may be prescribed may, on behalf of the Public Trustee, take any oath or verify any account. The statement of truth is accordingly sworn and the HMRC Inheritance Tax account (if any) signed by an officer nominated by the Public Trustee for that purpose.

Chapter 10

SETTLED LAND GRANTS

Note: The Non-Contentious Probate Rules 1987 were amended by SI 2018/1137, which came into force on 27 November 2018. The amended rules replace the oath application for a grant of representation with a statement of truth. In anticipation of further revision of the Non-Contentious Probate Rules the expressions 'witness statement' and 'statement of truth' where they are used in this work refer to the form of application or evidence required with reference to any rule in force at the time of the application.

THE NECESSITY FOR THE GRANT

Land ceasing to be settled land

10.39 Where there was settled land vested in the tenant for life which ceased to be settled land on his death (there being no further life interest or outstanding charges and no special circumstances such as minority) the legal estate in the land vests in the general personal representatives of the tenant for life[1]. When it is recited in the statement of truth 'that there was no land vested in the said deceased which was settled previously to his death (and not by his will) and which remained settled land notwithstanding his death', a normal grant without any reference to the settled land may be taken by the person or persons entitled thereto under his will or intestacy. The value of such land is not included in the amount of the estate shown in the statement of truth.

[1] *Re Bridgett and Hayes' Contract* [1928] Ch 163.

GRANT SAVE AND EXCEPT SETTLED LAND

When made

10.66 Where there was settled land vested in a deceased person which remained settled land notwithstanding his death, the person entitled to a grant under his will or intestacy in respect of his free estate may take a grant expressly excluding the settled land (NCPR SI 1987/2024 r 29(3)). Forms of statement of truth, Nos 60 and 81 (**A6.65** and **A6.86**).

10.67 The statement of truth should include the statement 'that there was land vested in the said deceased which was settled previously to his death (and not by his will) and which remained settled land notwithstanding his death', but it is unnecessary to include details of the settlement.

Previous grant limited to settled land

10.69 If a grant limited to settled land has previously been extracted, the statement of truth must include details of the former grant (see Form No 81 (A6.86)).

TO WHOM SETTLED LAND GRANT MADE

Special executors

10.77 As from 14 October 1991 special executors can only obtain a grant of administration. Where the special executors are applying and they are also the trustees of the settlement at the time of the application for the grant (whether or not there are also other trustees at the time of that application) there appears to be no need for them to produce the will of the tenant for life on the application. They will need to state in the statement of truth that they were the trustees of the settlement at the date of death of the tenant for life and still are trustees of the settlement. They will thereby show that they have both the prior and the next right to a grant.

10.78 However, if the special executors are not also trustees of the settlement at the time of the application for the grant, before they can take a grant in respect of the settled land they must establish their prior right. To do so it will be necessary for them to satisfy the district judge or registrar that not only were they the trustees at the death of the life tenant but also that he died testate. If the will has not been proved previously on an application for a grant of the free estate of the tenant for life it should be produced on the application for the settled land grant. In this circumstance the will is referred to in the statement of truth. The will is not proved for the settled land grant and a copy of it is not annexed to the grant, which is one of administration only. If the district judge or registrar is satisfied that the tenant for life did die testate, the will will be returned to the solicitors so that it may be proved on the application for the grant in respect of the free estate in due course.

Personal representative of settlor: when trustee of settlement

10.95 On an application for a grant by the personal representatives of the settlor, the statement of truth must show that there are no other trustees of the settlement, and include particulars of the grant (or chain of grants) constituting them, the grant, or an office copy of it, should be produced.

LETTERS OF ADMINISTRATION LIMITED TO SETTLED LAND

Personal representative of tenant for life

10.119 On any application for a grant by the personal representative of the tenant for life, the statement of truth must show how the trustees of the settlement are cleared off (eg by stating that none were appointed, or by reciting their death or renunciation). Where the settlement was created by will

or arose under an intestacy, in default of other trustees the personal representative of the settlor is the trustee of the settlement[1] and must also be cleared off.

[1] Settled Land Act 1925, s 30(3).

Oath (witness statement of application)

10.122 Particulars of all previous grants in the estate of the deceased must be given in the statement of truth. (Forms of statement of truth, Nos 75 to 78 (**A6.80** to **A6.83**).)

AMENDMENT OF SETTLED LAND GRANTS

Appointment of special or additional personal representative

10.136 Applications under this subsection are extremely rare. The procedure is for prior notice of intention to make the application to be given to the probate department at the Principal Registry (see s 23(4)), following which application is made in chambers in the Chancery Division for a direction that the application be made in the Family Division. The subsequent application in the latter division is made by summons to a district judge or registrar, supported by affidavit. The direction obtained in the Chancery Division and the existing grant of representation must be lodged on issuing the summons. The question of security (see s 23(3)) is in the discretion of the district judge or registrar[1]. In view of the ongoing modernisation programme of the probate service, the above practice may be subject to change.

[1] See *Re Clifton's Estate* [1931] P 222. In this case a grant limited to settled land had been made to F and D, trustees of the settlement, as special executors. F subsequently became of unsound mind, and W was appointed as trustee in his place. Under an order on motion the grant was revoked, and a further grant of probate was made to D, with power reserved to F; it was ordered that W be appointed special personal representative with D, and that the grant, when sealed, be noted accordingly.

Chapter 11

LIMITED GRANTS

Note: The Non-Contentious Probate Rules 1987 were amended by SI 2018/1137, which came into force on 27 November 2018. The amended rules replace the oath application for a grant of representation with a statement of truth. In anticipation of further revision of the Non-Contentious Probate Rules the expressions 'witness statement' and 'statement of truth' where they are used in this work refer to the form of application or evidence required with reference to any rule in force at the time of the application.

INTRODUCTORY NOTES ON LIMITED GRANTS

Settling statements of truth

11.07 Where the application is complex, the statement of truth may be submitted in draft, for settling to the probate department of the Principal Registry or to the district probate registry at which the application for the grant is to be made. The nature of the complexity must be clearly set out.

WILL LOST OR NOT AVAILABLE

Statement of truth

11.16 The statement of truth should include the details of the order and the limitation appearing in it. (Forms of statement of truth, Nos 68 and 69 (**A6.73** and **A6.74**)).

Practice

11.28 When a will—which is whole—has been damaged but is sufficiently intact, the original will should be admitted to probate, and an examined copy of it (not a photograph) filed to perpetuate it. The copy should be supplied by the applicant, and may be printed or typewritten. Exceptionally it may be hand written. This copy will be filed and used in place of the original, which itself will be protected and filed. The damaged will, if capable of repair or backing, will be dealt with at the registry.

GRANTS TO ATTORNEYS AND CONSULAR OFFICERS

Form of power of attorney

11.42 An enduring power of attorney made and executed in the prescribed form before 1 October 2007 is acceptable (see the Enduring Powers of Attorney (Prescribed Form) Regulations 1990 (SI 1990/1376) and the Enduring Powers of Attorney (Prescribed Form) (Amendment) Regulations 2005 (SI 2005/3116) further extended by the Enduring Powers of Attorney (Prescribed Form) (Amendment) Amendment Regulations 2007 (SI 2007/548) and the Enduring Powers of Attorney (Welsh Language Prescribed Form) (Amendment) Regulations 2007 (SI 2007/549) which together combine to extend the power to execute enduring powers of attorney in the appropriate prescribed form until 30 September 2007; see also para **11.269** ff)). The statement of truth should confirm that the donor remains mentally capable or does not lack mental capacity and that the Public Guardian has not registered the power. If the power has been registered the application for the grant must be made under NCPR SI 1987/2024 r 35 (see paras **11.269** ff).

11.44 The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 prescribe forms of lasting powers of attorney (Sch 1, Parts 1 and 2). References to the forms mentioned in the Regulations include a Welsh version of the forms. A donor may execute an instrument intended to create a property and affairs lasting power of attorney or/and an instrument intended to create a personal welfare lasting power of attorney. Of these, only a lasting power of attorney in respect of property and (financial) affairs may be used for the purpose of obtaining a grant for the use and benefit of the donor. The donor of a lasting power of attorney may appoint more than one donee. A lasting power of attorney is not created and therefore unusable until the Public Guardian registers it irrespective of whether the donor lacks capacity within the meaning of the Mental Capacity Act 2005 or not. An application made under NCPR SI 1987/2024 r 31(1) that relies upon a registered lasting power of attorney should confirm in the witness statement that the donor does not lack capacity within the meaning of the Act to manage his property and affairs and that the registered lasting power of attorney has not been revoked nor has the donee disclaimed his appointment. However, the practice now is that if this statement is not included, the probate registry will assume that the donor has capacity within the meaning of the Act. The registered lasting power of attorney stamped by the Office of the Public Guardian together with a copy should be submitted with the application. The registry returns the original stamped power after inspection. Equally acceptable is an office copy of the registered lasting power or a copy certified on each page pursuant to s 3 of the Powers of Attorney Act 1971.

Power filed in the registry

11.79 A probate practitioner lodging a *general* or an *enduring* or *lasting* power of attorney, which is required for other purposes, may lodge with it a copy, and request that the original be returned with the grant. The original power must be duly stamped if it was executed before 19 March 1985 (see

para **11.46**). The examined copy is filed with the statement of truth and the original returned with the grant. A power of attorney limited only for the purpose of obtaining a grant is not returnable[1].

[1] Registrar's Direction (1952) 14 March.

Statement of truth

11.82 The statement of truth should contain all the particulars which would be necessary in the case of a direct grant to the donor of the power. Additionally an attorney acting under an enduring power must confirm that the power is not registered with the Public Guardian and that the donor remains mentally capable. See paras **11.265** ff below for practice where the power is registered. An attorney acting under a registered lasting power of attorney should confirm that the donor does not lack mental capacity within the meaning of the Mental Capacity Act 2005, but if this is omitted the probate registrar will assume this to be the case. The appropriate limitation must be included. A grant to an attorney is expressed to be for the use and benefit of the donor and the usual limitation required by r 31(1) is 'until further representation be granted' but, under that rule, the district judge or registrar may direct some other form of limitation. The usual form of limitation in a grant allows a further grant to issue not only to the donor of the original power of attorney, or another attorney appointed by him, but to any other person with an equal title to a grant. The district judge or registrar would not normally allow a further grant to issue to anyone other than the original donor, or an attorney appointed by him in substitution for the original attorney, without good reason being given and without the original attorney or donor being given an opportunity to be heard on the matter. Some other possible forms of limitation are dealt with in the following paragraphs. See forms of statement of truth, Nos 116–118, 165 and 172 (**A6.121–A6.123**, **A6.170** and **A6.177**).

Grant to the attorney of the sole or surviving executor

11.83 The grant, which takes the form of letters of administration with will annexed, is made to the attorney for the use and benefit of the executor, and limited until further representation be granted (or, if the district judge or registrar so directs, until he shall obtain probate)[1]. For Form of statement, see No 165 (**A6.170**).

[1] *Re Cassidy's Goods* (1832) 4 Hag Ecc 360. These words signify only that the administrator is the agent of the party constituting him. The grant is virtually for the use and benefit of all persons beneficially interested in the estate: *Chambers v Bicknell* (1843) 2 Hare 536. As to the powers of such an administrator, see *Webb v Kirby* (1856) 7 De GM & G 376, 26 LJ Ch 145. The grant usually follows the terms of the power: *Re Goldsborough's Goods* (1859) 1 Sw & Tr 295 at 297.

Grant to attorney of one or some of executors: notice to other executors

11.89 The statement of truth, or other evidence, should establish that the notice was so served. It is advisable to lodge a copy of the notice, and any reply received.

To the attorney or nominee of executors (corporations)

11.94 As to grants to the attorneys or nominees of non-trust corporations appointed as executors or otherwise entitled, see paras **4.38–4.40** and **5.239** ff. In all cases where the grant is made for the use and benefit of a non-trust corporation or a foreign corporation, the limitation in the statement of truth and grant is 'until further representation be granted'.

'Cessate' grant to attorney

11.106 Where a grant made to one of two attorneys appointed severally has ceased by his death, the other attorney may take a grant under the original power of attorney on reciting in the statement of truth that the donor has not revoked the power (see paras **13.101–13.103**).

Grants to consular officers

Practice

11.114 The statement of truth should show that the applicant is a consular officer of a state with which there is a convention and to which the section has been applied by Order in Council; that the person on whose behalf the officer applies is a national of that state and resides out of England and Wales, and giving his title to a grant as in the case of an application by an attorney; and that no application has been made or is being made by a duly constituted attorney on the national's behalf[1].

[1] A charity which is a duly constituted corporation, with power to take representation, is deemed to be a 'person' within the meaning of s 1 of the Consular Conventions Act 1949 (Registrar's Direction (1954) 13 October).

11.115 In other respects the statement of truth should be worded in a similar way to that to lead a grant to an attorney: see Form No 165 (**A6.170**). It will be observed that no consent or authority from the national for whose use and benefit the grant is made is necessary.

GRANTS FOR USE OF MINORS

Grant where person entitled is a minor

11.126 The Children Act 1989 as subsequently amended sets out which persons have parental responsibility for a child, the acquisition of parental responsibility and the meaning of parental responsibility[1]. The Adoption and Children Act 2002 has extended the classes or persons who may have parental responsibility for a minor. In addition the Human Fertilisation and Embryology Act 2008 defines the parent of a child born as a result of placing in a woman an embryo or sperm and eggs or her artificial insemination. Accordingly with effect from 5 December 2005 priority of right to a grant for the use and benefit of a minor is now given by the NCPR SI 1987/2024 r 32 equally to a parent (including an adoptive parent and from 6 April 2009 a parent by virtue of the Human Fertilisation and Embryology Act 2008[2]) with parental

responsibility for him, a person who has parental responsibility by virtue of a residence order in his favour in respect of the minor, a step-parent who has acquired parental responsibility for the minor, a guardian with parental responsibility for him, a special guardian (appointed by order of the court), an adoption agency authorised to place the minor for adoption or a local authority with parental responsibility for him. In the absence of or in appropriate circumstances in spite of such persons, adoption agency or local authority having parental responsibility, other persons may be appointed by district judge's or registrar's order[3] to obtain administration for the use and benefit of the minor.

[1] Children Act 1989, Pt 1, ss 2–6, and see para **11.152** ff.

[2] Section 2, Children Act 1989 as amended consequential to the Human Fertilisation and Embryology Act 2008.

[3] NCPR SI 1987/2024 r 32(2).

11.127 Briefly, the rule gives priority of right to a grant for the use and benefit of a minor to the following who have or have acquired parental responsibility: parent, guardian, step-parent, special guardian, adoption agency or local authority. In the absence of such a parent or any of the above persons or bodies r 32(2) allows a wide discretion to a district judge or registrar to appoint other persons to obtain administration for the use and benefit of the minor. The rule also allows the appointment of persons to act jointly with any persons who are entitled in priority to obtain administration for the use and benefit of the minor[1].

[1] NCPR SI 1987/2024 r 32(2).

Persons of full age equally entitled with minors

11.130 By NCPR SI 1987/2024 r 27(5), unless a district judge or registrar otherwise directs, a person of full age entitled to a grant is to be preferred to a person with parental responsibility for a minor entitled in the same degree. Thus, normally, where one of the persons entitled to a grant is of full age, he or she should apply for the grant in preference to the person with parental responsibility for a minor. This does not apply where the only one of several persons entitled to apply is of age and the remainder are minors. As to the practice in such cases, see Chapter 7.

11.131 Where the only person, or all persons, entitled to the grant are minors, this should be confirmed in the statement of truth to lead the grant. The age of the minors should be confirmed in the statement of truth[1].

[1] Registrar's Direction (1863) 18 August.

Limitation in grant

11.141 The appropriate form of limitation should be included in the statement of truth.

Grant to parents (including adoptive parents)

11.155 Under s 2 of the Children Act 1989 a mother of a child has parental responsibility for the child whether or not she and the child's father were married to each other at the time of the child's birth. Accordingly, it is sufficient for her to confirm in the statement of truth that she is 'the mother of the minor'[1].

[1] *Practice Direction* 26 September 1991 ([1991] 4 All ER 562, [1991] 1 WLR 1069).

11.157 A father of a minor relying on s 2(1) of the Children Act 1989 must state in the statement of truth that he is 'the father of the minor and has parental responsibility under s 2(1) of the Children Act 1989'[1].

[1] *Practice Direction* 26 September 1991 ([1991] 4 All ER 562, [1991] 1 WLR 1069).

11.159 Consequently s 2(2)(b) of the Children Act 1989 is amended so that where a minor's father and mother were not married to each other at the time of his birth the father shall have parental responsibility for the minor if he has acquired it (and not ceased to have it) in accordance with the provisions of the Act as amended. The effect of these changes is that such father may acquire parental responsibility in one of the three ways mentioned in s 4(1): (a) by being registered as the child's father in the entry of birth, (b) by agreement with the mother of the minor; or (c) by order of the court (see para **11.158**). And on an application for a grant for the use and benefit of the child he must confirm in the statement of truth that he is 'the father of the minor and has acquired parental responsibility for him under s 2(2)(b) of the Children Act 1989 (as amended) and that the parental responsibility is subsisting.' A copy of the document, that is the certified entry of birth or re-registration, court order or registered parental responsibility agreement should be submitted with the application[1].

[1] *Practice Direction* 26 September 1991 ([1991] 4 All ER 562, [1991] 1 WLR 1069).

11.161 Where the father of a minor was not married to the mother at the time of the child's birth, but has parental responsibility in accordance with paras 4 or 6 of Sch 14 to the Children Act 1989 either (a) by virtue of an order under s 4(1) of the Family Law Reform Act 1987; or (b) by virtue of an order giving him custody or care and control of the child, in force immediately before the commencement of Pts I and II of the Children Act 1989, the statement of truth must state that he is the father of the minor and a parent having parental responsibility by virtue of such an order which was in force immediately before the commencement of the Children Act 1989. A copy of the order must be produced in each instance[1]. The passage of time has now made this requirement redundant.

[1] Practice Direction, 26 September 1991 ([1991] 4 All ER 562, [1991] 1 WLR 1069).

11.163 Where an adoption order was made before 30 December 2005 an adopter of a child has parental responsibility for the child in accordance with s 12(1) of the Adoption Act 1976, as amended by s 88 of the Children Act 1989, and has a right to a grant for the use and benefit of the child under NCPR SI 1987/2024 r 32(1)(a)(iii). The statement of truth must state that the applicant is the adopter or one of the adopters of the minor by an order made within the meaning of s 12 of the Adoption Act 1976. A copy of the order must

be produced[1].

[1] *Practice Direction* 26 September 1991 ([1991] 4 All ER 562, [1991] 1 WLR 1069).

11.164 Form of statement of truth on application for administration (with will) by both parents, No 167 (**A6.172**).

Statement of truth and supporting evidence

11.165A The current programme for modernisation of the courts has led to the Non-Contentious Probate (Amendment) Rules 2016, 2017 and 2018 (SI 2016/972, SI 2017/1034 and SI 2018/1137 respectively). These amend the Non-Contentious Probate Rules 1987 to provide under rules 5ZA and 5A (SI 2018/1137 with effect from 27 November 2018) that a personal applicant (may apply for a grant of probate or administration using the online portal (r 5ZA) or alternative online process (r 5A) at any registry if invited to do so by that registry. The amendment rule 4A makes provision for a solicitor or probate practitioner to use the new alternative online process to make an application in accordance with instructions given by the registry. The Non-Contentious Probate Rules 1987 as amended are set out in Appendix II.

11.165B See paras **5.296B** and **6.379B** for developments about making online applications for grants.

11.166 Otherwise, the applicant's statement of truth should include details of the residence order or parental responsibility agreement. A copy of the order or of the sealed agreement must be produced with the statement of truth together with any will to be proved. For form of agreement see para **A2.115** (Form C(PRA3)).

Statement of truth and supporting evidence

11.170 The applicant's statement of truth should include details of the residence order and of parental responsibility for the minor. A copy of the order must be produced with the statement of truth together with any will to be proved. If there is no parent, step-parent, guardian, special guardian or local authority with parental responsibility competent and willing to join in the application the applicant may nominate a fit and proper person to act jointly with him unless a district judge or registrar otherwise directs[1].

[1] NCPR SI 1987/2024 r 32(3).

11.171 For form of statement of truth, see Form Nos 122–128 (**A6.127–A6.133**).

Statement of truth and supporting evidence

11.175 The step-parent's statement of truth (see Form No 125 (**A6.130**)) should include details of the parental responsibility agreement or of the court order and confirm that the agreement or order is still subsisting. A sealed copy of the agreement or of the order should be submitted with the application. Where the step parent is the only person able and willing to take a grant he may nominate a co-administrator under NCPR SI 1987/2024 r 32(3).

Guardians

11.178 Where the guardian has been appointed in accordance with s 5 of the Children Act 1989 (see para **A1.440**) the statement of truth must state that he or she is a guardian of the minor having parental responsibility by virtue of:

(a) an order made under s 5 of the Children Act 1989; or
(b) an appointment made by 'AB a parent having parental responsibility for the minor by will' (or 'by deed' as appropriate); or
(c) an appointment made by 'CD a duly appointed guardian having parental responsibility for the minor by will' (or 'by deed' as appropriate).

Statement of truth and supporting evidence

11.192 In addition to the appropriate statement of truth (see para **11.172**) the order, will or deed (or in the case of a proved will, an official copy of it) must be produced on the application for the grant, together with such further evidence as the district judge or registrar may require in the circumstances of the case. The date of death of the person making the appointment must be included in the statement of truth, as must the date of death of any other person upon whose death the appointment takes place.

11.193 Where the guardian has parental responsibility by virtue of an order made under the now revoked Guardianship of Minors Act 1971, or under the Sexual Offences Act 1956 or under the High Court's inherent jurisdiction with respect to children which is deemed to be an appointment made and having effect under s 5 of the Children Act 1989 (by paras 12 and 13 of Sch 14 to that Act) the statement of truth must include such information and a copy of the order must also be produced.

11.195 For form of statement of truth, see Form No 126 (**A6.131**).

Statement of truth and supporting evidence

11.203 The statement of truth should confirm that the applicant(s) is (are) the special guardian(s) of the minor appointed in accordance with s 14A of the Children Act 1989 and recite the details of the order confirming that it remains in force and that there is no pending application to discharge it. An office copy of the order should be enclosed with the application. If there is only one special guardian appointed by the order he should confirm also whether there is any other person who has parental responsibility for the minor before nominating a co-administrator under NCPR SI 1987/2024 r 32(3).

11.204 For form of statement of truth, see No 127 (**A6.132**).

Adoption agency

11.209 A copy of the placement order or other evidence of placement of the minor should be filed with the statement of truth. Where the adoption agency is not a trust corporation it may apply through two nominees or attorneys so

as to meet the requirement of s 114(2) of the Senior Courts Act 1981 and a duly authenticated copy of the resolution or the power of attorney should also be filed. The statement of truth must recite the facts that qualify the adoption agency as having parental responsibility for the minor.

11.210 It would seem that where an adoption agency is a local authority it may qualify as a custodian trustee under r 30(1) of the Public Trustee Rules 1912 (as variously amended) and apply as a trust corporation. In this case the statement of truth to lead the grant should state that the local authority is entitled to act as a custodian trustee under the Public Trustee Act 1906 and thereby as a trust corporation as defined by r 2(1) of the Non-Contentious Probate Rules 1987, and that it has power to accept the grant.

Practice on application by local authority in 'care' cases

11.217 Where the local authority qualifies as a custodian trustee under rule 30 of the Public Trustee Rules 1912 and applies as a trust corporation (see paras **9.01** ff), the statement of truth to lead the grant should, in addition to the usual recitals, state that the local authority is entitled to act as a custodian trustee under the Public Trustee Act 1906 and thereby as a trust corporation as defined by rule 2(1) of the Non-Contentious Probate Rules 1987, and that it has power to accept the grant.

Deceased domiciled in England and Wales: minors domiciled abroad

11.224 Guardianship must be proved by production of a copy of the document by which the guardians have been constituted, duly authenticated by the seal of the court having jurisdiction in the place of the domicile of the minors, or by an affidavit of the law of that place by a person who is conversant with its law. It must be clearly shown in the order that the guardianship is not limited to care of the children, but provides for or implies the custody of their property. Failing this an order appointing persons to obtain administration must be obtained. The domicile of the minors must be confirmed in the statement of truth.

Application for order

11.233 The district judge's or registrar's order and supporting documents if subsequently handed out should be included with the papers to lead the grant when these are lodged at the registry. The statement of truth must include particulars of the order of the district judge or registrar. Form of statement of truth, No 129 (**A6.134**). No fee is payable for the order.

Nomination of co-administrator

11.235 It must be sworn in the statement of truth that there is no other parent, step-parent, guardian, special guardian, adoption agency, local authority or any other person with parental responsibility other than the applicant. If there is another such, the first applicant may nominate a co-grantee only where it is

established that such other parent or guardian or person who has parental responsibility is either incompetent or unwilling to join in the grant. In the latter case, his renunciation or other evidence of unwillingness should be lodged. Forms of statement of truth, Nos 122 to 128 (**A6.127** to **A6.133**).

When person with parental responsibility for one of several minors may nominate

11.240 NCPR SI 1987/2024 r 32(3) restricts the right to nominate a co-administrator to cases where 'there is only one person competent and willing to take a grant under the foregoing provisions of this rule'. Accordingly, when the person with parental responsibility for one of several minors applies for a grant with a nominated co-administrator, the position as to persons having parental responsibility for the other minors must be shown in the statement of truth. If any other minor has a parent or a competent guardian with parental responsibility it must be established that such parent or guardian is unwilling to be joined as co-grantee. Cases of doubt should be referred to a district judge or registrar for directions.

Nomination of co-administrator

11.239 It should be noted that a person apart from a spouse or civil partner entitled to a grant *in his or her own right* will not be appointed on behalf of a minor to enable him or her to nominate a co-administrator (see para 7.28).

GRANTS FOR USE OF PERSONS UNDER DISABILITY

Other persons having equal right

11.253 Where one of several executors named in a will lacks capacity within the meaning of the Mental Capacity Act 2005 to manage his affairs, probate is granted to the other executors, power being reserved to the executor[1] who lacks capacity. The district judge's or registrar's power under r 35(1) does not enable a grant to be made on behalf of an executor who lacks capacity without clearing off other executors who are sui juris[2].

1 *Evans v Tyler* (1849) 2 Rob Eccl 128 at 131.
2 Registrar's Circular, 12 June 1967.

11.254 Where one of two executors lacks capacity to manage his affairs within the meaning of the Mental Capacity Act 2005 and administration (with will) is granted to the other's attorney, it is limited until further representation be granted, leaving it open for the capable executor to obtain probate and for the one who lacks capacity to obtain probate upon recovering his capacity. Form of statement of truth, No 165 (**A6.170**), suitably adapted.

Wording of statement of truth

11.256 The statement of truth must state that the person entitled to the grant lacks capacity to manage his affairs within the meaning of the Mental Capacity Act 2005. For forms of statement of truth, see No 132 (**A6.137**). The date of

any relevant order or authorisation (of the Court of Protection) is quoted in the statement of truth, and the order or authorisation must be produced; the usual statements as to minority and life interests and settled land must be included (see paras **6.384** and **6.385**). If any minority or life interest arises, the grant will normally be made to not less than two individuals, or to a trust corporation with or without an individual[1]. If a life or minority interest arises and two administrators are required and if there is only one person competent and willing to take a grant, who is either the person authorised by the Court of Protection or the lawful attorney of the incapable person acting under a registered enduring power of attorney or the person entitled to the residuary estate of the deceased, under r 35(2), he may nominate his co-administrator under r 35(3) (Form 57 (**A6.62**)).

[1] Senior Court Act 1981, s 114(2) (see para **A1.333**).

11.257 The limitation 'for the use and benefit of' the person who lacks capacity 'and until further representation be granted' must be included in the statement of truth.

Notice to Court of Protection

11.262 The notice should be addressed to: The Court of Protection, PO Box 70185, First Avenue House, 42–49 High Holborn, London WC1A 9JA *or* DX 160013 Kingsway 7. The email address is: courtofprotectionenquiries@hmcts.gsi.gov.uk and the website is https://courttribunalfinder.service.gov.uk/courts/court-of-protection. The telephone number is: 0300 456 4600.

Lawful attorney acting under a registered enduring power of attorney

11.273 The statement of truth should confirm that no one has been authorised by the Court of Protection to apply for a grant. Form of statement of truth, No 133 (**A6.138**).

11.274 The registered enduring power of attorney, stamped by the Office of the Public Guardian, should be lodged for inspection together with a copy for filing with the application for the grant. The production of the registered power of attorney stamped as such by the Office of the Public Guardian, coupled with confirmation in the statement of truth that the incapable donor remains mentally incapable of managing his affairs is accepted as sufficient evidence of the lack of capacity. The registered power of attorney is returned by the registry.

Lawful attorney acting under a registered lasting power of attorney

11.279A It should be noted that the appointment of an attorney ceases to have effect and is terminated by death or bankruptcy of the attorney or the making of a debt relief order in respect of the attorney. Where the attorney is a bankrupt because of an interim bankruptcy order, his appointment is suspended for so long as the order has effect[1].

[1] Mental Capacity Act 2005, s 13 (as amended).

11.280 Unless there is a relevant restriction in the power of attorney, the grant will be limited for the use and benefit of the person who lacks capacity and until further representation be granted. For statement of truth, see Form No 133 (**A6.138**).

Sole executor or residuary legatee or devisee in trust lacks capacity to manage his affairs: grant to residuary legatee

11.282 Where the sole executor or residuary legatee or devisee in trust, as the case may be, is entitled to a grant but lacks capacity to manage his affairs and if no person has been appointed by the Court of Protection and there is no lawful attorney acting under a registered enduring power of attorney or registered lasting power of attorney (or any such attorney has renounced administration for the use and benefit of the person who lacks capacity) a grant will be made to the residuary legatee or devisee named in the will, for the use and benefit of the person who lacks capacity and limited until further representation be granted (or otherwise limited as the district judge or registrar may direct). For statement of truth, see Form No 170 (**A6.175**). If there be no residuary legatee or devisee, a similar grant will be made to the person entitled to the undisposed-of residuary estate of the deceased[1].

[1] NCPR SI 1987/2024 r 35(2)(c).

11.284 As to the position where there are two or more executors, one of whom lacks capacity to manage his affairs, see 'Other persons having equal right', paras **11.251–11.254**.

Only person entitled on intestacy lacks capacity to manage his affairs

11.287 In the case of an intestacy, where the only person entitled to the grant lacks capacity to manage his affairs within the meaning of the Mental Capacity Act 2005, administration (with will if appropriate) will be granted for his use and benefit and during his incapacity or lack of capacity (i) to the person authorised by the Court of Protection or, if none, (ii) to his lawful attorney acting under a registered enduring power of attorney or registered lasting power of attorney; or, if none, or if such attorney renounces administration (with will if appropriate) for the use and benefit of the person who lacks capacity (iii) to such other person as the district judge or registrar may by order direct (see paras **11.291–11.292**). For forms of statement of truth, see Nos 132 to 134 (**A6.137** to **A6.139**) and, where there is a will, No 169A (**A6.174A**).

Grant to persons appointed by district judge or registrar

11.291 When a person entitled in priority to a grant lacks mental capacity within the meaning of the Mental Capacity Act 2005 and no person has been authorised by the Court of Protection, there is no attorney acting under a registered enduring power of attorney or registered lasting power of attorney and there is no other person entitled to the residuary estate capable of taking a grant, the district judge or registrar may by order direct that a grant for the

use and benefit of the person who lacks capacity be made to such other person as he thinks fit[1]. The district judge or registrar may also direct that a grant issue to another person where there is a person authorised by the Court of Protection, or an attorney acting under a registered lasting power or registered enduring power of attorney, or a person entitled to the residuary estate, instead of to such of these persons who would otherwise be entitled to a grant, if he considers it appropriate[1]. Form of statement of truth, No 134 (**A6.139**).

[1] NCPR SI 1987/2024 r 35(4).

11.292 Application for the order of the district judge or registrar is made by lodging an affidavit (*witness statement*) of the facts at the probate department of the Principal Registry, or if the application for the grant is to be made at a district probate registry, at that registry. Unless it is submitted separately the affidavit (*witness statement*) should exhibit a medical certificate of the person who lacks capacity as detailed in para **11.266** above. The applicant should also confirm that notice has been given to the Court of Protection. The district judge or registrar may direct that the application be made on notice or summons (*application notice*) if it becomes apparent that it is being, or likely to be, opposed[1].

[1] NCPR SI 1987/2024 r 61(1).

GRANTS LIMITED AS TO PROPERTY

Grant to part of estate only

Fee for grant to trust property only

11.315 The Non-Contentious Probate Fees Order 2004 makes no provision for a fee on an application for a grant to trust property. Consequently, being a nil estate for the purpose of the grant, no fee is payable on making such application.

Grant limited in terms of will

Statement of truth

11.323 Where an order has been made for a grant to issue for part of the estate only, details of the order must be recited in the statement of truth, and the order and supporting documents must be lodged with the papers to lead the grant[1].

[1] Registrar's Circular, 15 December 1930.

11.324 If a limitation is necessary because of the terms of the will, the statement of truth should recite the appointment of executors as given in the will, and the executors should swear to administer the estate to the extent of the powers respectively granted to them. For statement of truth, see Form No 146 (**A6.151**).

Grants 'save and except'

Probate or administration (with will) 'save and except'

11.326 In such circumstances no order is required for severance of the representation. Form of statement of truth, No 72 (**A6.77**).

'Caeterorum' grant

Probate 'caeterorum'

11.333 If a testator has appointed one executor for a special purpose or in respect of a specific fund and another executor for all other purposes and effects, and the first-mentioned executor has taken limited probate, the other may take probate of the rest of the testator's estate[1]. Form of statement of truth, No 73 (**A6.78**).

[1] *Re Lord Stanley* (1939) March.

Administration 'caeterorum'

11.336 Similarly, if administration of only a particular part of the estate has been granted by order under s 113 of the Senior Courts Act 1981, the person entitled to a general grant may, without further order, take administration of the rest of the estate. Form of statement of truth, No 185 (**A6.190**).

Practice

11.338 The statement of truth must include details of the previous grant, and, in applications proceeding at the Principal Registry or at a district probate registry other than that from which the previous grant issued, the former grant or an office copy of this must be lodged with the papers. The practice as to marking the will is the same as in other cases of second grants where the will has already been proved (see paras **13.67–13.70**).

WILL IN EXERCISE OF POWER OF APPOINTMENT

Disposition in will not revoked by subsequent marriage

11.357 For form of statement of truth in such case, see No 176 (**A6.181**).

Proof of will

11.363 It should be established by affidavits (*witness statement*) as to the law and, where necessary, the facts, that the will is invalid under the law of the domicile and, in the case of death on or after 1 January 1964, under any other law which is available by virtue of the Wills Act 1963. The statement of truth must refer to the settlement, and any order of the court. Form of statement of truth, No 82 (**A6.87**).

ADMINISTRATION PENDING DETERMINATION OF PROBATE CLAIM

Order required

11.365 Application for the appointment of an administrator pending determination of a probate claim is made by application notice in the probate claim (CPR Pt 23). For practice, see para **38.01**.

11.366 The court has power to appoint a sole administrator pending determination of the claim notwithstanding the existence, or possibility, of a life or minority interest[1]. The statement of truth to lead the grant must nevertheless contain the usual clause as to life and minority interests (NCPR SI 1987/2024 r 8(4)).

[1] *Re Haslip* [1958] 2 All ER 275n, [1958] 1 WLR 583.

Issue of grant

11.367 If an order is made appointing an administrator pending determination of the claim, the solicitor or probate practitioner should prepare and lodge at the Principal Registry of the Family Division[1] the papers to lead the grant, ie the administrator's statement of truth (Form No 135 (**A6.140**)), an HMRC Inheritance Tax account summary (if required, see Chapter 8), and an office copy of the order of the Chancery Division appointing the administrator. No reference need be made in the statement of truth to any will of the deceased or grant that has already been issued. The grant is this case is always one of administration. The grant pending determination of a probate claim will be silent as to will or intestacy and will be limited pending determination of the claim.

[1] CPR PD 57.8.4. The practice direction directs that the application for the grant be made to the Principal Registry as the grant cannot be made by a district probate registrar because of the unresolved contention arising from the probate claim—NCPR SI 1987/2024 r 7(1)(a). In practice, the application for the grant is now referred to a district probate registrar, it is assumed under the delegated power of the Senior District Judge.

Subsequent application for full grant

11.370 The value of the whole estate in the United Kingdom must be confirmed in the statement of truth, and all the worldwide estate is disclosed in the HMRC account, if required: see Chapter 8.

Practice

11.371 An office copy of the judgment or order in the probate claim must be obtained and lodged with the papers, and the statement of truth must include particulars of the judgment (see also paras **4.180** and **4.181**), and of any previous grant pending determination of the probate claim.

MISCELLANEOUS MATTERS CONCERNING LIMITED GRANTS

Grant limited to a claim

11.374 Where it is necessary for the personal representative of a deceased person to be made a party to legal proceedings (eg a claim by or against the estate of the deceased), but the executors or other persons entitled to obtain a grant will not constitute themselves as personal representatives, application may be made for a grant of administration to a nominee, limited to bringing, defending or being a party to the claim or proceedings in question. The grant will in no case be a general grant[1]. The claim or proceedings must be identified in the statement of truth so far as possible[2] and will be specified in the grant.

[1] *Re Chanter's Goods* (1844) 1 Rob Eccl 273; *Davis v Chanter* (1848) 2 Ph 545; *Re Dawson's Goods, Maclean and Maclean v Dawson* (1859) 1 Sw & Tr 425.

[2] Circular, 14 March 1956; Registrar's Direction (1964) 23 March.

11.376 Difficulties can also arise in those cases where a dependant of a deceased person wishes to bring a claim under the Inheritance (Provision for Family and Dependants) Act 1975 for financial provision from the deceased's estate, but is prevented from bringing proceedings until a grant has issued and a personal representative has been constituted, and there is no person either entitled or (if entitled) willing to apply for a grant. In this event, the claimant may make a claim without naming a defendant and may apply for directions as to the representation of the estate[1]. As to claims under the Inheritance (Provision for Family and Dependants) Act 1975, and the position where the claimant is also the constituted personal representative, see Chapter 41.

[1] CPR 57.12, 57.16(3A) and see paras **A2.181** and **11.379–11.380**.

11.378 Any order for a grant to the Official Solicitor or any other person limited for the purpose of being a party to an claim contemplated against the estate of the deceased must specify the claim in the limitation. In cases where it is desired to appoint the Official Solicitor his consent will contain the appropriate wording, which should be followed in the statement of truth[1].

[1] Registrar's Direction (1964) 23 March.

Proceedings against a deceased's estate

11.379 An alternative method of bringing proceedings against the estate of a deceased person where a cause of action has survived but no personal representative has been constituted is provided by rules of court made under the Civil Procedure Rules 1998: see CPR 19.8.

Practice in obtaining grant

11.384 When the order has been made, the papers to lead the grant should be prepared and lodged at the probate registry. The following documents are necessary: administrator's statement of truth (Form No 144 (**A6.149**)); HMRC account summary (IHT421) (if required, see Chapter 8); the order appointing the administrator and the supporting affidavits etc.

11.385 In all cases the statement of truth in support of the grant application need not include any statement whether a will exists or whether the deceased

died intestate, nor contain any of the usual clearings. It will, however, always be necessary to consider the existence of life or minority interests. It is suggested that the question as to whether any life or minority interest arises in the estate of the deceased be dealt with in the affidavit in support of the application for the order. Every grant ad colligenda bona (*collection grant*) shall be silent as to the will or the intestacy and the grant is limited 'to collecting, getting in and receiving the estate and doing such acts as are necessary for the preservation of the same and until further representation be granted'[1].

[1] Registrar's Direction (1979) 12 October.

Subsequent application for full grant

11.387 Details of the former grant must be included in the statement of truth, and, where application for the general grant is made at a district probate registry other than that from which the limited grant issued, a copy of that grant must be lodged with the papers.

Chapter 12

GRANT WHERE DECEASED DIED DOMICILED OUT OF ENGLAND AND WALES

Note: The Non-Contentious Probate Rules 1987 were amended by SI 2018/1137, which came into force on 27 November 2018. The amended rules replace the oath application for a grant of representation with a statement of truth. In anticipation of further revision of the Non-Contentious Probate Rules, the expressions 'witness statement' and 'statement of truth' where they are used in this work refer to the form of application or evidence required with reference to any rule in force at the time of the application.

DOMICILE

Domicile of origin

12.04 A person can acquire a domicile of choice, and while this is retained the domicile of origin is in abeyance, but not extinguished. When the domicile of choice is abandoned the domicile of origin revives[1]. On appeal, the Court upheld a decision that a person whose domicile of origin was India and who decided to go to there because of illness did not abandon his English domicile of choice. His decision to remain in India was forced on him because of illness and impending death. It would not be a decision as to where to live indefinitely because, for all practical purposes, there was sadly no life left remaining to be lived by him[2].

1 *Udny v Udny* (1869) LR 1 Sc &Div 441. See also *Re Flynn, Flynn v Flynn* [1968] 1 All ER 49, [1968] 1 WLR 103 (given a physical departure from the country of one's domicile of choice, the ending of the intention to return there, as distinct from the forming of a positive intention not to return, is sufficient to bring that domicile to an end: accordingly the domicile of origin revives until ousted by the acquisition of another domicile of choice).

2 *Hohli v Proles* [2019] EWHC 193 (Ch).

Domicile of choice

12.07 Residence in a country is not, of itself alone, sufficient to create a domicile of choice without evidence of volition to change domicile[1]. A domicile of choice is not acquired merely by accepting and holding a post of employment in a country[2]. A person whose residence in England is illegal is not

barred thereby from acquiring a domicile of choice here[3].

1 *IRC v Bullock* [1976] 3 All ER 353, [1976] 1 WLR 1178, CA.
2 *Bowie (or Ramsay) v Liverpool Royal Infirmary* [1930] AC 588; *Cooney v Cooney* (1950) 100 L Jo 705.
3 *Mark v Mark* [2005] UKHL 42, [2006] 1 AC 98, [2005] 3 All ER 912.

Domicile to be sworn to

12.13 Unless otherwise directed by a district judge or registrar, every statement of truth to lead a grant of representation must state where the deceased died domiciled[1]. A statement of the domicile sworn to appears in the grant. Where a country has no uniform system of law (eg in the case of Australia, Canada, or the United States of America) the particular Province, State or other judicial division must be specified[2].

1 NCPR SI 1987/2024 r 8(2).
2 Registrar's Direction (1961) 24 January.

GRANTS WHERE DECEASED DIED DOMICILED OUT OF ENGLAND AND WALES

Domicile in Scotland or Northern Ireland

12.23 Where the deceased died domiciled in Scotland or Northern Ireland but representation has not been granted in the country of domicile, application may be made for an English grant if the circumstances make this necessary. Such a grant will be specifically limited to the estate in England and Wales and, to avoid the possibility of dual representation, will also be limited until representation be granted in the country of domicile. Except where the application is for probate of a will in the English or Welsh language containing an effective appointment of an executor, or by the attorney of an executor named in such a will, the application for the grant should be framed in accordance with NCPR SI 1987/2024 r 30(1)(b) or 30(1)(c) or 30(3)(b): see paras **12.101–12.120**. It is essential that the statement of truth should show that no grant of representation has been obtained in the country of domicile. The principles normally applicable in cases of domicile out of England and Wales apply in relation to the admissibility of any will left by the deceased: see paras **12.34** ff.

Reference to law of nationality

12.31 When the law of the country in which a person dies domiciled (he being a national of some other country) provides that the law applicable to the validity of his will and the devolution of his estate is that of his nationality, it is sometimes necessary to ascertain with which part of the 'empire' of which the deceased was a national he was directly associated. For this purpose it may be necessary to ascertain his domicile of origin[1]. As regards persons dying on or after 1 January 1964, reference should be made to the Wills Act 1963 as to nationality and to confirmation of which of several systems of law in force in a territory or state is applicable where the formal validity of a will is to be

decided. As to the Wills Act 1963, see paras 3.400 ff.

[1] *Re O'Keefe, Poingdestre v Sherman* [1940] Ch 124, [1940] 1 All ER 216; *Re Ross, Ross v Waterfield* [1930] 1 Ch 377.

SECTION I. ADMISSIBILITY TO PROOF OF WILLS OF PERSONS DYING DOMICILED ABROAD

Procedure on proving wills

Wills in a foreign language

12.71 The original, or official copy of the will, and *not* the translation into English, should be produced to the Court and referred to by date in the statement of truth to comply with NCPR SI 1987/2024 r 10(1).

SECTION II. ENTITLEMENT TO A GRANT WHERE DECEASED DIED DOMICILED OUT OF ENGLAND AND WALES

Person beneficially entitled to the estate by the law of the domicile

12.104 The evidence of law must be supported by adequate evidence confirming the facts themselves (normally an affidavit (*witness statement*), or in the statement of truth, by the applicant for the grant)[1].

[1] Registrar's Direction (1972) 20 November.

European Certificate of Succession

12.107 Guidance about the treatment of the ESC in the UK is awaited but for the purposes of the law of England and Wales it is assumed that the ESC is sufficient evidence of beneficial entitlement to the estate according to the law of domicile of the deceased at his death if that law is also the law of the place where he was habitually resident at the date of his death. The facts to establish this should be set out in the statement of truth and in support of the application for order under NCPR SI 1987/2024 r 30(1)(b). Alternatively, if this is not appropriate, consideration will need to be given to the application of NCPR SI 1987/2024 r 30(1)(c). The application for the grant will be supported in the usual way with authenticated translation of any testamentary papers or other documents if they are not in English.

Grant under r 30(1)(c)

12.113 In cases of applications for an order under r 30(1)(c) it may be preferred unless otherwise directed that the statement of truth be not prepared until the district judge's or registrar's order has been confirmed, as the statement of truth should recite the particulars of the order (for statement of truth see Form No 174 (**A6.179**)).

Whole or substantially whole of estate in England and Wales immovable property

12.120 The statement of truth should confirm that the whole, or substantially the whole, as the case may be, of the estate in England and Wales consists of immovable property. Where it is claimed that the whole of the estate in England and Wales consists of immovable property, a statement to this effect in the statement of truth is normally accepted as sufficient evidence of the fact. Where it is claimed that *substantially* the whole of the estate in England and Wales consists of immovable property, brief details of the immovable estate and the movable estate (in particular their respective total values) should be included in the statement of truth and must contain the usual statement of the domicile of the deceased[1].

[1] NCPR SI 1987/2024 r 8(2).

SECTION III. APPLICATION FOR DISTRICT JUDGE'S OR REGISTRAR'S ORDER

Mode of application

(i) Prior to the application for a grant

12.128 When the order has been obtained, the statement of truth should be completed. All the documents, including the district judge's or registrar's order, HMRC Inheritance Tax Form IHT 421 (authorised by HMRC Trusts and Estates, Inheritance Tax) or Form IHT 205 for an 'excepted' estate and the affidavits (*witness statements*) etc, in support, should then be lodged with the probate department at the Principal Registry, or at the district registry, in the usual way. Forms of statement of truth, Nos 172–174 (**A6.177–A6.179**).

(ii) Simultaneously with the application for the grant

12.129 In straightforward applications for a grant to the person (or the attorney of a person) entrusted with administration, or beneficially entitled to the estate, the statement of truth may be prepared in anticipation of the district judge's or registrar's order, and all necessary documents lodged with (or sent by post to) the probate department at the Principal Registry or the district probate registry. All the relevant matters of fact in support of the application for the order must be confirmed by the applicant, either in the statement of truth or in a separate affidavit. If the papers are approved, the order will first be drawn, and the grant will then be issued and despatched in the normal way. Notice of any defect in the papers will be given by post, email or telephone. (See also para **12.146** as to perusing and approving draft papers.)

Requirements in statement of truth

12.131 The statement of truth to lead the grant must state specifically the place of domicile of the deceased[1]. Where, as in the Provinces of Canada or the States of Australia or the United States of America, there are separate jurisdictions, the particular Province or State must be specified. It is not necessary to specify the division of a country where the testamentary law is

uniform, as in Switzerland or the Republic of South Africa.[2].

[1] NCPR SI 1987/2024 r 8(2).

[2] Registrar's Direction (1972) 20 November. Except in the case of wills executed before 1 January 1954, the testamentary law of South Africa is uniform throughout the Republic: it is therefore correct to state that the deceased died domiciled in the Republic of South Africa (Registrar's Direction (1964) 24 February).

12.132 The estate covered by the grant is that in England and Wales only. Any Scottish or Northern Irish assets, or assets situated outside the United Kingdom, should therefore be excluded in arriving at the figure to be inserted in the statement of truth.

12.133 In cases where, under NCPR SI 1987/2024 r 30(1)(a) or (b), *an order has been made* for a grant to the person entrusted with administration by the court of domicile or beneficially entitled to the estate by the law of the domicile, a statement of truth describing the applicant as the person entrusted or beneficially entitled, as the case may be, will normally be accepted whether it recites the order or not. A person who qualifies under r 30(1)(b) does not need to clear off an executor named in the will of the deceased[1].

[1] Registrar's Direction (1977) 6 December.

12.134 Where an order has been made under r 30(1)(c), the statement of truth should describe the applicant as the person authorised by order under that rule, and specify the date of the order, but where it has been executed before the making of the order, reswearing of the statement of truth may be dispensed with if it is so drawn as to give a sufficient title to the grant, and not to be inconsistent with the order[1].

[1] Registrar's Direction (1972) 20 November.

12.135 For forms of statement of truth, see Nos 172–174 (**A6.177–A6.179**). See also para **12.146** as to prior settling of draft papers.

Community of property

12.137 As to the additional wording to be included in the statement of truth and as to court fees in cases where, under the law of the domicile of the deceased, community of property existed between him and his spouse, see para **4.221**.

Minority or life interests

12.138 As stated earlier, where a minority or a life interest arises in any estate, except in the case of a direct grant of probate to an executor, the grant must normally be made to not less than two individuals or to a trust corporation, with or without an individual (Senior Courts Act 1981, s 114(2)). This is so even if under the law of the domicile a single person may take a grant, although the court has discretion to allow an individual as a sole administrator if it appears expedient in all the circumstances to do so (s 114(2)). The statement of truth should confirm as to minority and life interests and should be based on the law applicable to the circumstances of the particular case[1]. In straightforward cases the applicant's confirmation in the statement of truth that a minority or life interest does or does not exist will be accepted without

further evidence. However, it may appear on the face of the will from the events which have happened that a minority or life interest does exist. If it does not, the statement should be verified in the affidavit (or notarial certificate) of law[2].

[1] Registrar's Direction (1975) 17 October.
[2] Registrar's Direction (1972) 20 November.

Second grantee

12.141 Accordingly, if a minority or life interest arises under the law of the domicile and only one person is qualified to apply as the person entrusted or beneficially entitled, the affidavit of facts (*witness statement of facts*), or the statement of truth should be completed jointly by that person and the person whom it is proposed to join as second administrator, and should show that application is made for the latter person to be joined as administrator under the provisions of NCPR SI 1987/2024 r 30(2).

Settling of papers

12.146 If desired, in a complex matter, the district probate registrar will, on payment of the requisite fee, peruse and approve draft affidavits (*witness statements*), settle and approve the draft statement of truth and other papers such as powers of attorney and consents. The probate practitioner must set out in a pre-lodgement letter what the difficulty or complexity of the matter is.

Inheritance tax, capital transfer tax or estate duty paid in Scotland or Northern Ireland

12.150 The addresses and telephone numbers of the HMRC Trust and Estates, Inheritance Tax offices concerned with the above procedures are as follows:

1.	In England and Wales	HMRC Trust and Estates, Inheritance Tax, BX9 1HT	DX 701201 Nottingham 4
2.	In Scotland	16 Picardy Place, Edinburgh EH1 3NB	tel 0131 556 8511
3.	Northern Ireland	Dorchester House, 52/58 Great Victoria Street, Belfast BT2 7BB	tel 01232 236633

Chapter 13

GRANTS 'DE BONIS NON' – CESSATE GRANTS – DOUBLE PROBATE

Note: The Non-Contentious Probate Rules 1987 were amended by SI 2018/1137, which came into force on 27 November 2018. The amended rules replace the oath application for a grant of representation with a statement of truth. In anticipation of further revision of the Non-Contentious Probate Rules, the expressions 'witness statement' and 'statement of truth' where they are used in this work refer to the form of application or evidence required with reference to any rule in force at the time of the application.

ADMINISTRATION (WITH WILL) 'DE BONIS NON'

13.12 Before a grant of administration (with will) de bonis non can be made, it must be established that there is no chain of executorship (see paras **13.04–13.06**), and all executors named in the will of the deceased must be cleared off (including any to whom power was reserved), ie by reciting their death or renunciation[1]. The renunciation of probate which an executor made previously remains effective[2]. The manner in which the chain of representation is broken must be shown in the statement of truth (eg by stating that the sole executor, or the survivor of the proving executors, died intestate, or having made a will but not appointing any executor, or as the case may be).

[1] As to citing an executor to whom power was reserved so as to extinguish his rights, see para **24.16**.

[2] See para **15.02** but note footnote to para **13.13**.

Codicil proved for the first time

13.25 For forms of statement of truth, see Nos 182 ff (**A6.187** ff).

Orders for provision from estate of deceased

13.28 Where there is a will an office copy is obtained, which must include a memorandum of the order made under the Act. A copy of the will may be requested with the new grant. A notation of the memorandum is made in the margin of the second or subsequent grant in the same form as in the original grant.

13.29 The copy memorandum must be included in every case.

ADMINISTRATION 'DE BONIS NON'

Administration 'de bonis non'

13.34 Forms of statement of truth for administration de bonis non, Nos 178 ff (**A6.183** ff).

PARTICULAR CASES

Administration, with draft or copy of will annexed, 'de bonis non'

13.47 Where a will has been proved in a draft, copy or reconstruction, on the death of the sole or last surviving grantee who leaves part of the estate unadministered, the following practice applies. Provided that a chain of representation does not arise, letters of administration with the draft, copy or reconstructed will may be granted on the same terms as the original grant, it being confirmed that the original will has not been found. But if the original will has been found, the application is for a cessate grant (see paras **13.85** ff).

PRACTICE IN GRANTS 'DE BONIS NON'

Statement of truth

13.60 It must be confirmed in the statement of truth leading to every grant de bonis non whether there is (still) any minority or life interest under the will or intestacy and whether there was land vested in the deceased which was settled previously to his death (and not by his will) and which remained settled land notwithstanding his death[1].

[1] NCPR SI 1987/2024 r 8(4) and (3).

13.63 The form of statement of truth differs from that for the first grant in an estate in the following respects:

(a) Full particulars must be given of the former grant; and the date of the death of the grantee or person whose death necessitates the grant de bonis non must be recited.
(b) If the original grant was one of probate, the statement of truth must show how the chain of executorship is broken (see also paras **13.04** and **13.05**).
(c) The statement of truth should show that part of the estate remains unadministered.

13.64 Where the grant is required for making title only, it may be recited that the grantee died 'without having completed the administration of the estate'. This situation may occur for example when the spouse or civil partner has appropriated the property to which he or she was entitled under the will or intestacy but did not assent to title of the property. The statement of truth should confirm this fact.

13.65 Forms of statement of truth, Nos 178 ff (**A6.183** ff).

Amount of estate

13.66 The administrator will promise to administer the unadministered estate, and the amount of estate recited in the statement of truth will be the value of what remains unadministered at the time.

Letters of administration (with will) 'de bonis non': marking of will or copy

13.67 In all cases of administration (with the will annexed) de bonis non, the applicant must produce to the Court and refer by date to an office copy of the will. An unsealed facsimile copy not issued by the registry is not acceptable unless the district judge or registrar gives leave under NCPR SI 1987/2024 r 10(2). Where a copy of the will is produced to the Court, the statement of truth should confirm that the document is an official copy (or facsimile copy, where the district judge's or registrar's leave has been obtained) of the last will and testament of the testator.

13.68 It should be noted that if the probate copy of the will annexed to the former grant is produced by the applicant, the registry will retain it and be part of the court record. It is therefore usually more convenient to bespeak an office copy of the will for marking.

13.69 In particular, where a de bonis non grant is necessary because of the incapacity of the original grantee, the probate copy should not be produced to the Court, as the grant may be required in the event of the recovery, or of the death, of the incapable person.

13.70 The previous practice of attending the registry where the will is deposited to mark and swear the oath has of course now been discontinued.

Foreign will

13.71 Where the former administrator swore to a notarial copy of the will, the applicant for a second grant may obtain an office copy to produce to the Court,[1] or, if the district judge or registrar gives leave under NCPR SI 1987/2024 r 10(2), a facsimile copy.

[1] Registrar's Direction (1927) 8 December.

Engrossment of will

13.73 On an application at the Principal Registry, if the will has been proved and registered at a district registry, an office copy should be obtained by the applicant.

Papers required

13.77 The practitioner lodges the statement of truth and HMRC account summary (A5C) or return of estate (Form IHT205) (if required: see Chapter 8) at the probate registry or sub-registry. If the papers are lodged at the probate registry other than that from which the previous grant was extracted, the

previous grant, or an office copy thereof, must also be lodged. Unless 'marked' by the applicant (see paras 13.67–13.70), the former grant or office copy will be returned with the new grant.

Fee for grant

13.80 This fee does not include the fee for a copy of the former grant where this is required.

CESSATE GRANTS

Discovery of lost will, or more authentic copy

13.87 On an application for a cessate grant, the statement of truth should state that probate of the will of the deceased, as contained in a copy thereof, was granted 'at the [named] registry on the day of , to A B, limited until the original will or a more authentic copy be proved', and should recite the discovery of the original will or the more authentic copy (as the case may be). If in the meantime the grantee has died, the will may be proved by the person next entitled.

Death of executor for life or other limited period

13.88 Where an executor appointed for his life takes probate, the grant ceases finally on his death, being distinguishable from an ordinary grant of probate which may continue to be effective, by chain of executorship, in spite of the death of the grantee. An executor substituted in the will at the decease of the executor for life may take a cessate grant of probate. For form of statement of truth, see No 74 (**A6.79**).

13.90 Probate granted to an executrix 'during widowhood' ceases on her remarriage, and a cessate grant of probate may be made to the executor substituted. The statement of truth should state that: 'The probate etc, granted at etc, to A, has ceased and expired by reason of her having intermarried with B on the day of '.

Grant for use of executor who lacks capacity to manage his affairs

13.93 If the administrator should die before the recovery of an executor who lacks capacity to manage his affairs, further administration (with the will annexed) may be granted to some other person for the use and benefit of the executor, the latter's lack of capacity to manage his affairs being established in the same manner as on the occasion of the first grant. The statement of truth should recite:

> 'That on the day of 20 letters of administration (with the said will annexed) of the estate of the said deceased were granted at the [ ] registry, to A B the residuary legatee named in the said will (*or as the case may be*) for the use and benefit of C D the sole executor therein named who lacks capacity to manage his affairs within the meaning of the Mental

Capacity Act 2005 during his incapacity. That the said A B died on the day of 20 whereby the said letters of administration (with the said will annexed) have ceased and expired. That the said C D continues to lack capacity to manage his affairs within the meaning of the Act.'

13.96 If the incapable executor should die without recovering his capacity, administration (with the will annexed) de bonis non may be granted to the person next entitled in order of priority under NCPR SI 1987/2024 r 20. In this event, careful consideration should be given to interpretation of the appointment clause in the will. Depending on the particular circumstances of the case, a substituted appointment of executor may take effect.

Grant for use of minor executor

13.97 Administration (with the will annexed) which has been granted to guardians or other persons for the use of an executor during his minority ceases when the executor attains his majority, and probate may be granted to the executor. For form of statement of truth, see No 75 (**A6.80**).

13.99 In such cases, the statement of truth must give respectively (a) the date upon which the executor came of age, or (b) the date of the grantee's death.

Application by donor of power of attorney for direct grant

13.100 Where administration (with or without will) has been granted to an attorney of the executor, or other person entitled to a grant, the latter may at any time apply for and obtain a cessate grant to himself, whereupon the limited grant ceases. Form of statement of truth, No 76 (**A6.81**). The executor should give notice of his application for a cessate grant to the attorney.

13.102 The statement of truth must include particulars of the former grant, and the death of the attorney. Form of statement of truth, No 141 (**A6.146**).

Grant limited to legal proceedings

13.105 Administration limited to taking or defending legal proceedings ceases on the termination of the proceedings, or on the prior death of the grantee. Form of statement of truth for a cessate grant, No 142 (**A6.147**).

Administration (with or without will) for use of minor beneficiary

13.106 A grant of administration or administration (with will) which has been made to parents or guardians (or a parent or guardian and co-administrator) for the use and benefit of a minor beneficially entitled ceases on the latter attaining full age, and he may then obtain a cessate grant of administration, or administration (with will) as the case may be. Forms of statement of truth, Nos 140 and 177 (**A6.145** and **A6.182**).

Practice on application for cessate grant

13.117 The statement of truth must in all cases recite the particulars of the former grant and the circumstances of its cessation. The applicant should confirm that he will administer all the estate, but the amount to be inserted in the statement of truth is that remaining unadministered.

DOUBLE PROBATE

Practice

13.128 A double probate is general in its terms, but the amount of the estate included in the statement of truth to lead the grant is that only which remains unadministered.

Statement of truth

13.129 The statement of truth must give particulars of the former grant, and show that power was reserved to the other executors and, where probate was originally granted to four executors, that a vacancy or vacancies have occurred by death, giving the name and date of death of the executor or executors who have died since the date of the first grant. For forms of statement of truth, see Nos 70 and 71 (**A6.75** and **A6.76**).

Will or probate to be produced

13.130 The executor may produce an official copy of the will or the copy annexed to the first grant of probate (provided, in the latter case for practical reasons, that all the proving executors are dead); or, with the district judge's or registrar's leave, a facsimile copy of the will. See also paras **13.67–13.70**.

Chapter 14

RIGHT OF THE COURT TO SELECT AN ADMINISTRATOR; 'COMMORIENTES'

Note: The Non-Contentious Probate Rules 1987 were amended by SI 2018/1137, which came into force on 27 November 2018. The amended rules replace the oath application for a grant of representation with a statement of truth. In anticipation of further revision of the Non-Contentious Probate Rules, the expressions 'witness statement' and 'statement of truth' where they are used in this work refer to the form of application or evidence required with reference to any rule in force at the time of the application.

COMMORIENTES

Evidence required

14.51 If the district judge or registrar is satisfied that the application may proceed on the basis of uncertainty as to survivorship, it must be recited in the statement of truth to lead the grant: 'That all possible enquiries as to survivorship have been made, but it appears that the said . . . and . . . died in circumstances rendering it uncertain which of them survived the other(s)'. The statement of truth should also refer to the statutory presumption (eg 'That the said . . . , being the younger, is by virtue of section 184 of the Law of Property Act 1925, deemed to have survived the said . . . '). Forms of statement of truth, Nos 138 and 139 (**A6.143** and **A6.144**).

14.52 In the case of spouses dying on or after 1 January 1953 but before 1 January 1996, on an intestacy the statement of truth should confirm that all possible enquiries as to survivorship have been made but it appears that the lawful husband/wife died in circumstances rendering it uncertain which one of them survived the other without referring to the statutory provisions.

Deaths in disasters

14.54 Circulars have been issued from time to time by the Principal Registry in connection with the loss of ships or aircraft or other disasters, listing the names of passengers and members of the crew or other persons involved in respect of whom the Senior District Judge is satisfied, from evidence produced

to him, that there is uncertainty as to which of them survived the others. Where such a circular has been issued no further evidence relating to commorientes is normally necessary on application for a grant in the estate of a person whose name is listed. Any request for information whether such a circular has been issued in any particular case should be addressed to the Senior Operations Manager, Probate, Rm WG 09, Royal Courts of Justice, Strand, London WC2A 2LL.

Specific cases

Death of both spouses after 1952 (one or both intestate)

14.60 *Clearing of a minor commoriens in statement of truth*—When the issue of the deceased die unmarried and under the age of 18[1], the clearing in the statement of truth should be: 'died a widow [widower, *or as the case may be*], leaving AB and CD his [her] children and only issue, who died under the age of eighteen years and unmarried, without having attained an absolutely vested interest in his/her estate. That there is no other person entitled in priority to share in the estate by virtue of any enactment.'

[1] In the case of death prior to 1 January 1970, a child's interest becomes absolutely vested on his attaining the age of 21 years or marrying thereunder.

Chapter 15

RENUNCIATION AND RETRACTION

Note: In anticipation of the revision of the Non-Contentious Probate Rules the expression 'witness statement' where it is used in this work refers to the form of application or evidence required with reference to any rule in force at the time of the application.

RENUNCIATION

When made

Before application for grant

15.22 Upon any subsequent application for a grant it may be necessary for the applicant to request an official copy of the will. The district judge or registrar has a general discretion, under NCPR SI 1987/2024 r 10(2), to allow a facsimile copy of the will to be marked in lieu of the original.

RETRACTION

Practice

15.75 Form of retraction, Form 197 (**A6.202**).

Form of retraction by members of a partnership, Form 198 (**A6.203**).

Chapter 16

AMENDMENT AND NOTATION OF GRANTS

Note: The Non-Contentious Probate Rules 1987 were amended by SI 2018/1137, which came into force on 27 November 2018. The amended rules replace the oath application for a grant of representation with a statement of truth. In anticipation of further revision of the Non-Contentious Probate Rules, the expressions 'witness statement' and 'statement of truth' where they are used in this work refer to the form of application or evidence required with reference to any rule in force at the time of the application.

AMENDMENT OF GRANT

Error as to deceased

16.04 Amendment of a grant may be allowed where the error was in the Christian name, address, or date of death of the deceased. Where an amendment is desired in the name of the deceased, or in the date of death, the certificate of birth or death must be produced.

Address of deceased

16.09 An additional address may be inserted by amendment[1] where there is a sufficient and exceptional reason for it to be included. Permission is rarely given.

[1] *Re Towgood's Goods* (1872) LR 2 P & D 408.

Errors as to grantee

16.11 An executor may have omitted a first or medial name of his own, which has been omitted in his appointment in the will, or he may have used the surname stated in the will, without the right to do so. If he can give a sufficient and reasonable explanation, the necessary amendment will be made.

Addition of limitation

16.14 The district judges and registrars have allowed the insertion of a limitation for the use and benefit of named minors until one of them attains 18 years etc and also a note as to reservation of power to make a grant to another executor.

Probate of codicil subsequent to that of will

16.19 If a codicil is found after probate of a will has been granted, a separate probate of that codicil may, in certain circumstances, be granted, and the first probate undergoes no alteration or amendment whatever. In order to obtain probate of the codicil, a statement of truth must be drawn up, identifying the codicil and reciting the particulars of the grant of probate of the will. The grant must be taken at the registry from which the first grant issued. In applications at the Principal Registry, the probate of the will, or an office copy thereof, should be lodged. A further HMRC account may also be required (see Chapter 8). This practice is liable to change under current modernisation plans.

ELECTION BY SPOUSE OR CIVIL PARTNER TO HAVE LIFE INTEREST REDEEMED

Right of surviving spouse or civil partner to redemption

16.36 Where the deceased dies intestate on or after 1 October 2014 leaving a spouse or civil partner and issue, and the value of the net estate exceeds the spouse's or civil partner's statutory legacy, a life interest in the deceased's estate no longer arises. The Administration of Estates Act 1925, s 46 as amended by the Inheritance and Trustees' Powers Act 2014, s 1, omits the previous requirement, if any, for a spouse's or civil partner's life interest.

ORDERS FOR PROVISION OUT OF ESTATE OF DECEASED

Inheritance (Provision for Family and Dependants) Act 1975

16.50 A copy of every final order made under the relevant provisions of these Acts[1] is to be sent to the Principal Registry of the Family Division for entry and filing, and a memorandum of the order must be endorsed on, or permanently annexed to, the probate or letters of administration under which the estate is being administered.

[1] Other than an order made under s 15(1) of the Act, but including an order dismissing an application or a final order embodying a consent order or terms of compromise (Registrar's Direction (Divorce), 21 March 1962; *Practice Direction* (Chancery Division: Endorsement of Orders on Grants of Representation): [1978] 3 All ER 1032, [1979] 1 WLR 1); now CPR PD 57B(18.1)–(18.3).

Practice for recording orders

Principal Registry

16.51 The grant of probate, letters of administration (with will) or letters of administration and a copy of the order are sent to the Leeds Registry by the Chancery Master, Family Division district judge or county court district judge, as the case may be. If the grant was made in the Principal Registry a memorandum of the order is prepared by the probate department and photocopied. A copy of the memorandum is attached to the grant, and a further copy is sent to HMRC Inheritance Tax. The order and another copy of the memorandum are sent to the Birmingham Probate Registry for filing at the Probate Record Centre with the original will, or if there is no will, with the statement of truth to lead the grant of administration.

16.52 A marginal note is made on the grant, as follows: 'Memorandum of order dated pursuant to section 19(3) of the Inheritance (Provision for Family and Dependants) Act 1975 (*or as the case may be*), annexed hereto' and a note is also made on the record of the grant. The grant, with the copy memorandum attached, is returned to the extracting solicitor, probate practitioner or grantee.

Chapter 17

REVOCATION AND IMPOUNDING OF GRANTS

Note: The Non-Contentious Probate Rules 1987 were amended by SI 2018/1137, which came into force on 27 November 2018. The amended rules replace the oath application for a grant of representation with a statement of truth. In anticipation of further revision of the Non-Contentious Probate Rules, the expressions 'witness statement' and 'statement of truth' where they are used in this work refer to the form of application or evidence required with reference to any rule in force at the time of the application.

BY WHOM REVOCATION IS OBTAINED

Other documents required

17.52 If one of the grantees lacks capacity to manage his property and affairs within the meaning of the Mental Capacity Act 2005, evidence of his lack of mental capacity is required. The district judge or registrar will normally accept a certificate or affidavit by the Responsible Medical Officer in the form set out in para **11.266**, or a certificate by the patient's doctor. If the Responsible Medical Officer or doctor is unable to give such a certificate, the matter should be referred to the district judge or registrar for his directions[1].

[1] *Practice Note* [1962] 2 All ER 613, [1962] 1 WLR 738; Registrar's Direction (1969) 31 January.

New grant

17.55 Except as stated in para **17.57**, the executor or administrator who is to take the new grant following upon the revocation should not prepare the statement of truth and the papers to lead to the grant until after the revocation of the former grant has been effected.

17.56 In applications lodged at the Principal Registry a 'plain' copy of the revoked grant (see para **21.20**) bearing the note of revocation on it must be lodged with the papers. Forms of statement of truth, Nos 67 and 121 (**A6.72** and **A6.126**).

Combined application for revocation of probate and new grant

17.57 Where a grant of probate has issued to two or more executors, one of whom subsequently lacks mental capacity to manage his affairs, and it is proposed to revoke it and obtain a new grant of probate to the remaining original grantee or grantees, one sufficient affidavit may be used both to lead the order for revocation and to serve as the statement of truth on which the new grant issues. The will may be referred to as that already proved and in the custody of the court, and need not be annexed. No further HMRC Inheritance Tax account need be lodged.

IMPOUNDING GRANTS

When grant impounded

17.67 Where a sole, or sole surviving, grantee subsequently lacks mental capacity within the meaning of the Mental Capacity Act 2005, and a new grant is made, the former practice of impounding the old grant has been abandoned[1].

[1] *Registrar's Direction* (1985) 9 July.

Form of new grant

17.70 The new grant is of the *unadministered* estate, except in the case of a grant of double probate which, following the normal practice, is a grant of the whole estate, although the amount shown in the statement of truth and grant is that remaining unadministered (see also paras **13.119** ff). Form of statement of truth, No 120 (**A6.125**).

Chapter 18

RESEALING

Note: The Non-Contentious Probate Rules 1987 were amended by SI 2018/1137, which came into force on 27 November 2018. The amended rules replace the oath application for a grant of representation with a statement of truth. In anticipation of further revision of the Non-Contentious Probate Rules, the expressions 'witness statement' and 'statement of truth' where they are used in this work refer to the form of application or evidence required with reference to any rule in force at the time of the application.

EXTENDED SCOPE OF UNITED KINGDOM GRANTS

Notation of domicile in England and Wales

18.23 A grant in the estate of a person dying domiciled in England and Wales is entitled to recognition in Scotland and Northern Ireland if it contains a statement of such domicile (Administration of Estates Act 1971, ss 2, 3[1]). Such recognition extends to grants made both before and after the commencement of the Act of 1971. A statement of the place of domicile is required to appear in every statement of truth (NCPR SI 1987/2024 r 8(2) as amended), and is reproduced in the grant, but in the case of a grant issued prior to 1 January 1972 a statement of domicile may not have been included. If in such a case there are assets in Scotland or Northern Ireland to be administered, or it is for some other reason necessary for the personal representative to prove his title in one of these countries, the procedure for obtaining a notation of domicile in England and Wales set out in the following paragraph should be followed.

[1] See paras **A1.206** and **A1.207**.

COLONIAL GRANTS RESEALED IN ENGLAND AND WALES[1]

[1] The term 'colonial' is used for convenience in this chapter, but the Colonial Probates Acts also authorise the resealing of grants issued by a number of former colonies, protectorates, etc which have attained independence within the Commonwealth, by South Africa while it was a Republic outside the Commonwealth and more recently by Hong Kong which is now a Special Administrative Region of the People's Republic of China (see paras **18.35–18.39**).

18.27 By s 1 of the Colonial Probates Act 1892[1] it is provided that:

> 'Her Majesty the Queen may, on being satisfied that the legislature of any British possession has made adequate provision for the recognition in that possession of probates and letters of administration granted by the courts of the United Kingdom, direct by Order in Council that this Act shall, subject to any exceptions and

modifications specified in the Order, apply to that possession, and thereupon, while the Order is in force, this Act shall apply accordingly.'

[1] For full text of the Act, see para **A1.45**. The term 'British possession' under s 1 of the Act means, by virtue of Sch 1 to the Interpretation Act 1978, 'any part of H.M. Dominions outside the United Kingdom', and is thereby not restricted to British dependent territories.

Changes in status of former colonies etc

18.37 In the case of South Africa, s 2 of, and the Second Schedule to, the South Africa Act 1962 specifically authorised the continued resealing of grants issued in South Africa notwithstanding that it became a Republic outside the Commonwealth. South Africa rejoined the Commonwealth in 1994.

Territories to which the Act applies

18.39 The Colonial Probates Acts now apply to permit the resealing of grants made in the following countries and territories:

[Aden]
On 30 November 1967 Aden ceased to form part of HM Dominions. Grants made in Aden after that date cannot be resealed (Secretary's Circular, 17 January 1968).
Alberta
Antigua
Australian Capital Territory
Bahamas
Barbados
Belize (formerly British Honduras)
Bermuda
Botswana (formerly Bechuanaland)
British Antarctic Territory
British Columbia
British Sovereign Base Areas in Cyprus
Brunei
Cayman Islands
Christmas Island (Australian)
Cocos (Keeling) Islands
Cyprus (Republic)
Only those grants issued by the courts under the jurisdiction of the recognised government of Cyprus may be resealed. Accordingly any document purporting to be a grant issued by a court of the 'Turkish Republic of Northern Cyprus', having only de facto jurisdiction, may not be resealed although such a document may be used to support an application for an order under NCPR SI 1987/2024 r 30(1)(c) (see paras **12.110–12.115**).
Dominica
Falkland Islands

Falkland Islands Dependencies

Fiji

Gambia

Ghana

Gibraltar

Gilbert and Ellice Islands

On 1 January 1976 the Ellice Islands separated from the Gilbert Islands and became a separate colony under the name of Tuvalu. On 1 October 1978 the colony of Tuvalu achieved independence within the Commonwealth. On 19 June 1979, by virtue of the Kiribati Act 1979, the former Gilbert Islands attained full independent status as the Republic of Kiribati. By that Act, the Colonial Probates Acts continue to apply to Kiribati.

Grenada

Guyana (formerly British Guiana)

Hong Kong

The United Kingdom's mandate to govern Hong Kong ended on 30 June 1997 and on 1 July 1997 the territory was renamed The Hong Kong Special Administrative Region of the People's Republic of China. The Hong Kong (Colonial Probates Act) Order 1997 applies the Colonial Probates Act 1892 to that region as it applied to Hong Kong immediately before 1 July 1997.

Jamaica

Kenya

Kiribati

See entry for Gilbert and Ellis Islands above

Lesotho (formerly Basutoland)

Malawi

Malaysia

See also entry for Singapore below

Manitoba

Montserrat

New Brunswick

[New Hebrides]

The Act of 1892 applied to the New Hebrides only to the extent of Her Majesty's jurisdiction there. The New Hebrides became an independent country (now known as Vanuatu) on 30 July 1980. Since Her Majesty from that date has no jurisdiction there, the Colonial Probates Acts only apply to grants issued before independence.

New Guinea Territory

New South Wales

New Zealand

Newfoundland

Nigeria

Norfolk Island

Northern Territory of Australia

North-West Territories of Canada

Nova Scotia

Ontario

Papua (New Guinea)

Prince Edward Island

Queensland

St Christopher (Kitts), Nevis and Anguilla

On 19 December 1980 Anguilla ceased to form part of the territory of the associated states of St. Christopher, Nevis and Anguilla: the Colonial Probates Acts continue to apply to these states.

St Helena

St Lucia

St Vincent

Saskatchewan

Seychelles (Republic)

Sierra Leone

Singapore

On 9 August 1965 Singapore seceded from the Federation of Malaysia and became an independent sovereign state. The Colonial Probates Acts continue to apply to Singapore (see Singapore Act 1966).

Solomon Islands

South Africa

The resealing of grants issued in South Africa, continues under the authority of the South Africa Act 1962, s 2 and Second Sch, including the period when South Africa was a Republic outside the Commonwealth. As to South African grants, see also para **18.60**.

South Australia

Southern Rhodesia (now Zimbabwe)

On 18 April 1980, Southern Rhodesia became an independent country known as Zimbabwe. Provision has been made in the Act granting such independence for the continued application of the Colonial Probates Acts to grants issued by its courts on and after that date. Furthermore, by virtue of an Ordinance enacted on 7 December 1979, provision was made for the recognition of any act done in Southern Rhodesia in reliance upon any law or purported law in operation in that country from 11 November 1965 onwards until its independence. One of the effects of this provision is that grants of representation issued by the courts in Southern Rhodesia, irrespective of the date of issue, may now be resealed in England and Wales under the Colonial Probates Act. (*Practice Direction* [1980] 2 All ER 324, [1980] 1 WLR 553).

Sri Lanka (formerly Ceylon)

Grants of probate and letters of administration in Sri Lanka during the period 1 January 1974 to 31 December 1977 were issued by the Public Trustee and not by a court of law. Such grants may be resealed under the Colonial Probates Act 1892 (Secretary's Circular, 14 June 1985).

Swaziland

Tanzania

The Colonial Probates Act (Application to Tanzania) Order 1969 provides that the Colonial Probates Act 1892 shall be deemed to have applied to Tanganyika from 9 December 1961 (the date on which Tanganyika attained independence within HM Dominions) until immediately before 26 April 1964 (the date on which it entered into a union with Zanzibar).

Tasmania

Tortola (formerly Virgin Islands)

Trinidad and Tobago (Republic)

Turks and Caicos Islands

Tuvalu (formerly Ellice Islands)

See entry for Ellice and Gilbert Islands above

Uganda

Victoria

Western Australia

Zambia

Zimbabwe (formerly Southern Rhodesia)

See Southern Rhodesia above

Domicile

18.42 Section 2(2) of the Colonial Probates Act 1892[1] provides that the court may require such evidence, if any, as it thinks fit as to the domicile of the deceased. A statement of truth is not required on an application for resealing, and the statement as to the domicile of the deceased given in the HMRC account summary (Form IHT 400 / IHT 205) is normally accepted by the registry. Additional evidence as to the domicile may, however, be required by the HMRC Trusts and Estates, Inheritance Tax in relation to the liability for inheritance tax.

[1] See para **A1.45**.

Grantee not qualified under rule 30

18.51 Application for such leave should be made to the Probate Department of the Principal Registry or to a district registry.

18.55 Such elections may be resealed under the Colonial Probates Acts, on it being certified on behalf of the trustee company that the election is still in force and an undertaking given that, in the event of further estate in New Zealand being discovered which would place the estate beyond the statutory limit for the election procedure, no further step will be taken in the administration of the estate in England without obtaining further representation in New Zealand: see also 'New Zealand. Public Trust', paras **18.81** ff.

Copy will to be lodged

18.60 Grants issued in certain countries, notably South Africa, are described as letters of administration or letters of executorship whether the deceased died

testate or intestate, and no copy of the will is annexed to the grant. When preparing applications to reseal grants made in such countries it should be ascertained whether or not the deceased left a will, so that the copies of the will required by NCPR SI 1987/2024 r 39(5) can be lodged. The use of the expression 'executor testamentary' to describe the grantee is an indication that the deceased died testate and appointed an executor: on the other hand, the term 'executor dative' used as in the case of South African grants may apply both to cases of testacy and intestacy where the grantee is other than an executor named in the will.

Postal applications generally

18.66 To avoid delay, in any application submitted by post, care should be taken to see that all the requirements detailed in this chapter are observed, and that a remittance for the appropriate fee is enclosed. Remittances for fees should be by crossed cheque, postal or money order, payable to 'HMCTS' or 'HM Court & Tribunal Service'. Postal applications should be addressed to: The Probate Department, First Avenue House, 42–49 High Holborn, London WC1V 6NP *or* DX 941, London/Chancery Lane or to one of the district probate registries (see para **2.60**).

New Zealand. Public Trust

18.81 The effect of certain provisions in the New Zealand statute the Public Trust Act 2001 is as follows:

(a) the Public Trust of New Zealand may in various circumstances obtain from the New Zealand court either a grant or an order to administer, which, while in force, has the full effect of a grant;

(b) if the estate in New Zealand is within certain limits (estate out of New Zealand is irrelevant for this purpose), the Public Trust of New Zealand may file an election to administer. This, while in force, has the full effect of a grant.

18.83 In the case of elections, the document produced should be an official copy showing that the election itself has been filed in the New Zealand court; and the Public Trust should certify that the election is still in force, and undertake that in the event of further estate in New Zealand beyond the statutory limitation being discovered he will not act further in the administration of the estate in England and Wales without obtaining further representation there[1].

[1] Registrar's Direction (1958) 24 March.

18.84 A general power of attorney has been filed in the Principal Registry by the Public Trust of New Zealand appointing as his attorney the Public Trustee of England and Wales for the purposes of applying for resealing under the Colonial Probates Acts.

Australia. Public Trustee

18.85 The principles which apply to the resealing of orders to administer in favour of, and elections to administer by, the Public Trust of New Zealand as set out in the previous section apply equally to orders obtained and elections given by the Public Trustee of Queensland, Australia (formerly known as the Public Curator of Queensland)[1].

[1] Registrar's Direction (1979) 18 June.

Chapter 20

DEPOSIT AND REGISTRATION OF WILLS OF LIVING PERSONS

DEPOSIT OF WILLS

Records

20.17 Printed forms and envelopes for use in connection with the deposit of wills may be obtained from the Probate Department, Principal Registry of the Family Division, First Avenue House, 42–49 High Holborn, London WC1V 6NP *or* DX 160011 Kingsway 7 or from any district probate registry (for the list of district probate registries, see para **2.60**).

Chapter 21

SEARCHES AND COPIES – EXEMPLIFICATIONS – DUPLICATE GRANTS

SEARCHES AND COPIES

Wills proved since 11 January 1858

Searches and copies

21.04 Computer terminals are now installed in all registries by which the public may search probate records. The Probate Records Centre has comprehensively updated the electronic records to include all calendars since 1858. This exercise included records of soldiers who died in active military service between 1860 and 1982.

No fee is payable on a search for a grant in the calendars if it is made personally at the registry, although on inspection of a copy will or any other document (in the presence of an officer of that registry) a fee of £20 is charged[1]. Where application is made in the Principal Registry or a district probate registry either personally or by post for a copy of a grant (other than on the application for the issue of the original grant) a fee of £1.50 is payable[2]. The fee will include the copying of the will and codicil proved[3]. If additional copies are requested at the same time the fee is £1.50 for each copy[4]. The NC Probate Fees Order 2004 (SI 2004/3120) (as amended) (Fee 8(b)) makes provision for the supply of copies of documents on computer disk or in other electronic form at the cost of £1.50 for each copy when facilities are in place to provide such copies.

1 NC Probate Fees Order 2004 (SI 2004/3120) (as amended), Fee 7.

2 NC Probate Fees Order 2004 (SI 2004/3120) (as amended by Court Fees (Miscellaneous Amendments) Order 2019 (SI 2019/1063)), Fee 8(a).

3 Secretariat Circular 15 April 2004.

4 NC Probate Fees Order 2004 (SI 2004/3120) (as amended by Court Fees (Miscellaneous Amendments) Order 2019 (SI 2019/1063)), Fee 8(b).

Public online searches

21.09 Facilities are now in place to search and order probate records online at www.gov.uk/search-will-probate.

In order to search for and order a copy of a grant and any will, the site requires the surname and year of death of the deceased. A successful search displays the name of the deceased, the date of the grant, the probate number, the date of death, the record available to order, the grant and will if any, and the probate registry which issued the grant. The fee is £10 payable by credit or debit card following which the site informs the applicant when the probate record will be available to download and print (about ten days). In this context, the probate record is the grant and any testamentary papers that were proved.

Standing search for grant of representation

21.12 The facility is now contained in NCPR SI 1987/2024 r 43, which provides:

> '(1) Any person who wishes to be notified of the issue of a grant may enter a standing search for the grant 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,
>
> a notice in Form 2.
>
> (2) A person who has entered a standing search will be sent an office copy of any grant which corresponds with the particulars given on the completed Form 2 and which—
>
> (a) issued not more than twelve months before the entry of the standing search; or
>
> (b) issues within a period of six months after the entry of the standing search.
>
> (a) Where an applicant wishes to extend the said period of six months, he or his solicitor may lodge at, or send by post or electronic means (paying the appropriate fee electronically) using an address provided for the purpose to, the registry or sub-registry at which the standing search was entered written application for extension.
>
> (b) An application for extension as aforesaid must be lodged, or received by post or electronic means, within the last month of the said period of six months, and the standing search shall thereupon be effective for an additional period of six months from the date on which it was due to expire.
>
> (c) A standing search which has been extended as above may be further extended by the filing of a further application for extension subject to the same conditions as set out in sub-paragraph (b) above.'

21.13 Application for a standing search is made by lodging with, or sending by post to, the probate department at the Principal Registry or to a district probate registry or sub-registry a request in the form prescribed (see Form No 199 (**A6.204**)), together with the prescribed fee of £10 (NC Probate Fees Order 2004 (SI 2004/3120) (as amended), Fee 5). An application for a standing search by electronic means is made by emailing the form PA1 to newcastledpr solicitorsenquiries@justice.gov.uk with confirmation that the fee should be met by the practitioner's Fee Account or PBA (payment by account) quoting the account number. The Fee Account or PBA must be previously set up with Liberata/Phoenix whose contact email address is: MiddleOffice.DDServices@liberata.gse.gov.uk.

21.13A No application for search may be accepted without the full information required by the form. In particular in all instances where the deceased died in the United Kingdom and the death has been recorded in the Register of Deaths the name and date of death as recorded in the Register should be included in the form together with any different name by which the deceased was known[1]. Likely variation of spelling of names for the deceased may also be included. The form of receipt issued includes provision for extension of the period of search in due course, if required, on payment of a further fee of £10. The fee provides for the issue of a copy grant and will irrespective of the number of pages.

[1] District Judge's Direction 12 January 1999.

21.14 Postal applications should be addressed to the Probate Department, Principal Registry of the Family Division, 42–49 High Holborn, London WC1V 6NP *or* DX 941 London/Chancery Lane or to any district probate registry (see para **2.60** for addresses). Remittances for fees may be by credit or debit card in the Principal Registry but otherwise should be by crossed cheque or postal order payable to 'HMCTS' or 'HM Courts and Tribunals Service'.

Copies of wills, grants and other documents

21.17 As from 31 January 2000 the majority of probate records are kept at the Probate Records Centre in Birmingham which is privately managed. The records remain under the control and possession of the Family Division of the High Court. There is no public access to the Centre for the purpose of obtaining copies of or inspecting probate records. Record copies of all grants and wills are scanned and held as computer data at the Centre and the most registries have online access to the Centre for the purpose of retrieving copies by facsimile transmission (see para **21.07**). The general public now have online access to record copies of all grants and wills (see para **21.09**). When any notation is made to an original grant as a result of amendment, revocation or other notice of this is sent to Birmingham District Registry which is assigned the responsibility for replacing or noting the record copy.

Office copies

21.19 In addition to copies of proved wills and grants, office copies of the following documents may be obtained (unless a district judge or registrar has directed that the will, grant or other document is not open to inspection):

- oaths;
- statements of truth
- bonds or guarantees;
- affidavits duly filed (including affidavits of justification by sureties);
- declarations of estates;
- powers of attorney (except where only a plain copy remains on the file);
- renunciations;
- orders (except an order for leave to swear death); and
- notarial copies of foreign wills, including the accompanying 'proceedings'.

Fees for searches and copies

21.30 Under the Non-Contentious Probate Fees Order 2004 as amended by the Non-Contentious Probate Fees (Amendment) Order 2014 and the Court Fees (Miscellaneous Amendments) Order 2019 the fees payable for searches and copies are as follows:

Fee No			
5		Fee for a standing search for a grant (see paras **21.11–21.14**), for each search period of six months	£10
7		On inspection of an original or copy will, or any other document including a copy of a will	£20
8	(a)	For each copy of all or part of a document, whether or not issued as an office copy, sealed and certified copy, exemplification of a grant or special certificate countersigned by the President	£1.50
	(b)	Where copies of any document are made available on a computer disk or other electronic form, for each such copy	£1.50
	(c)	Where a search of the index is required, in addition to (a) or (b) above, for each period of four years	£4

EXEMPLIFICATIONS AND SPECIAL CERTIFICATES

21.38 An exemplification is a document sometimes required by foreign courts. It contains an exact copy of the will (if any), and a copy of the grant. A testimonium clause is signed by a district judge or registrar, and in the case of a special certificate or copy it is countersigned by the President of the Family Division and the seal of the Family Division is added. The name and address of the probate practitioner who extracted the grant are placed in the margin.

DUPLICATE GRANTS

Fees

21.47 The fee for a duplicate grant is £20[1], exclusive of the fee (£1.50) for an office copy of the original grant, where necessary.

[1] Non-Contentious Probate Fees Order 2004 (SI 2004/3120) (as amended), Fee 3.

Chapter 22

AFFIDAVITS, AFFIRMATIONS AND STATUTORY DECLARATIONS

22.02 As regards affirmations, NCPR SI 1987/2024 r 12 requires that evidence as to due execution be given by affidavit. Rule 8 now requires a statement of truth by the applicants for a grant. However, the Interpretation Act 1978 provides that, unless the contrary intention appears, the words 'oath' and 'affidavit' include affirmations, and they are therefore accepted.

RULES

22.05A In the meantime, the Non-Contentious Probate (Amendment) Rules 2018 which came into force on 27 November 2018 (and superseded previous (Amendment) Rules 2016 and 2017)[1] allow online applications for grants of representation. The amendment rules are being rolled out and a party may make an application online if it meets certain criteria and if invited to do so by the probate registry. The online application incorporates a statement of truth. If there is a requirement for supplementary evidence it is anticipated that this may be given in a statement of truth. The project is in its infancy and continues to be tested at the time of publication.

[1] SI 2016/972, SI 2017/1034 and SI 2018/1137. See Appendix II, para **A2.39** ff of this supplement for the incorporated rule amendments.

22.08 As to the description of the deponent, see under *Executor's statement of truth*, paras **4.114–4.115**. The requirement that a female deponent's occupation or status should be given[1] is no longer rigidly enforced.

[1] Secretary's Circular, 12 May 1967.

22.10 Similarly when the deponent is a non-English or non-Welsh speaker the jurat should confirm that the contents of the affidavit were translated in his/her presence by an interpreter previously sworn and that the deponent appeared perfectly to understand the contents.

COMMISSIONERS ETC

Before whom sworn in England and Wales

22.30 Affidavits for use in the probate registries, when sworn in England and Wales, must be sworn before a Commissioner for Oaths or an authorised

officer of the Supreme Court[1].

[1] Secretary's Circular, 12 April 1967.

Chapter 23

CAVEATS (OBJECTIONS)

Note: In anticipation of the revision of the Non-Contentious Probate Rules the expression 'witness statement' where it is used in this work refers to the form of application or evidence required with reference to any rule in force at the time of the application.

NATURE

Definition

23.01 A caveat is a notice in writing by a person wishing to show cause against the sealing of a grant, that no grant is to be sealed in the estate of the deceased named without notice to that person (NCPR SI 1987/2024 r 44). *Note*—If the person does not wish to prevent a grant issuing but requires to know when a grant issues, so that he may pursue a claim against the estate or for any other reason, instead of entering a caveat he should enter a standing search under r 43—see paras **21.11–21.14**.

ENTRY OF CAVEAT (OBJECTION)

Date and duration

23.15 The life of a caveat is also extended beyond the normal period of six months by the issue of a summons for directions pursuant to r 44(6) (see paras **23.67** ff) until that summons is disposed of or the district judge or registrar gives a direction, on the summons, for the caveat to cease to have effect (r 44(8)). Before this happens the caveat may be withdrawn under r 44(11), but in the event of a caveat being withdrawn before such a summons has been finally disposed of, no grant will be sealed without reference to a district judge or registrar[1]. This allows for the resolution of any issues which a party has raised following the entry of the caveat and which may have a bearing on the administration of the estate.

[1] Registrar's Circular, 12 June 1967.

Commencement of probate claim

23.17 The commencement of a probate claim operates to prevent the sealing of any grant (other than a grant of administration pending determination of

the probate claim) until application for a grant is made by the person shown to be entitled thereto by the decision of the court in such claim. This is subject to the proviso that a district judge may direct that a grant issue on an application made by summons. On the application for a grant after the conclusion of a probate claim, any caveat (*objection*) entered by the claimant in the claim, and any caveat (*objection*) in respect of which notice of the claim has been given, ceases to have effect (r 45(4)).

Place and mode of entry

23.18 A caveat (*objection*) may be entered at the Principal Registry or at any district probate registry[1] by attending and completing the prescribed form 'in the appropriate book', or by:

- sending by post at the caveator's own risk; or
- sending by electronic means at the caveator's own risk (paying the appropriate fee electronically) using the address provided for the purpose,

to the registry a notice in the prescribed form (r 44(2) and see Form No 41 (**A6.46**)).

[1] Senior Courts Act 1981, s 108 (see para **A1.327**); see NCPR SI 1987/2024 r 44.

Form of caveat

23.22 Care should be taken to include in the entry all alternative or alias names for the deceased to ensure that a grant does not issue in any of these names.

Index of caveats

23.23 Section 108(2) of the Senior Courts Act 1981 directs:

> 'On a caveat being entered in a district probate registry, the district probate registrar shall immediately send a copy of it to the Principal Registry to be entered in the caveats of that registry.'

Upon entry of a caveat (*objection*) in a district probate registry details of it are immediately recorded in the index of caveats (*objections*) in the court computer system (see para **23.24**).

23.24 The Non-Contentious Probate (Amendment) Rules 1998 introduced new rules and amendments as a result of computerisation of probate records including the index of pending applications and caveats. NCPR SI 1987/2024 r 44(4) is as follows:

> '(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.'

Further, under NCPR SI 1987/2024 r 57(1) the Senior District Judge is directed to maintain an index of every pending application for a grant in any registry or sub-registry. All the records are kept in one database with the result that each probate registry is able immediately to update the index when a caveat is entered. The caveat is instantly matched against pending applications.

Fee

23.26 The fee payable on the entry of a caveat is £20[1]. If sent by post the remittance should be by crossed cheque or postal order made payable to 'HMCTS' or 'HM Court & Tribunal Service'. If the caveat is entered by electronic means the completed caveat form should be emailed to the probate registry with confirmation that the fee is by payment by account (PBA) from the practitioner's numbered Fee Account. The Fee Account is set up in advance by contacting Liberata/Phoenix whose contact email address is: MiddleOffic e.DDServices@liberata.gse.gov.uk.

[1] NC Probate Fees Order 2004 (SI 2004/3120) (as amended), Fee 4.

Extension of caveat

23.28 No form of application for the extension of a caveat (*objection*) is prescribed by NCPR SI 1987/2024 r 44(3)(a), other than the requirement that it must be in writing. Application may, therefore, be made by the caveator (*objector*) or his probate practitioner attending personally at the registry in which the caveat was entered and by endorsing the relevant caveat with a request for its extension. Alternatively the application may be posted or sent by electronic means (cf para **23.26**) to the registry. Where postal application is made or sent by electronic means the related caveat number should be quoted. In every case where a caveat is extended, the registry will issue a receipt[1]. The fee for extending a caveat is £20[2].

[1] *Practice Note* (1976) 15 September.
[2] NC Probate Fees Order 2004 (SI 2004/3120) (as amended), Fee 4.

23.29 The proviso to NCPR SI 1987/2024 r 44(1) (which provides that a caveat (*objection*) is not effective to prevent the sealing of a grant on the day of entry) is not expressly attached to an application for the extension of a caveat (*objection*) with the result that a successful application for extension made, or received in the registry, on the date upon which the caveat is due to expire will operate to prevent the sealing of a grant. In all other respects, the procedures relating to the entry of a caveat (*objection*) apply to applications for extension[1]. Note that a caveat extended by electronic means and received in the registry after 4pm will be treated as having been received the following day.

[1] Registrar's Circular, 15 September 1976.

Restriction on entry of further caveat

23.33 Where leave of a district judge of the Principal Registry for the entry of a further caveat is granted, the further caveat is effective for six months from the date of its entry and not (as in the case of an application for extension of

an existing caveat) from the date of expiry of the first caveat[1].

[1] Registrar's Direction (1958) 28 January.

Search for caveat

23.36 An application may also be made by post or email to the Principal Registry or any district registry asking for a search to be made and it will be answered by a letter or email stating whether or not there is an effective caveat (*objection*), and, if there is one, a copy of it will be posted to the applicant[1].

[1] Secretary's Circular, 11 August 1988.

WARNING OF CAVEATS – CURRENT PRACTICE

Caveats warned at the nominated registry—currently Leeds District Probate Registry

23.39 Caveats can be warned only at the nominated registry (NCPR SI 1987/2024 r 44(5)). 'Nominated registry' is defined by r 44(15). It is the registry nominated by the Senior District Judge for the purpose of r 44, and in the absence of such nomination it is the Leeds District Probate Registry – see para **23.41**.

How warned

23.41 The warning is a notice to the caveator to enter an appearance at the Leeds District Probate Registry (the nominated registry) within 14 days, inclusive of the day of service, setting out his interest or, if he has no contrary interest but wishes to show cause against the sealing of a grant, to issue and serve within the same period a summons for directions returnable before a district judge of the Principal Registry or a district probate registrar (see NCPR SI 1987/2024 r 44(6)). The address of Leeds District Probate Registry is: York House, 31 York Place, Leeds LS1 2BA *or* DX 26451 Leeds (Park Square).

23.42 The person warning the caveat must set out in the warning his interest in the estate including the date of any will or codicil under which he claims title to a grant (eg executor or residuary legatee, etc), or, in the case of intestacy, his interest in the estate of the deceased, and must also give an address within the jurisdiction, which is his address for service (NCPR SI 1987/2024 r 49).

NON-APPEARANCE TO WARNING

Affidavit required

23.52 If no appearance is entered, nor any summons issued, by or on behalf of the caveator within the 14 days allowed, the person warning the caveat should file in the Leeds District Probate Registry an affidavit showing that the warning was duly served (NCPR SI 1987/2024 r 44(12)). The search for appearance and for the issue of any summons for directions is made by the Leeds registry. If no appearance is found and the time for appearance has

expired and if no summons for directions is pending, the caveat will be removed. Where the application for a grant has already been lodged, it may then proceed in the normal way.

APPEARANCE TO WARNING

Effect of appearance to warning

23.54 If the caveator enters an appearance to the warning, no grant can issue without an order of the court. A caveat in respect of which an appearance to a warning has been entered remains in force until proceedings are commenced by probate claim, unless otherwise directed by order made on summons by a district judge of the Principal Registry or by a registrar[1].

[1] NCPR SI 1987/2024 r 44(13) as amended by SI 2018/11137.

How entered

23.60 To enter his appearance, a caveator may either attend in person or by his probate practitioner at the Leeds District Probate Registry and complete a form of memorandum of appearance, which may be obtained at the registry, or he may send at his own risk the completed form of appearance by post to that registry. Form of appearance, No 39 (**A6.44**).

Caveator having no contrary interest

23.67 A caveator who has no interest contrary to that of the person warning the caveat, but wishes to show cause against the issue of a grant to that person, may within 14 days of service of the warning upon him (inclusive of the day of service) or at any time thereafter before a step in default has been taken by the person warning (ie the filing of an affidavit showing that the warning was duly served), issue and serve a summons for directions returnable before a district judge of the Principal Registry or a district probate registrar (NCPR SI 1987/2024 r 44(6)).

Subsequent proceedings

23.71 After entry of appearance, if the parties come to an agreement (which does not involve pronouncing for or against a will or making an order incorporating terms which are properly a matter for the Chancery Division) or if the opposition to the issue of a grant is abandoned, a summons for discontinuance of proceedings should be taken out before a district judge or registrar (see paras **25.221** ff), and an order clearing off the caveat, and for the issue of the grant, may then be made. A district probate registrar may deal with the summons if the application for the grant has been made or is to be made to his or her registry.

Chapter 24

CITATIONS (NOTIFICATIONS)

Note: In anticipation of the revision of the Non-Contentious Probate Rules, the expression 'witness statement' where it is used in this work refers to the form of application or evidence required with reference to any rule in force at the time of the application.

OBJECT OF CITATIONS

Kinds of citations

(A) To accept or refuse a grant

24.04 The citation, therefore, answers two purposes:

(a) it compels those who are primarily entitled to take a grant to decide whether they will do so or not; and
(b) where such parties refuse either to take a grant or to renounce, it provides an alternative grantee.

24.11 *Alternative to citation (or notification).* Where it is sought to pass over persons entitled who cannot be traced, in favour of a lower title, and a citation served by advertisement would normally be required, a district judge or registrar may make an order, if he thinks fit, under s 116(1) of the Senior Courts Act 1981 after, in appropriate cases, requiring the publication of a suitable advertisement for the person who would normally be cited. This course may be adopted where costs associated with the citation procedure would deplete a small estate.

24.19 *Will must be filed.* Before any citation (*notification*) can issue every will referred to in it must whenever possible be lodged in the Principal Registry or a district probate registry[1]. This confirms the existence of the will and allows the probate registrar to establish that the will, the subject of the citation, is or appears to be valid and that in due course it may be proved.

[1] NCPR SI 1987/2024 r 46(5).

(C) To propound a will

24.36 *Will already proved in common form.* If a will has been proved in common form, procedure by citation to propound is inappropriate. A person disputing such a will and wishing to compel the grantee to prove it in solemn form should take steps to have the grant called in, and himself commence

proceedings for revocation: the Non-Contentious Probate Rules have no application in such circumstances[1]. The proceedings are begun by a probate claim in the Chancery Division.

[1] *Re Jolley, Jolley v Jarvis* [1964] P 262, [1964] 1 All ER 596.

REQUIREMENTS ON EXTRACTING CITATIONS

Postal application

24.57 The procedure is as follows:

(a) Drafts of the citation and supporting affidavit should be sent for settling and perusal to the probate registry where the citation is to be issued, together with the originals of any relevant will and codicil. In the event of an original will or codicil being sent, registered post should be used and the registry will retain them unless their return is requested or necessary by reason of the intention to exhibit them to the affidavit.

(b) After the citation has been settled the papers (but not the original wills and codicils except in the circumstances set out in (a) above) will be returned to the probate practitioner who should then, if he has not already done so, enter a caveat (by post to any probate registry in respect of which a fee of £20[1] is payable: cheques or postal orders should be drawn in favour of 'HMCTS' or 'HM Courts and Tribunals Service'. In the Principal Registry payment may be by debit or credit card). The probate practitioner should return to the registry the settled draft citation, an engrossment of the citation, the draft affidavit, the sworn affidavit, any relevant wills and codicils in the solicitor's possession at this stage (eg if the draft citation has been provisionally settled in reliance on photographic copies, where the originals were not readily available and it would have been unreasonable to delay the matter until they were produced) and the receipt for the entry of the caveat. A payment for £12, being the fee for settling the citation, should also be sent.

(c) A signed and sealed citation will be returned to the probate practitioner. The receipt for the caveat will be returned at the same time.

(d) Details of the caveat are entered in the probate computer. These are automatically cross-referenced to the caveat filed under the rules.

It is anticipated that a similar procedure will continue to apply when the new rules come into force.

[1] NC Probate Fees Order 2004 (SI 2004/3120) (as amended), Fee 4.

Chapter 25

APPLICATIONS TO DISTRICT JUDGE, REGISTRAR OR HIGH COURT JUDGE (NON-CONTENTIOUS BUSINESS)

Note: In anticipation of the revision of the Non-Contentious Probate Rules, the expression 'witness statement' where it is used in this work refers to the form of application or evidence required with reference to any rule in force at the time of the application.

25.03 The Non-Contentious Probate Rules 1954 gave the registrars (now district judges) statutory power in most of the cases formerly dealt with by the High Court judges, save in the larger estates. The financial limits imposed by those rules were removed by the Non-Contentious Probate (Amendment) Rules 1967 which, with certain exceptions, extended to district probate registrars many of the powers formerly exercised only by the registrars (now district judges) of the Principal Registry. The Non-Contentious Probate (Amendment) Rules 1985 gave power to district probate registrars to deal with subpoenas to bring in testamentary documents, citations and summonses in relation to applications for grants made, and grants already issued, at the district probate registries, to the same extent as registrars (now district judges) of the Principal Registry. All those powers were retained in the Non-Contentious Probate Rules 1987[1]. The Non-Contentious Probate (Amendment) Rules 1991 and 2018 further extended the powers of district probate registrars so that a registrar may assess a bill of costs where he or she made the order or direction for payment of costs and for an assessment of those costs, and he or she may make an order to discontinue a caveat where an appearance has been entered to a warning of it. The Non-Contentious Probate (Amendment) 2003 (SI 2003/185) applied Parts 43, 44 (except rr 44.9–44.12), 47 and 48 of the Civil Procedure Rules 1998 to non-contentious probate and replaced the previous procedure for taxation of costs (under the Rules of the Supreme Court). Accordingly a district judge or registrar may make a summary assessment of costs order or conduct detailed a assessment of costs where he or she has made the order for costs. In practice assessment of costs of orders made in the Principal Registry are conducted by the Supreme Court Costs Office. District probate registrars may, however, refer any matters about which they are in doubt to a district judge of the Principal Registry for directions[2]. District judges' and registrars' summonses must be issued out of the registry in which they are to be heard[3]. A district judge or

registrar may order the transfer of any application made under the Non-Contentious Probate Rules 1987 to another district judge or registrar having jurisdiction[4]. The publication of the next revision of the Non-Contentious Probate Rules is now awaited.

[1] See para **A2.40.**
[2] NCPR SI 1987/2024 r 7(1)(b).
[3] NCPR SI 1987/2024 r 61(3).
[4] NCPR SI 1987/2024 r 62.

APPLICATIONS WITHOUT NOTICE

Leave to swear death

25.20 The Presumption of Death Act 2013 came into force on 1 October 2014. Under s 3(1) of the Act, but subject to sub-ss (3) and (4) (which deal with appeals against a declaration), a declaration of presumed death is conclusive of the presumed death and the date and time of death, and under s 3(2) the declaration is effective against all persons for the purpose of the acquisition of an interest in any property and the ending of the marriage or civil partnership to which the missing person was a party. Section 1 of the Act lays down the following qualifications and conditions:

- the person who is missing is thought to have died or has not been known to be alive for a period of at least seven years;
- any person may apply to the High Court for a declaration that the missing person is presumed to be dead;
- the person was domiciled in England and Wales on the day on which he or she was last known to be alive or the person was habitually resident in England and Wales throughout the period of one year ending with that day; or
- on an application by a spouse or civil partner, the applicant is domiciled in England and Wales on the date of the application or has been habitually resident in England and Wales throughout the period of one year ending with that day;
- the court must refuse the application by someone other than the missing person's spouse, civil partner, parent, child or sibling and if the court considers that the applicant does not have a sufficient interest in the determination of the application.

25.20A An application for a declaration of presumed death of a person under the Presumption of Death Act 2013 may be made either to the Family Division or the Chancery Division. The Civil Procedure Rules apply to the proceedings in this regard save that in the Family Division the Family Procedure Rules apply to the drawing up and service of orders.

25.20B While limited in nature, an application may be made under NCPR SI 1987/2024 r 53 to a district judge or probate registrar for leave to swear to the death of a person. Where the applicant for a grant cannot swear in his oath to the death of the deceased, and there is no direct evidence of his being dead[1], but only evidence from which his death may be presumed to have taken place, application must be made for an order giving him leave to swear to the death[2]. Such a presumption may arise: (1) from the disappearance of the presumed

deceased at or after a given time, and from the circumstances attending such disappearance, or from his not having been heard of for a prolonged period by those with whom he might reasonably have been expected to communicate[3]; or (2) from his having been on board a ship, which, from its non-arrival in port within a reasonable time, from the absence of tidings of any of those on board, and from other circumstances, is supposed to have been lost at sea; and similarly in the case of a missing or totally destroyed aeroplane.

[1] But where death can be sworn to have occurred between two dates, and the fact is not in doubt, the grant can be made in the registry without order (*Re Long-Sutton's Estate* [1912] P 97). In this case the oath should state that the deceased 'was last seen alive [or last known to be alive] on the day of 19 and that his dead body was found on the day of 19 '.

[2] It must be always remembered in these cases that the court does not presume the death of the deceased; it merely gives the applicant leave to swear the death (*Re Jackson's Goods* (1902) 87 LT 747).

[3] The fact that the family or friends of a man whose habit was to communicate with them received no communication from or news of him for seven years leads to the presumption of his death at some time during the seven years, but not at the beginning or at the end of the seven years (*Re How's Goods* (1858) 1 Sw & Tr 53, 31 LTOS 26), provided that there is no assignable cause for the cessation of his communications. The mere fact, however, that he has not been heard of for seven years, where it was not his practice to communicate, does not lead to such an inference, but it may, coupled with other circumstances, induce the court to act on the presumption of his death.
Where application was made for an order on the ground that a man had not been heard of for nearly seven years, there being also a Chancery suit, it was ordered that the letters of administration were not to be given out (*except for the purposes of the suit*) till the end of the seven years (*Re Winstone's Goods* [1898] P 143).

Decree under Matrimonial Causes Act

25.37 A decree of presumption of death and dissolution of marriage made before 1 October 2014 by virtue of s 19 of the Matrimonial Causes Act 1973[1] does not remove the necessity of applying for an order for leave to swear to the death of the missing former spouse. Section 19 of the MCA 1973 was repealed by the Presumption of Death Act 2013, s 16(3), Sch 2, para 1. See paras **25.20** ff.

[1] 27 Halsbury's Statutes (4th edn) 720.

Statement of truth

25.46 For form of statement of truth to lead to the grant following the order, see No 119 (**A6.124**).

Person found to be living after order giving leave to swear death

25.50 A claim for a declaration of presumed death under the Presumption of Death Act 2013, s 1 is issued in the High Court in either the Family Division or the Chancery Division in accordance with CPR Pt 57 and PD 57B.

Original will not available

Probate of a copy where the original is in existence

25.82 For the form of statement of truth, see No 69 (**A6.74**) with necessary alterations.

Contents of will not known

25.85 A person who applies for letters of administration states that the deceased died intestate. It sometimes happens that no will is forthcoming on the death of the deceased but the applicant is unable to confirm an intestacy. He may know, or have reason to believe, from the deceased's observations, or the statements of others, that there was a will in existence subsequently to the deceased's death.

Order

25.92 If the district judge or registrar grants the application, the order will direct that the grant be limited until the original will, an authentic copy or a more authentic copy thereof be proved, or in some appropriate variation of this wording. Details of the order should be included in the statement of truth for the grant. Unless the practitioner specifically requests a copy, it is no longer the practice of the probate registries to draw up the order in an application made without notice. When the registrar makes the order, details of it are communicated to the practitioner by email or letter.

25.94 Forms of statement of truth, Nos 68 and 69 (**A6.73** and **A6.74**).

Grants under s 116 of the Senior Courts Act 1981[1]

[1] See para **A1.343**.

25.96 **Note.** Section 116 of the Senior Courts Act 1981 replaces, with amendments, s 162(1) and proviso (b) of the Supreme Court of Judicature (Consolidation) Act 1925 and s 73 of the Court of Probate Act 1857, with effect from 1 January 1982. The following case law relates to applications made under the earlier statutory provisions, but the examples cited also illustrate the 'special circumstances' in respect of which the court may consider it 'necessary or expedient' to exercise its discretionary powers under s 116 of the Senior Courts Act 1981.

Mode of application

25.105 Exceptionally, where a local authority applies as a trust corporation in the circumstances mentioned below the district judge or registrar may dispense with the affidavit in support of the application for order. In these circumstances, the local authority applies by virtue of the Public Trustee (Custodian Trustee) Rules 1975 (SI 1975/1189), as amended (see paras **9.07–9.10**) on behalf of a person who by age, infirmity or other reason is in need of care and attention and resides in residential accommodation of the authority provided under s 21(1)(a) of the National Assistance Act 1948. The facts are recited

fully in the statement of truth and the written consent of the person in care is lodged (Registrar's Direction (1976) 30 June). It should be noted that application for an order under s 116 in these circumstances is an alternative procedure to an application being made under NCPR SI 1987/2024 r 31 (see para **A2.70**) for a grant to an attorney on behalf of the person in care or made under r 35 (see para **A2.74**) for a grant based on the lack of capacity within the meaning of the Mental Capacity Act 2005 of such a person.

Order

25.110 Details of the order must be included in the statement of truth to lead the grant. Unless the practitioner specifically requests a copy, it is no longer the practice of the probate registries to draw up orders in applications made without notice. When the registrar makes the order, details of it are communicated to the practitioner by email or letter.

Statement of truth

25.112 For forms of statement of truth, see Nos 145 and 171 (**A6.150** and **A6.176**).

Grant 'ad colligenda bona' (collection grant)

25.182 The application must be supported by an affidavit (*witness statement*) setting out the grounds of the application, and provided that it is not opposed should be made without notice at the registry at which the application for the grant is to be made[1]. A district probate registrar may, if he considers it necessary, obtain the directions of a district judge of the Principal Registry on any application made to him[2].

[1] NCPR SI 1987/2024 rr 2(1), 52(b); see also *Ghafoor v Cliff* [2006] EWHC 825 (Ch), [2006] 2 All ER 1079, [2006] 1 WLR 320.

[2] NCPR SI 1987/2024 r 7.

25.186 Ad colligenda bona (*collection*) grants are always grants of letters of administration despite the existence of a valid will which is ultimately proved. In all cases the statement of truth in support of the grant application (see Form No 144 (**A6.149**)) need not include any statement whether a will exists or whether the deceased died intestate, nor contain any of the usual clearings. It will always, however, be necessary to consider the existence of life or minority interests. Every (*collection*) grant ad colligenda bona is silent as to the will or the intestacy and is limited 'until further representation be granted'[1]. The question as to whether any life or minority interest arises in the estate of the deceased should be dealt with in the affidavit in support of the application for the order.

[1] Registrar's Direction (1979) 12 October.

Subpoena to bring in a testamentary document

25.194 Application for the issue of a subpoena (*witness statement*) under s 123 of the Senior Courts Act 1981[1] is made by lodging at a probate registry

an affidavit (*witness statement*) setting out the grounds of the application (NCPR SI 1987/2024 r 50(2)) (see Form No 35 (**A6.40**)), together with two copies of the form of subpoena (*witness summons*) (Form No 200 (**A6.205**)), duly completed. If the district judge or registrar directs the issue of the subpoena (*witness summons*) one of the copies is sealed and returned to the solicitor or probate practitioner, the affidavit (*witness statement*) being indorsed with the district judge's or registrar's direction and filed in the registry.

[1] See para **A1.342**.

APPLICATIONS BY SUMMONS (APPLICATION NOTICE)

Discontinuance of proceedings arising from caveat

25.221 When an appearance has been entered to the warning of a caveat, no grant can issue until the decision of the court in the proceedings (by probate claim) arising from the appearance to warning. But if, prior to the commencement of a probate claim the caveator abandons his opposition to the issue of a grant, application may be made by summons to a district judge or registrar for an order for discontinuance of the caveat and for the issue of a grant notwithstanding the caveat, warning and appearance (NCPR SI 1987/2024 r 44(13)). If the parties come to terms an application for discontinuance of the caveat is made by consent under the same rule to a district judge in the Principal Registry or to the registrar of the district probate registry to which the application for the grant has been, or is to be, made. It should be noted that an order of a district judge or registrar may not include the pronouncing for or against the validity of a will as these are properly matters for Chancery. Form of summons, No 203 (**A6.208**).

25.222 A similar application may be made to a district judge or registrar where a caveator enters an appearance to a warning which shows an insufficient interest.

25.223 As to the right of a caveator who has not appeared to a warning to withdraw his caveat and practice, see paras **23.48–23.51**. As to caveats generally, see Chapter 23.

PRACTICE AS TO SUMMONSES (APPLICATION NOTICES)

Issue of summons

25.233 Summonses (*application notices*) for hearing by a district judge or registrar must be issued out of the registry in which they are to be heard[1]. The registrar's jurisdiction relates in the first instance to cases where the related application for the grant has been, or is to be, made to his or her registry or the grant has issued from it. A registrar may also hear and dispose of an application which another registrar might otherwise deal with at the request of that registrar or on the application of the party making the substantive application or where the circumstances require it without any such request or application[2]. All summonses (*application notices*) for hearing by a High Court

judge must be issued out of the Principal Registry[1] (probate department).

[1] NCPR SI 1987/2024 r 61(3).
[2] NCPR SI 1987/2024 r 62A.
[3] NCPR SI 1987/2024 r 61(4).

Where reference to be made to Hansard

25.238 Unless the judge otherwise directs, where any party intends to refer at a hearing, as an aid to construing legislation, to the reports of parliamentary proceedings as reported in *Hansard*, that party must not less than five clear working days before the first date of the hearing serve upon all other parties and the court copies of any such extract together with a brief summary of the argument intended to be based upon such extract. Service on the court is to be in accordance with RSC Ord 65, r 5 to (a) in the Family Division in cases to be heard in London, the Clerk of the Rules, Floor 1M, Queens Building, Royal Courts of Justice, Strand, London WC2A 2LL; in cases to be heard out of London the manager of the relevant district registry, and (b) in the Principal Registry of the Family Division, the Probate Manager, First Avenue House, 42–49 High Holborn, London WC1V 6NP *or* DX 160011 Kingsway 7. Service upon other parties is also to be effected in accordance with RSC Ord 65, r 5 or as otherwise agreed between the parties (*Practice Direction* [1995] 1 All ER 234, sub nom *Practice Direction* [1995] 1 WLR 192).

When heard

25.245 The Human Rights Act 1998 (HRA 1998) came into force on 20 October 2000. It gives effect to rights and freedoms guaranteed under the European Convention on Human Rights. In this regard the matter of hearings in chambers is subject to the overriding considerations of the Act. In particular HRA 1998, Sch 1, art 6 allows everyone the right to a public hearing. This places on the district judge or registrar a duty to allow public access to any hearing or to transcript of judgment in chambers. CPR 39.2 and PD 39.2 set out the matters which the court must have regard to when deciding whether to hold a public hearing. CPR 29.2(3)(f) provides that a hearing, or any part of it, may be private if it involves non-contentious matters arising in the administration of trusts or in the administration of a deceased person's estate.

Orders

25.252 Orders are drawn up in the registry, and normally bear the date of the day on which they are made. Sealed copies of orders are sent by post to the applicant and respondent.

Part II

CONTENTIOUS BUSINESS

Chapter 26

INTRODUCTION

JURISDICTION OF THE COURT

High Court

26.16 Contentious probate business in the High Court is by statute assigned to the Chancery Division[1]. Since 2 October 2017 the Chancery Division operates as part of the Business and Property Courts ('B&PCs'). The B&PCs are made up of a number of specialists, lists and sub-lists. The appropriate list for probate claims is the Property, Trusts and Probate List (ChD). For the title of claims in the B&PCs, see para **29.02**.

A probate claim in the High Court must be begun by claim form issued out of Chancery Chambers (that is, the offices of the Chancery Division in the Royal Courts of Justice, 7 Rolls Building, Fetter Lane, London, EC4A 1NL) or out of one of the Chancery district registries (that is, one of the district registries of Birmingham, Bristol, Caernafon, Cardiff, Leeds, Liverpool, Manchester, Mold, Newcastle upon Tyne and Preston)[2]. Five of these Chancery district registries, Birmingham, Bristol, Cardiff, Leeds and Manchester, are also B&PCs. They are known as the B&PCs District Registries. For the title of claims issued in one of the B&PCs District Registries, see para **29.02**.

A probate claim in the High Court may only be transferred to the Chancery Division at the Royal Courts of Justice or to one of the Chancery district registries[3].

1 The Senior Courts Act 1981, s 61(1) and Sch 1, para 1(h).
2 CPR 57.3(a) and 57.1(2)(b)(i) and (ii).
3 CPR 30.2(8).

26.18 Procedure and case management in the Chancery Division are set out in the Chancery Guide (February 2016). The Guide is regularly updated and amended on the court website: www.gov.uk/courts-tribunals/chancery-division-of-the-high-court. The process of implementation of the Chancery Modernisation Review Report published in December 2013 has led to a significant number of recent changes to Chancery practice and it is essential to refer to the updated and amended online version. Probate procedure is summarised between paras 29.47 and 29.58 of the Chancery Guide.

THE PRACTICE: HIGH COURT AND COUNTY COURT

Pre-action steps

(1) Larke v Nugus

26.31 The Law Society Practice Note '*Disputed Wills*' (6 October 2011) sets out what is good practice on receipt of a request for information by a solicitor and the consequences of the failure to provide full information. It refers to the issue of privilege and to where there is a possibility of negligence. See www.lawsociety.org.uk/support-services/advice/practice-notes/disputed-wills.

A refusal by an executor to provide a full response to a reasonable request for information contained in a *Larke v Nugus* letter or to provide disclosure of the central documents is likely to have serious costs consequences and may result in his being deprived of part of his costs[1].

[1] *Watton v Crawford* [2016] NICh 14 in which a previous will and medical notes and records were not disclosed in response to a request for information.

Chapter 27

CLAIMS

(1) CLAIMS FOR PRONOUNCING FOR OR AGAINST A WILL IN SOLEMN FORM

When proof in solemn form may be required

27.10 The above persons may put an executor, or other person interested under a will, to proof in solemn form either before or after probate has been taken in common form, but the following two, by reason of their particular status, can only do so before, and not after, probate in common form has issued, namely:

(4) *A creditor*. A creditor to whom administration has been granted[1].
(5) *An appointee of the court*. Any other person in possession of a grant of administration, as appointee of the court, eg, by order under the Senior Courts Act 1981, s 116, but not having a beneficial interest in the estate.

This should not be regarded as an exhaustive list of the circumstances in which persons have been found to be entitled to require proof of a will in solemn form. Paragraph 28.01(ff) is expressed very broadly. It states that the rules of the probate court as to standing have always been flexible. This is in line with the new procedural code introduced by the Civil Procedure Rules 1998 with their overriding objective of enabling the court to deal with cases justly and at proportionate expense[2].

[1] *Menzies v Pulbrook and Kerr* (1841) 2 Curt 845 at 851. The decision in *Menzies v Pulbrook and Kerr* was stated still to be good law by the Court of Appeal in *Randall v Randall* [2016] EWCA Civ 494, [2017] Ch 77, [2016] 3 WLR 1217 but it was held to be wrong to assimilate the position of a creditor of a beneficiary of an estate with that of a creditor of an estate. The interests of the two types of creditor were held to be fundamentally different. The interest of the creditor of a beneficiary is to ensure that the beneficiary receives what is due to him or her under the will or on an intestacy. The interest of a creditor of an estate is to ensure that there is due administration of the estate: see the judgment of the Master of the Rolls at [22].

[2] *Randall v Randall* [2016] EWCA Civ 494, [2017] Ch 77, [2016] 3 WLR 1217 at [28] per the Master of the Rolls and at [36] per McCombe LJ.

Evidence of due execution

27.13 To prove the due execution of a will, it is necessary to examine one only of the attesting witnesses[1], provided that his evidence establishes due execution[2]. If the witness called fails to prove its due execution, then the party

propounding the will is bound to call the other attesting witness, notwithstanding that he may be an adverse or hostile witness[3]. Even though both witnesses give evidence of incorrect execution, rebutting evidence may be admitted[4], and the court may still decide after evaluating the evidence of the attesting witnesses that the will was duly executed[4]. There is a strong public interest in valid testamentary documents being upheld. In a case where there was doubt as to due execution, a judge was held wrong to have pronounced against a will without the original being produced to the court and without an opportunity for evidence to be given by at least one of the attesting witnesses[5].

1 *Belbin v Skeats* (1858) 1 Sw & Tr 148.

2 *Owen v Williams* (1863) 4 Sw & Tr 202; *Coles v Coles and Brown* (1866) LR 1 P & D 70.

3 *Re Vere-Wardale, Vere-Wardale v Johnson* [1949] P 395, [1949] 2 All ER 250; and see para **34.22** and cases there cited.

4 *Sherrington v Sherrington* [2005] EWCA Civ 326, [2005] WTLR 587 and *Channon v Perkins (a firm)* [2005] EWCA Civ 1808, [2006] WTLR 425; applied in *Kettell v Stancliffe* [2012] EWHC 2446 (Ch).

5 *Payne v Payne* [2018] EWCA Civ 985, [2018] 1 WLR 3761 at [45] and [48].

27.15 If the court is dissatisfied with the evidence of the attesting witness examined and the other attesting witness is not called, it is competent to it to decline to grant probate of the instrument propounded. The position is otherwise where there has not been an opportunity for evidence to be given by at least one of the attesting witnesses.[1]

1 See para **27.13** and fn 5 above.

(2) INTEREST ACTIONS

27.22 The decision in an interest action may involve an issue of pedigree or of legitimacy, but a prayer for a declaration of legitimacy may not be included in the claim form. Applications for declarations as to legitimacy or legitimation are now made under s 56 of the Family Law Act 1986 (as substituted by s 22 of the Family Law Reform Act 1987) and any such declaration may be made only under that section (Family Law Act 1986, s 58(4)). Any application for a declaration under s 56 of the Act of 1986 must be made in the form prescribed by rules of court (Family Law Act 1986, s 60(1)) and the Family Procedure Rules 2010 r 8.20 sets out what should normally be contained in an application for such a declaration. The proceedings should be brought in the Family Court. An interest action may arise from a dispute as to whether a person claiming to be a beneficiary and entitled to administer the estate was married to the deceased or whether the marriage was valid[1]. It might also arise in the context of an issue such as whether adopted children were included within the testator's description of 'children' for the purposes of his will.[2]

1 For a recent example see: *Adepoju v Akinola* [2016] EWHC 3160 (Ch). The issue was tried within the framework of a probate claim.

2 An issue of this type arose in *Hand v George* [2017] EWHC 533 (Ch), [2017] 3 WLR 559, [2017] WTLR 495 in which it was decided that the failure to ensure that s 5(2) of the Adoption Act 1926 had no continuing effect was in breach of art 14 of the European Convention of Human Rights, and that the Adoption Act 1976, Sch 2, para 6 had to be read down pursuant to s 3 of the Human Rights Act 1998 in order to bring it into compliance with the claimants' Convention rights. For the position of adopted persons under English domestic law in the context of the right to a grant, see paras **6.247** ff.

(3) CLAIMS FOR REVOCATION OF GRANTS

Claims for revocation when a will has been proved

27.26 A claim under the Inheritance (Provision for Family and Dependants) Act 1975 was held to give the claimant an interest in the estate within the meaning of CPR 57.7 sufficient to bring a claim for revocation of a grant in circumstances where it was conceded that the claim under the 1975 Act would be more valuable under intestacy than if a previous will admitted to probate in common form were upheld[1]. A claim by a former husband to challenge the validity of a will made by his wife following divorce was held to give sufficient standing in circumstances where if the will was invalid the husband stood to be entitled to an additional £75,000 as part of a divorce settlement[2]. In both cases there was in practice held to be no other route by which the will in question would be brought before the court to be proved in solemn form or for the grant to be revoked.

[1] *O'Brien v Seagrave* [2007] EWHC 788 (Ch), [2007] 3 All ER 633, [2007] 1 WLR 2002. The broad construction of the meaning of 'interest' adopted by Judge Mackie QC was adopted and applied by the Court of Appeal in *Randall v Randall* [2016] EWCA Civ 494, [2017] Ch 77, [2016] 3 WLR 1217.

[2] *Randall v Randall* [2016] EWCA Civ 494, [2017] Ch 77, [2016] 3 WLR 1217.

Claims for revocation of letters of administration

27.27 A claim for the revocation of letters of administration is instituted: (1) On the allegation that they were granted to a person without sufficient title to the grant[1]. The object of such a claim is to compel the party who has obtained the grant of administration to establish such a degree of relationship with the deceased as will entitle him to the grant, and in the result it becomes an interest suit. (2) On the discovery of a will, the validity of which is not admitted by the grantee. This may necessitate a claim for the revocation of the grant and for a pronouncement in favour of the will. A defendant administrator who with knowledge of a will applied for a grant of letters of administration was held liable to pay costs on the indemnity basis and to account on the footing of wilful default.[2]

[1] A grant to the Crown, and the order authorising it, may be revoked by a district judge's or a registrar's order, if kin are discovered. See para **24.88**. See also Chapter 17, as to the jurisdiction of the district judge or registrar to revoke a grant.

[2] *Morris v Browne* [2017] EWHC 631 (Ch).

Lodgment of grant

27.29 No copy of the grant may issue, without leave, after the claim form has been issued until the claim has been concluded. For a form of order, see: CP13A (**A6.223A**): Chapter 28.

ASSOCIATED CLAIMS

27.41 The following claims or applications are not, strictly, contentious probate claims, but they have sufficient connection to the subject matter of a contentious probate claim to warrant mention in this book. They are:

(1) a claim for the rectification of a will;
(2) a claim or application for the substitution and removal of a personal representative;
(3) a claim under the Inheritance (Provision for Family and Dependants) Act 1975[1]; and
(4) an application for a declaration under the Presumption of Death Act 2013.

The first two such proceedings (claims for rectification of a will and claims or applications for the substitution and removal of a personal representative) are contained in CPR Pt 57 as 57.12 Section II and as 57.13 Section III and the corresponding sections in Practice Direction 57A. Claims under the 1975 Act are governed by the rules in CPR 57 Part IV and the corresponding section in Practice Direction 57A.

CPR 57 Section V and Practice Direction 57B concern proceedings under the Presumption of Death Act 2013. The 2013 Act assists the problems of families trying to resolve the affairs of missing persons: see Chapter 25 at paras **25.49–25.50** and see also paras **41.42** ff.

[1] See Chapter 41.

Chapter 28

PARTIES TO CLAIMS

WHO MAY BE A PARTY

28.01 The foundation of title to be a party to a probate claim is *interest*—so that whenever it can be shown that it is competent to the court to make a decree in a claim for probate or administration, or for the revocation of probate or of administration, which may affect the interest, or possible interest, of any person, such person has a right to be a party to such a suit[1].

Such was the rule in the Prerogative Court of Canterbury as to the foundation of title to be a party to a cause in that court.

[1] *Kipping and Barlow v Ash* (1845) 1 Rob Eccl 270; *Crispin v Doglioni* (1860) 2 Sw & Tr 17. This passage was quoted in *Randall v Randall* [2016] EWCA Civ 494, [2017] Ch 77, [2016] 3 WLR 1217 in support of adopting a flexible approach to issues of standing and interest entitling a person to bring a probate claim.

28.02 In a claim for the revocation of a grant every person who is or claims to be entitled to administer the estate under that grant must be made a party to the claim[1].

[1] CPR 57.6(1). This is by way of exception to the normal rule that executors are not necessary parties to a probate claim.

28.03 The question whether a person has a sufficient *interest* to be permitted to bring a probate claim is a procedural issue and not a matter of substantive law. The nature of an interest adequate to found a probate claim is a matter of practice and procedure. It is decided on a pragmatic basis from case to case. There is no rigidity about the test[1]. A claim under the Inheritance (Provision for Family and Dependants) Act 1975 was on particular facts a sufficient interest for the purposes of bringing a probate action. The claimant's motivation for challenging the will was that her Inheritance Act claim would be more likely to succeed on intestacy than under the will[2]. A divorced husband was allowed to proceed with a probate revocation claim to challenge the validity of a will made by his deceased ex-wife in circumstances where if the will was held to be invalid he would stand to receive an additional sum under their divorce settlement[3].

[1] *Randall v Randall* [2016] EWCA Civ 494, [2017] Ch 77, [2016] 3 WLR 1217 at [27] per the Master of the Rolls and at [32] per McCombe LJ.

[2] *O'Brien v Seagrave* [2007] EWHC 788 (Ch), [2007] 3 All ER 633, [2007] 1 WLR 2002, approved in *Randall v Randall* [2016] EWCA Civ 494, [2017] Ch 77, [2016] 3 WLR 1217. In *O'Brien*, a claimant with a prospective claim under the 1975 was held to have standing to challenge a will where the only surviving relation by blood or marriage was an elderly brother who did not wish to be a party to any proceedings. In *Randall*, the CA held there to be a

distinction between the position of a creditor of a beneficiary of an estate with that of a creditor of an estate. The interests of the two types of creditor were said to be 'fundamentally different'. The interest of the creditor of a beneficiary is to ensure that the beneficiary receives what is due to that beneficiary under the will or on intestacy. The interest of a creditor is limited to ensuring that there is due administration of the estate; at [22] per the Master of the Rolls.

[3] *Randall v Randall* [2016] EWCA Civ 494, [2017] Ch 77, [2016] 3 WLR 1217.

PARTIES GENERALLY

Defendants

28.07 In certain cases it may be appropriate to apply for a representation order under CPR 19.6 (representation of parties with same interest) or CPR 19.7 (representation of interested parties who cannot be ascertained etc). These are matters to which the master or district judge will give consideration at a case management conference[1]: see CPR Pt 57 PD57A, para 4(1) and (2). For a recent review of the scope of CPR 19.6 in a non-probate context see: *Emerald Supplies Ltd v British Airways plc* [2010] EWCA Civ 1284, [2011] Ch 345, [2011] 2 WLR 203. If, for example, in a probate claim, there are very large numbers of persons who would be interested under intestacy were a will to be held invalid, including a significant number resident out of the jurisdiction, the appointment of a representative beneficiary may be easier than having to give individual notices under CPR 19.8A.

[1] See para 37.08.

Chapter 29

CLAIM FORM

ISSUE OF CLAIM FORM

Rules applicable

29.02 A probate claim in the High Court must be begun by a claim form issued out of the Chancery Division of the High Court either at the Rolls Building in London at 7 Rolls Building, Fetter Lane, London EC4A 1NL or out of one of the Chancery district registries (that is, one of the district registries of Birmingham, Bristol, Cardiff, Caernafon, Cardiff, Leeds, Liverpool, Manchester, Mold, Newcastle upon Tyne and Preston)[1]. A probate claim must be commenced by using the procedure in CPR Pt 7[2]. The appropriate claim form is N2 Claim Form Probate.

Since 2 October 2017 the Chancery Division forms part of the Business and Property Courts ('B&PCs'). The B&PCs are made up of a number of specialist courts, list and sub-lists. The appropriate list for probate claims is the Property, Trusts and Probate List (ChD).[2A]

Probate claims issued in the High Court in London should be headed:

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Probate claims issued in one of the Business and Property Courts District Registries[3] ('the B&PCs District Registries') should be headed:

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS IN [ ]

PROPERTY, TRUSTS AND PROBATE LIST (ChD)

All of the B&PCs District Registries are located in centres which are also Chancery District Registries. Preston, Mold and Caernarfon are the only Chancery District Registries which are not also designated as one of the B&PCs District Registries.

1 CPR 57.3(a) and 57.1(b)(i) and (ii).

2 CPR 57.3(b).

2A See CPR 57A 'Business and Property Courts' and Practice Direction 57AA 'Business and Property Courts'. In the context of Part II of this work, CPR 57A should not be confused with PD57A 'Probate' which supplements CPR 57. The lists are not specialist lists for the purposes of CPR 30.5: see *Mezvinsky v Associated Newspapers Ltd* [2018] EWHC 1261 (Ch).

[3] Birmingham, Bristol, Leeds, Liverpool, Manchester, Newcastle and Cardiff.

Appropriate location for starting proceedings in the Business and Property Courts

29.02A Before a claimant issues a claim in the Business and Property Courts, the claimant must determine the appropriate location in which to issue the claim.[1] Claims with 'significant links' to a particular circuit outside London or elsewhere in the South Eastern Circuit must be issued in the B&PCs District Registry located in the circuit in question. A link to a particular circuit is established where:

(a) one or more of the parties has its address or registered office in the circuit in question (with extra weight given to the address of any non-represented parties);
(b) at least one of the witnesses expected to give oral evidence at trial or other hearing is located in the circuit;
(c) the dispute occurred in a location within the circuit;
(d) the dispute concerns land, goods or other assets located in the circuit; or
(e) the parties' legal representatives are based in the circuit.[2]

The claimant must base a decision on where to start proceedings on the information available about links to a particular circuit but is not obliged to make extra inquiries to determine whether there may be other links outside the claimant's current knowledge.[3]

In some probate claims it will be evident that there are significant links with a single circuit in view of where the deceased person whose testamentary intentions are in issue lived and where a significant number of witnesses expected to give oral evidence at trial are located. In others, there may be links with more than one circuit, and a decision must be made by the claimant onwith which circuit the claim has the most significant links.

[1] CPR PD 57AA para 2.3(1).
[2] CPR PD 57AA para 2.3(3).
[3] Advisory Note 'The Business and Property Courts' 13 October 2017: para 12. The Advisory Note 'Business and Property Courts of England and Wales' is available online at https://www.gov.uk/courts-tribunals/chancery-division-of-the-high-court.

Heading of claim form and other court documents

29.06 The claim form in a probate claim and all subsequent court documents must be marked at the top 'In the estate of [name] deceased (Probate)'[1]. Practice Form N2 (**A6.210**) is to be used for a claim form in a probate claim issued in the Business and Property Courts. That form, and the forms entitled Notes for claimant on completing a claim form and Notes for defendant are set out in Appendix VI. For the heading of claim forms in the Business and Property Courts, see para **29.02** above. The Advisory Note 'The Business and Property Courts of England and Wales' contains further useful information about the courts, lists and sub lists, titles of claims and transfer of proceedings[2].

[1] CPR Pt 57 PD para 2.1.

[2] The Advisory Note 'Business and Property Courts of England and Wales' is available online at https://www.gov.uk/courts-tribunals/chancery-division-of-the-high-court.

STATEMENTS OF INTEREST

Forms of statement

29.11 See Forms CP14 ff (**A6.224** ff).

Party acting in representative capacity

29.12 If the claimant is claiming in a representative capacity the claim form must state what the capacity is[1]. If the defendant is sued in a representative capacity the claim form must state what the capacity is[2]. A defendant may for example be sued or joined to represent the estate of a deceased person who having survived the testator had an interest under a will which is the subject of a probate claim.

[1] CPR 16.2(3).
[2] CPR 16.2(4).

Considerations in settling statements of interest

(1) Who are the persons entitled to defend the claim, and whether all or some of them only should be made defendants to the claim form

29.14 When the claim arises from the entry of a caveat (*objection*), the statement of the defendant's interest follows that disclosed in his appearance to the warning, but all parties whose interests are, or may by any possibility be, affected by the judgment claimed should be made defendants in the action in order that every person interested may be bound by the judgment. If there are a very large number of interested parties it is suggested that only those with major interests should be made parties and that an application be made under CPR 19.8A (see para **28.06**, and Form CP6 (**A6.216**)).

(2) The nature of the claim to be put forward

29.15 In a claim for proof of a will in solemn form, it is material to consider whether the claimant is propounding one testamentary instrument, or whether the claimant is claiming in the alternative, eg probate of an earlier will in the event of the last will propounded by the claimant being pronounced against.

COSTS MANAGEMENT

29.19 Costs management applies to all Part 7 multi-track cases, apart from cases excepted by sub-paragraphs (a)–(e) of CPR 3.12(1). As a probate claim must be commenced using the procedure in Part 7[1], and all probate claims are allocated to the multi-track[2], CPR Part 3 Section II and Practice Direction 3E are applicable to probate claims unless excepted by sub-paragraphs (a)–(e) of CPR 3.12(1). The exceptions most likely to be applicable in the case of probate claims are (b) claims commenced on or after 22 April 2014 containing a

statement that the claim is valued at £10 million or more; and (c) where in proceedings commenced on or after 6 April 2016 a claim is made by or on behalf of a person under the age of 18 (a child) (and on a child reaching majority this exception will continue to apply unless the court orders otherwise). Costs management is considered further in Chapters 37 and 40.

[1] CPR 57.3(b).
[2] CPR 57.2(4).

Chapter 31

TESTAMENTARY DOCUMENTS

GENERAL MATTERS CONCERNING TESTAMENTARY DOCUMENTS

31.01 The requirement for each party to file evidence about testamentary documents and lodge the documents at court (as set out below) is most important.[1] It allows the Master or district judge, initially, and later the judge to satisfy himself that the relief sought is correct (and that the claimant has not, for example, mistakenly asked the court to pronounce against will 'A' (an alleged last will) and in favour of will 'B' (an earlier will) without realising that there existed a valid intermediate will, which would be the valid will if will 'A' failed). The requirements as to testamentary documents also assists the Master when considering the question which parties should be added (or notified of proceedings).

[1] The importance of compliance with CPR 57.5(2) was stressed by Henderson LJ in *Payne v Payne* [2018] EWCA Civ 985. In that case the original of an earlier will had not been lodged and was not available to the judge or the parties at trial. This was 'a serious procedural error which should never have been allowed to happen'.

INSPECTION OF TESTAMENTARY DOCUMENTS

Loan of testamentary documents for examination

31.12 If a party wishes his expert to examine a testamentary document, his solicitor should attend the master at the time for oral applications without notice to give a written undertaking (as to safekeeping and return) against loan of the testamentary document for a specified time. For a form of order, see CP4A (**A6.214A**): CH27 Handing out Testamentary Documents for examination.

Verification of testamentary documents

31.14 When the court orders trial on written evidence it is normally necessary for an attesting witness to sign a witness statement or swear an affidavit of due execution of the will or codicil sought to be admitted to probate, but the will or codicil is lodged at court and cannot be handed out of court for use as an exhibit to the witness statement or affidavit. Either the attesting witness can attend at the court and sign or swear his evidence before an officer of the court or, if he is unable to do so, his solicitor may request from the court a photocopy

of the will or codicil. This will be certified as authentic by the court and may be exhibited to the witness statement or affidavit of due execution in lieu of the original. The witness statement or affidavit must state that the exhibited document is an authenticated copy of the document signed in the witness' presence[1].

[1] Chancery Guide paras 29.53 and 29.54; see para **26.18**.

Transmission of scripts in cases tried outside London

31.15 When a probate claim in the Royal Court of Justice is listed for trial at a Chancery District Registry the solicitor for the party responsible for preparing the court bundle must write to the Masters' Appointments (Ground Floor, Rolls Building), Chancery Chambers, Royal Courts of Justice, 7 Rolls Building, Fetter Lane, London EC4A 1NL and request that the testamentary documents be forwarded to the appropriate Chancery District Registry[1].

[1] Chancery Guide para 29.55; see para **26.18**; and see CPR Pt 57 PD(A) para 2.2.

Chapter 32

STATEMENTS OF CASE GENERALLY

PRACTICE AS TO STATEMENTS OF CASE

Statements of interest and denial of interest

32.07 The claim form must contain a statement of the nature of the interest of the claimant and of each defendant in the estate[1]. If a party disputes another party's interest in the estate he must state this in his statement of case and set out his reasons[2]. The nature of an interest adequate to found a right to bring or defend probate proceedings falls to be determined on a case by case basis. The issue is one of practice and procedure rather than substantive law. A creditor of an estate does not have a sufficient interest in an estate to bring a probate claim. A creditor of a beneficiary on the other hand may do so depending on the circumstances[3].

1 CPR 57.7(1).

2 CPR 57.7(2).

3 In *O'Brien v Seagrave* [2007] EWHC 788 (Ch), [2007] 1 WLR 2002, [2007] 3 All ER 633 and in *Randall v Randall* [2016] EWCA Civ 494, [2017] Ch 77, [2016] 3 WLR 1217 sufficient interests to bring a probate claim were shown. In *Randall* the claimant was classified as being a creditor of a beneficiary. There will of course be cases in which on looking at all the circumstances it will be apparent that a person has no interest in bringing a claim. For that reason the parties are required to lodge testamentary documents at the outset of their involvement in a probate claim.

Initial disclosure

32.08 The Disclosure Pilot for the Business and Property Courts[1] which applies from 1 January 2019 for two years to existing and new proceedings in the Business and Property Courts of England and Wales or in one of the B&CPCs District Registries[2] provides that each party must provide to all other parties at the same time as its statement of case an Initial Disclosure List of Documents that lists and is accompanied by copies of:

(a) the key documents on which it has relied (expressly or otherwise) in support of the claims or defences advanced in its statement of case (and including the documents referred to in that statement of case); and

(b) the key documents that are necessary to enable the other parties to understand the claim or defence they have to meet.

This form of disclosure is known as 'Initial Disclosure'[3]. The parties may agree in writing before or after the commencement of proceedings to dispense with,

or defer, Initial Disclosure. Each party is required to record its respective reasons for any agreement, so that those reasons may be available to the court, on request, at any case management conference.[4] The court may set aside such an agreement if it considers that Initial Disclosure is likely to provide significant benefits and the costs of providing Initial Disclosure are unlikely to be disproportionate to such benefits.

In a probate claim, the key documents are likely to include at least some of the 'testamentary documents' as defined in CPR 57.1(2)(c).[5] They may also include a statement obtained from a solicitor responsible for preparing a will in response to a '*Larke v Nugus*' letter.

1 CPR PD 51U. The Disclosure Pilot in relation to probate claims is considered in Chapter 36.

2 See para **26.16**.

3 CPR PD 51U paras 5.1 and 5.2.

4 CPR PD 51U paras 5.3 and 5.8.

5 Initial Disclosure requires a list of documents to be accompanied by copies. CPR 57.5(5) however provides that, except with the permission of the court, a party shall not be allowed to inspect the testamentary documents or written evidence lodged or filed by any other party until he himself has lodged his testamentary documents and filed his evidence. The purpose of this rule is to require a party to file his evidence about testamentary documents without having seen any other parties' evidence about testamentary documents. In practice, parties are likely to have seen or obtained copies of the key testamentary documents either in response to a *Larke v Nugus* letter (see paras **26.27–26.31**) or through following pre-action protocol (see paras **26.32–26.34**). In rare cases where a claimant has real grounds for concern that another party may doctor its testamentary documents in the light of being provided with copies of some or all of the claimant's testamentary documents, he should seek agreement to defer Initial Disclosure until the other party has filed its evidence about testamentary documents, failing which he should apply to the court on notice to the other party for directions permitting Initial Disclosure of some or all of his testamentary documents to be deferred.

Chapter 33

PARTICULARS OF CLAIM

FORFEITURE

33.73 Section 1 of the Forfeiture Act 1982 defines the 'forfeiture rule' as meaning 'the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing'. Section 2 of the Act gives power to the court to modify the forfeiture rule.[1] Section 5 prevents the granting of relief in the case of a person who stands convicted of murder. Subject to s 5, the forfeiture rule does not prevent an application being made by any person under the Inheritance (Provision for Family and Dependants) Act 1975: s 3(2)(a).[2]

[1] The rule has been held to apply to anyone guilty of manslaughter: *Dunbar v Plant* [1998] Ch 412, [1997] 4 All ER 289, CA. It applies equally to cases involving aiding and abetting suicide contrary to s 2(1) of the Suicide Act 1961, however in such cases the decision of the Crown Prosecution Service not to prosecute (because it is considered not to be in the public interest to do so) is a powerful factor in granting relief from the effect of the rule: per Mummery LJ and Phillips LJ in *Dunbar v Plant* [1997] 4 All ER 289, [1998] Ch 412 at 425F–G and 437D–G; applied by Chief Master Marsh in *Ninian v Findlay* [2019] EWHC 297 (Ch).

[2] See *Re Land (dec'd), Land v Land* [2006] EWHC 2069 (Ch), [2007] 1 All ER 324, [2007] 1 WLR 1009.

33.74 Under the Forfeiture Act 1982, s 2(2) the court is entitled to take into account a whole range of circumstances quite apart from the conduct of the offender and the deceased[1]. The forfeiture rule was applied without modification to a man who had killed his partner and son while suffering from a delusional disorder[2], there being sufficient culpability to justify the application of the rule. Relief from forfeiture was granted to a wife who helped her husband travel to Switzerland to end his life there although she was opposed to his decision and never provided any encouragement to her husband to commit suicide.[3]

[1] See *Meeking v Meeking* [2013] All ER (D) 250 (May).

[2] *Chadwick v Collinson* [2014] EWHC 3055 (Ch), [2015] WTLR 25.

[3] *Ninian v Findlay* [2019] EWHC 297 (Ch).

33.75 In a case of intestacy where the person entitled on intestacy had murdered his parents it was held that his issue could not take as he had not predeceased the deceased. The estate was therefore to be distributed as if the deceased had died without issue[1]. The effect on the distribution of an estate where the rule applies has been changed in the case of deaths occurring on or after 1 February 2012 by the Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011. Instead of lapse, the person whose interest is precluded by the rule is treated as having died immediately before the intestate

or testator. This is achieved by inserting s 46A into the Administration of Estates Act 1925 and s 33A into the Wills Act 1837 respectively. In the case of jointly owned property, the effect of the forfeiture is to effect a severance of any joint tenancy in equity.[2]

[1] *Re DWS (deceased)* [2001] Ch 568, [2001] 1 All ER 97 and Administration of Estates Act 1925, s 47(1)(i).

[2] See *In re K Deceased* [1985] 1 All ER 403, [1985] Ch 85 at 100F–G.

Chapter 34

DEFENCE AND COUNTERCLAIM

COUNTERCLAIM

34.02 In a probate claim, a defendant who alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate, of the deceased must add to his defence a counterclaim in respect of that matter[1]. The alternative of bringing a separate action is not permissible in probate proceedings. If the claimant fails to serve particulars of claim any such defendant may apply for permission to serve a counterclaim and the claim shall proceed on the basis that the counterclaim is the particulars of claim[2].

1 CPR 57.8(1). A defendant who failed to serve a counterclaim and put on record that she sought the same remedy as the claimant had her later claim seeking the same relief to that sought in the earlier claim by a sibling struck out as an abuse of process: *Samuel v Samuel* [2018] EWHC 3513 (Ch). More usually, the effect of the rule is to require a defendant who wishes to propound a different testamentary instrument or to claim the deceased person died intestate to serve a counterclaim making that contention.

2 CPR 57.8(2).

34.04 It is possible to counterclaim for probate in other proceedings[1]. A probate counterclaim must contain a statement of the nature of the interest of the defendant and the claimant in the estate of the deceased to which the counterclaim relates[2]. If the action is not in the Chancery Division the court will, if necessary of its own motion, transfer the action to the Chancery Division and to either the Royal Courts of Justice or a Chancery district registry (if it is not already proceeding in one of those places)[3]. Application may however be made within seven days after the service of a probate counterclaim for the counterclaim to be dealt with in separate proceedings (under CPR 3.1(2)(e)) or to be struck out (under CPR 3.4)[4]. If an order is made that the probate counterclaim be dealt with in separate proceedings the order shall order the transfer of the probate counterclaim (if not already proceeding there) to the Chancery Division and to either the Royal Courts of Justice or to a Chancery District Registry[5].

1 CPR 57.9.
2 CPR 57.9(3).
3 CPR 57.9(4).
4 CPR 57.9(4).
5 CPR 57.9(5).

(1) WANT OF DUE EXECUTION

Forgery

34.12 The charge that the signature or mark of the testator is a forgery is also raised by this plea, but forgery itself must also be specifically pleaded[1].

Allegations of forgery were not upheld in *Fuller v Strum* [2001] WTLR 677 or *Wyniczenko v Plucinska-Surowka* [2005] EWHC 2794 (Ch), 8 ITELR 385 but succeeded in *Supple v Penter* [2007] EWHC 829 (Ch), [2007] WTLR 1461 (account of the execution and attestation of a will given by an attesting witness not believed). The normal civil standard of proof on the balance of probabilities applies to forgery allegations in probate claims but with the inherent probability or improbability of the allegation falling to be taken into account[2].

1 CPR 16.5 and 57.7(4).

2 *Patel v Patel* [2017] EWHC 133 (Ch) applying the guidance of Lord Nicholls in *Re H (Minors)* [1996] AC 563 at 586 D-G, [1996] 1 All ER 1. In *Patel v Patel* the claimant was found to have forged his mother's will. The claimant and the witnesses to the forged will were subsequently found to have been in contempt of court 'of the most serious kind'. The claimant was given an immediate custodial sentence of twelve months and the witnesses three months.

Notice under CPR 57.7(5)

34.13 Where it is proposed merely to put the executors to proof and only to cross-examine their witnesses, the notice as to such cross-examination must be given in the defence[1]. A notice under CPR 57.7(5) will not provide costs protection to a defendant who did not have reasonable grounds for opposing a will. This follows from the wording of CPR 57(5)(b)[2]. Once a defendant is in a position to make a proper assessment as to whether there were reasonable grounds to oppose a will, he is at risk for costs incurred from that date[3]. The notice will no longer provide costs protection.

1 CPR 57.7(5)(a).

2 CPR 57(5)(b) provides that if a defendant gives such a notice, the court will not make an order for costs against him 'unless it considers that there was no reasonable ground for opposing the will.'

3 *Elliott v Simmonds* [2016] EWHC 962 (Ch), [2016] WTLR 1375 at [14] and [17].

Summary of reported cases as to due execution

E Subscription by witnesses

34.21 NB *In respect of wills of testators* dying on or after 1 January 1983, *s 9 of the Wills Act 1837, as substituted by the Administration of Justice Act 1982, s 17 (see* para **A1.05**), *now allows a witness to acknowledge his earlier signature.*

May be by mark (*Re Ashmore's Goods* (1843) 3 Curt 756; *Re Amiss' Goods* (1849) 2 Rob Eccl 116); see also *Hindmarsh v Charlton* (1861) 8 HL Cas 160; or by description of himself (*Re Duggins' Goods* (1870) 39 LJP & M 24; *Re Sperling's Goods* (1863) 3 Sw & Tr 272); but not by signing the name of another person (*Re Leverington's Goods* (1886) 11 PD 80); another person may write name or mark of witness so long as he holds the pen (*Lewis v Lewis* (1861) 2 Sw & Tr 153; *Bell v Hughes* (1880) 5 LR Ir 407); but another person cannot subscribe for witness at his desire (*Re Cope's Goods* (1850) 2 Rob Eccl

335; *Re Duggins' Goods*); nor is it sufficient if witness's name is affixed by means of a rubber stamp affixed by the other witness in his presence but without any physical act or participation on his part (*Re Bulloch's Estate* [1968] NI 96, applying dictum in *Bell v Hughes*); signature of witness cannot be acknowledged afterwards by any means as can that of a testator, nor is it sufficient to re-write, with a dry pen, a signature written before acknowledgment by the testator in the presence of *both* witnesses (*Re Maddock's Goods* (1874) LR 3 P & D 169; *Hindmarsh v Charlton*; *Horne v Featherstone* (1895) 73 LT 32); if witness is unable to complete signature the execution is invalid (*Re Maddock's Goods* (1874) LR 3 P & D 169; *McConville v McCreesh* (1879) 13 ILTR 35); the signatures of the witnesses need not appear on any particular part of the instrument (*Re Davis' Goods* (1843) 3 Curt 748; *Re Chamney's Goods* (1849) 1 Rob Eccl 757; *Roberts v Phillips* (1855) 4 E & B 450); but if not on same sheet as signature of testator, the sheets must be physically connected at time of execution (*Re Braddock's Goods* (1876) 1 PD 433); and the court must be satisfied that witnesses intended to attest the signature of the testator (*Re Streatley's Goods* [1891] P 172; *Re Taylor's Goods* (1851) 2 Rob Eccl 411; *Phipps v Hale* (1874) LR 3 P D 166; *Re Denning, Harnett v Elliott* [1958] 2 All ER 1, [1958] 1 WLR 462 (signatures of witnesses upside down on reverse of paper on which will written: see also para **3.103**)); the signature of third person at end of will may be omitted from probate upon proof that it was not written for purpose of attesting (*Re Sharman's Goods* (1869) LR 1 P & D 661): see also paras **3.104–3.106**. See also *Re White, Barker v Gribble* [1991] Ch 1, [1990] 3 All ER 1 (witnesses only attested alterations). An attesting witness may validly sign a will at the direction of the testator and as attesting witness without signing a second time when it is clear that the witness had intended to perform the dual function of both signing the will on behalf of the testator and of witnessing the direction to do so (*Re Elsie Marsden Deceased* LTL 21/3/2006, an appeal from the Registrar's refusal to admit the will to probate).

The requirement since 1982 for an attesting witness to 'sign' the will should be construed as meaning the same as the previous requirement that the witness should 'subscribe' the will. The change should not be interpreted as requiring a 'signature' in the sense of an identifiable and probably unique personal mark.[1] The use of 'sign' instead of 'subscribe' was not intended to be a change of any substance. The points of principle which the 1982 amendments were intended to deal with were quite different. The changes arose from recommendations made in the 22nd Report of the Law Reform Committee on the Making and Revocation of Wills (Cmnd 7902, May 1980). Those changes were:

(a) relaxation of the former rule that the testator's signature had to be placed at the foot or end of the will, so that the signature may now be placed anywhere on the will provided it is apparent on its face that the testator intended his signature to validate it; and

(b) the introduction of a provision that an acknowledgement of his signature by an attesting witness shall have the same effect as his actual signature, whereas no provision had been made for such an acknowledgement to suffice.[2]

[1] *Payne v Payne* [2018] EWCA Civ 985, [2018] 1 WLR 3761 at [31] per Henderson LJ.

[2] *Payne v Payne* at [30] per Henderson LJ citing *Tristram and Coote's Probate Practice* (31st edn), para 3.60. This is consistent with the view expressed in para 3.61 that in all other respects the former requirements of s 9 of the Wills Act 1837 continue to apply and that the former case law in general remains relevant.

(2) INCAPACITY

Testamentary capacity: an overview

34.28 In *Perrins v Holland* [2009] EWHC 1945 (Ch) Lewison J referred to the common law test having been superseded by the Mental Capacity Act 2005. A different conclusion was reached by Mr N Strauss QC (sitting as a deputy judge of the High Court) in *Walker v Badmin* [2014] EWHC 71 (Ch), [2014] Lexis Citation 237 who after a full review of the case law and full argument concluded that the correct and only test for testamentary capacity is the common law test[1].

[1] See also *James v James* [2018] EWHC 43 (Ch) (Judge Paul Matthews) where the test of mental capacity in *Banks v Goodfellow* (1870) LR 5 QB 549, [1861–73] All ER Rep 47 was stated as remaining the sole test for judging will-making capacity in retrospect.

The nature of the inquiry by the court

34.32 A will which is drawn up in accordance with instructions given by a testator at a time when he had full testamentary capacity but executed at a time when he no longer had such capacity will be upheld provided the testator knew that the document he was signing conformed with the instructions he had given and approved it by executing it in those terms[1]. The rule in *Parker v Felgate* 8 PD 171 does not displace the requirement for full testamentary capacity; it merely displaces the ordinary requirement that the testator should have had such capacity at the time he executed the will[2]. The rule has been held to apply in the case of inter-vivos dispositions[3].

For precedent of defence, see Form CP33 (**A6.243**).

[1] *Perrins v Holland* [2011] Ch 270, [2011] 2 WLR 1086 approving *Parker v Felgate* (1883) 8 PD 171.

[2] Per Moore-Bick LJ at [54] in *Perrins v Holland*.

[3] *Singellos v Singellos* [2010] EWHC 2353 (Ch), [2011] Ch 324; *Re Smith (decd)* [2014] EWHC 3926 (Ch), [2015] 4 All ER 329.

Summary of reported cases

What constitutes undue influence

34.47 To be undue influence there must be coercion (*Wingrove v Wingrove* (1885) 11 PD 81); or fraud (*Boyse v Rossborough* (1857) 6 HL Cas 2 at 45; *Williams v Goude* (1828) 1 Hag Ecc 577 at 581); a testator may be led but not driven; his will must be the offspring of his own volition and not the record of someone else's (*Hall v Hall* (1868) LR 1 P & D 481). See also *Mountain v Bennet* (1787) 1 Cox Eq Cas 353 at 355. The relevant principles of law were summarised by Lewison J in *Re Edwards (dec'd)* [2007] EWHC 1119 (Ch), [2007] All ER (D) 46 (May) as:

'(i) In a case of a testamentary disposition of assets, unlike a lifetime disposition, there is no presumption of undue influence;

(ii) Whether undue influence has procured the execution of a will is therefore a question of fact;

(iii) The burden of proving it lies on the person who asserts it. It is not enough to prove that the facts are consistent with the hypothesis of undue influence. What must be shown is that the facts are inconsistent with any other hypothesis. In the modern law, this is, perhaps no more than a reminder of the high burden, even on the civil standard, that a claimant bears in proving undue influence as vitiating a testamentary disposition;

(iv) In this context undue influence means influence exercised by coercion, in the sense that the testator's will must be overborne, or by fraud;

(v) Coercion is pressure that overpowers the volition without convincing the testator's judgment. It is to be distinguished from mere persuasion, appeals to ties of affection or pity for future destitution, all of which are legitimate. Pressure which causes a testator to succumb for the sake of a quiet life, if carried to an extent that overbears the testator's free judgment discretion or wishes, is enough to amount to coercion in this sense;

(vi) The physical and mental strength of the testator are relevant factors in determining how much pressure is necessary in order to overbear the will. The will of a weak and ill person may be more easily overborne than that of a hale and hearty one. As was said in one case simply to talk to a weak and feeble testator may so fatigue the brain that a sick person may be induced for quietness' sake to do anything. A "drip drip" approach may be highly effective in sapping the will;

(vii) There is a separate ground for avoiding a testamentary disposition on the ground of fraud. The shorthand used to refer to this species of fraud is "fraudulent calumny". The basic idea is that A poisons the testator's mind against B, who would otherwise be a natural beneficiary of the testator's bounty, by casting dishonest aspersions on his character, then the will is liable to be set aside;

(viii) The essence of fraudulent calumny is that the person alleged to have been poisoning the testator's mind must either know that the aspersions are false or not care whether they are true or false. In my mind if a person believes that he is telling the truth about a potential beneficiary then even if what he tells the testator is objectively untrue, the will is not liable to be set aside on this ground alone;

(ix) The question is not whether the court considers that the testator's testamentary disposition is fair because, subject to statutory powers of intervention, a testator may dispose of his estate as he wishes. The question, in the end, is whether in making his dispositions, the testator has acted as a free agent.'

In *Re Edwards*, undue influence and fraud were established where a son was found to have deliberately poisoned his mother's mind by making untruthful accusations against another son and his wife, causing her to change her will.

What is not undue influence

34.48 Appeals to affection, ties of kindred, gratitude for past services, or pity for future destitution are legitimate; but not pressure if so exerted as to overpower the volition without convincing the judgment (*Hall v Hall* (1868) LR 1 P & D 481). Even immoral considerations do not amount to undue influence unless the testator is in such a condition that if he could speak his wishes to the last, he would say, 'This is not my wish, but I must do it'

(*Baudains v Richardson* [1906] AC 169 at 184). See also *Cowderoy v Cranfield* [2011] EWHC 1616 (Ch), [2011] WTLR 1699, *Wharton v Bancroft* [2011] EWHC 3250 (Ch), [2012] WTLR 693 and *Nesbitt v Nicholson* [2013] EWHC 4027 (Ch) in which undue influence claims failed. A plea of undue influence failed in *Edkins v Hopkins* [2016] EWHC 2542 (Ch). The main beneficiary had had a significant level of control over the testator, his business and personal financial affairs, but that level of control was given by the testator and not taken by the main beneficiary. The main beneficiary had encouraged the testator to change his will but the testator had acted out of his own judgment.

Fraudulent calumny

34.52A This provides a separate ground for avoiding a testamentary disposition on the ground of fraud where A poisons the testator's mind against B who would otherwise be a natural beneficiary of the testator's bounty, by casting dishonest aspersions on his character[1]. The requirements of fraudulent calumny are: (i) that A made a false representation (ii) to the testator (iii) about B's character (iv) for the purpose of inducing the testator to alter his or her testamentary disposition and that (v) A made such a representation knowing it to be untrue or being reckless as to its truth and (vi) the will was only made because of the fraudulent calumny[2].

[1] See (vii) and (viii) of the principles of law summarised by Lewison J (as he then was) in *Re Edwards (dec'd)* [2007] EWHC 1119 (Ch), [2007 All ER (D) 46 (May) at para 34.47 above.

[2] *Christodoulides v Marcou* [2017] EWHC 2632 (Ch), Morgan J.

(5) WANT OF KNOWLEDGE AND APPROVAL

Summary of reported cases

Burden of proof

34.64 Suspicious circumstances may arise where the testator is mentally or physically frail or where beneficiaries have been part of the process of drawing up the will. In such cases the judge must consider whether the suspicion has been dispelled (*Hawes v Burgess* [2013] EWCA Civ 74 at [12] per Mummery LJ). It may be obvious that the burden has not been dispelled (*Poole v Everall* [2016] EWHC 2126 (Ch), [2016] WTLR 1621 where a person on whom the testator depended had received the great bulk of the estate through a will drafted by him).

It is not the law that in no circumstances can a solicitor or other person who has prepared a will for a testator take a benefit under it; but that fact creates a suspicion that must be removed by the person propounding the will. In all cases the court must be vigilant and jealous. The degree of suspicion will vary with the circumstances of the case. It may be slight and easily dispelled; it may, on the other hand, be so grave that it can hardly be removed (*Wintle v Nye* [1959] 1 All ER 552, [1959] 1 WLR 284, HL). A solicitor beneficiary under a will has a personal obligation to see that the testator was separately advised before he could benefit (*Re a Solicitor* [1975] QB 475, [1974] 3 All ER 853).

The fact-sensitive nature of the inquiry where want of knowledge and approval is put in issue

34.67 The highly fact-sensitive nature of the inquiry can be seen from a number of recent cases. In *Fuller v Strum* [2001] EWCA Civ 1879, [2002] 2 All ER 87, [2002] 1 WLR 1097 (suspicion was aroused by the claimant participating in the will-making process involving a will where he was also a beneficiary; it was found to have been amply dispelled); *Sherrington v Sherrington* [2005] WTLR 587, CA (it was held to be contrary to all probability that an experienced solicitor and successful businessman of sound mind did not know or approve of the contents of a simple will); *Cattermole v Prisk* [2006] 1 FLR 693, [2006] Fam Law 98 (burden found to be discharged); *Re Wilkes, Wilkes v Wilkes* [2006] WTLR 1087 (the will of a 92-year-old testatrix held to be valid); *Franks v Sinclair* [2007] WTLR 439 (son who was a solicitor drafted the will and read it to the testator but the court was not satisfied that she understood it); *Perrins v Holland* [2011] Ch 270 (will drawn up in accordance with testator's instructions and testator had understood a summary of the will given by his solicitor at the time the will was executed); *Gill v Woodall* [2010] EWCA Civ 1430, [2011] Ch 380 (a severe anxiety disorder meant that testatrix had not known or approved the contents of the will when she signed it); *Cowderoy v Cranfield* [2011] EWCA 1616 (Ch), [2011] WTLR 1699 (will upheld); *Hawes v Burgess* [2013] EWCA Civ 74; *Simon v Byford* [2014] EWCA Civ 280, 17 ITELR 536 (held to be clear that the testatrix described as having mild to moderate dementia knew she was making a will, took a conscious decision to make it and approved its terms). A testatrix was held to have known and approved the contents of a will executed in 2009 but not of a will executed in 2011 because of important differences between the circumstances in which the two wills were respectively executed. The most obvious difference was that, in respect of the 2011 will, all documents signed by the testatrix were in English, and none written in Chines characters: *Chin v Chin* [2019] EWHC 523 (Ch). In *Gupta v Gupta* [2018] EWHC 1353 (Ch) the challenge to a will failed where there was evidence indicating at least a modest understanding of English and evidence from a solicitor who prepared the will that she would not have prepared and witnessed a will if she did not think the testatrix understood its contents.

(7) REVOCATION

Summary of reported cases

III. By burning, tearing, or otherwise destroying (Wills Act 1837, s 20[1])

[1] See para **A1.20**.

34.87 *(i) Generally:*

(a) *Intention to revoke.* The intention to revoke must accompany the act (*Bibb v Thomas* (1775) 2 Wm Bl 1043; *Clarke v Scripps* (1852) 2 Rob Eccl 563 at 567; *Giles v Warren* (1872) LR 2 P & D 401). Therefore a person of unsound mind cannot revoke his will by destruction (*Brunt v Brunt* (1873) LR 3 P & D 37 at 38; *Re Taylor's Estate, National and Provincial and Union Bank of England v Taylor* (1919) 64 Sol Jo 148). As to standard of capacity required, see *Re Sabatini* (1969) 114 Sol Jo

35. Where the destruction is not with consent of the testator, he cannot subsequently ratify such destruction so as to effect a revocation (*Mills v Millward* (1889) 15 PD 20; *Gill v Gill* [1909] P 157), and subsequent acquiescence does not constitute revocation (*Re Booth, Booth v Booth* [1926] P 118). If there is an express revocation clause in a later will which is not in accord with the testator's instructions there is no rule of law that the testator is bound by the draftsman's mistake. The burden of proving on the balance of probabilities that the testator had not intended to revoke the earlier will is on the party seeking to prevent the express clause having effect. The standard of proof is no higher than the usual balance of proof, but the existence of the revocation clause is strong evidence that needs to be overcome (*Lamothe v Lamothe* [2006] EWHC 1387 (Ch), [2006] WTLR 1431). For a later lost will to revoke an earlier will there must be clear, stringent and conclusive evidence that there was either a revocation clause in the lost will or that its provisions were inconsistent with those of the earlier will (*Broadway v Fernandes* [2007] EWHC 684 (Ch), [2007] All ER (D) 485 (Mar)).

(b) *Presumption as to will not forthcoming at testator's death.* Where a will is traced into the testator's custody, and there is no evidence of its having subsequently left his custody, and it is not forthcoming at his death—this will be prima facie evidence of its destruction by him animo revocandi (*Patten v Poulton* (1858) 1 Sw & Tr 55; *Welch v Phillips* (1836) 1 Moo PCC 299 at 302), and it is not necessary for those alleging revocation to show how, in fact, it was lost or destroyed (*Patten v Poulton* (1858) 1 Sw & Tr 55). The presumption may be rebutted by surrounding circumstances, eg declaration of unchanged affection or intention (*Patten v Poulton* (1858) 1 Sw & Tr 55; *Welch v Phillips* (1836) 1 Moo PCC 299 at 302; *Re Mackenzie's Estate* [1909] P 305; *Re Sykes, Drake v Sykes* (1906) 22 TLR 741; affd (1907) 23 TLR 747, CA); *Re Wilson's Estate, Walker v Treasury Solicitor* (1961) 105 Sol Jo 531. The strongest proof of the improbability of revocation by destruction arises from the contents of the document itself (*Saunders v Saunders* (1848) 6 Notes of Cases 518 at 522).

(c) *Presumption does not apply where the testator becomes of unsound mind after execution of the will and continues so until his death.* Where a will which has been in the custody of a testator at a time when he has been of unsound mind as well as of sound mind, is found torn, or is not forthcoming at his death, the burden of showing that it was revoked by him while of sound mind lies on the party who sets up the revocation (*Harris v Berrall* (1858) 1 Sw & Tr 153). See also *Sprigge v Sprigge* (1868) LR 1 P & D 608 (the presumption of destruction animo revocandi does not apply where the testator became of unsound mind after execution of the will and continued so until his death. The burden of showing that the will was revoked before he became of unsound mind lies on the party asserting revocation); *Re Yule's Estate* (1965) 109 Sol Jo 317 (the presumption of destruction animo revocandi and the contrary presumption, in the case where the testator had lost testamentary capacity, that the will was destroyed unintentionally, were not intended to be rigid rules but as indications of the inferences which would always be drawn from a given state of evidence. But the court was not entitled to depart from *Sprigge v Sprigge*, above).

(d) *Presumption rebutted or found not to have arisen on the evidence.* In *Re Dickson* [1984] LS Gaz R 3012, CA; [2002] WTLR 1395 the presumption that a missing will had been destroyed animo revocandi was rebutted where the only reasonable inference from declarations by the testator and other evidence was that he had intended the missing will to be effective and had intended to benefit the beneficiaries thereunder. If the deceased has passed the will to a third party for safe custody no presumption arises (*Chana v Chana* [2001] WTLR 205). In *Rowe v Clarke* [2006] WTLR 347 the presumption was rebutted on the facts, which pointed to the testator having lost or destroyed the will in his lifetime without intending to revoke it. In *Wren v Wren* [2006] EWHC 2243 (Ch), [2007] WTLR 531, the will was not found at death, however, the deceased's clear post-will testamentary declarations rebutted the presumption of revocation. In *Nicholls v Hudson* [2006] EWHC 3006 (Ch), 150 Sol Jo LB 1333 the will made by the deceased was found to have been lost through mistake, accident or inadvertence with no intention of revoking it and a copy of the will was admitted to probate. In *Singh and McDonald v Vozniak* [2016] EWHC 114 (Ch) a wife's assertion that her husband had torn up his will was rejected in circumstances in which the deceased had repeatedly confirmed to one of the executors named in the will, after his wife had found out about the will, that his testamentary wishes were unchanged. The presumption of revocation did not arise where it was more likely than not that the deceased's solicitors had retained the original will (*Blyth v Sykes* [2019] EWHC 54 (Ch)).

(e) *Revocation by partial destruction.* Where a testator signed his name, which was attested by both the witnesses, on each of the sheets of his will, and at his death only two of the middle sheets were found among his papers, it was held that the will must be presumed to be revoked (*Re Gullan's Goods* (1858) 1 Sw & Tr 23); so, too, where the testator had replaced the three middle sheets of his will (consisting of five sheets) by three other sheets, and the original sheets could not be found (*Treloar v Lean* (1889) 14 PD 49); see also *Clarke v Scripps* (1852) 2 Rob Eccl 563 (the question is whether the portion destroyed is so important as to raise a presumption that the remainder cannot have been intended to stand without it, or whether it is unimportant and independent of the remainder of the will); *Leonard v Leonard* [1902] P 243. Where part of a will is destroyed, but the part preserved contains the signatures of testator and the witnesses, the onus is normally on the party alleging revocation to prove the necessary animus. But if the part preserved is so mutilated as to be unworkable as a testamentary instrument this raises a presumption that the testator could not have intended it to stand as his will (*Re Green's Estate, Ward v Bond* (1962) 106 Sol Jo 1034). In *Re Adams* [1990] Ch 601, [1990] 2 All ER 97 it was held that the obliteration of his signature by the testator, so that it could not be read with a magnifying glass was by itself sufficient evidence of intention to revoke the whole will.

(f) *Revocation of duplicate wills.* Where a will is executed in duplicate the revocation of one is the revocation of both (*Boughey v Moreton* (1758) 3 Hag Ecc 191). But there must be evidence that the will was, in fact,

executed in duplicate—subsequent declarations by the testator to this effect are inadmissible (*Atkinson v Morris* [1897] P 40, CA; *Eyre v Eyre* [1903] P 131 at 137). See para **3.209**.

B Dependent relative, or conditional, revocation

34.93 *Dependent relative revocation.* The doctrine of dependent relative revocation arises when revocation is relative to another testamentary disposition which has been made or is intended to be made and is so dependent on that disposition that revocation is not intended unless that other disposition takes effect. It is a sub-species of conditional revocation.[1] Conditional revocation may arise where a testator destroys his will, intending to revoke it conditionally, upon the existence, or future existence, of a particular fact or on a mistaken assumption of law, such as a belief that in the event of his dying intestate his widow would be entitled to the whole of his property.[2]

Summary of reported cases. Will destroyed in belief that thereby an earlier will would be revived (*Powell v Powell* (1866) LR 1 P & D 209; *Cossey v Cossey* (1900) 82 LT 203); part of will destroyed in belief that its place would be taken by an unexecuted memorandum (*Dancer v Crabb* (1873) LR 3 P & D 98); document destroyed in belief that later will (unexecuted) would take its place (*Re Irvin's Estate* (1908) 25 TLR 41; and *West v West* [1921] 2 IR 34; see also *Dixon v Treasury Solicitor* [1905] P 42); will destroyed in belief that a later will (in fact pronounced against) was properly executed (*Re Bunn, Durber v Bunn* [1926] All ER Rep 626, 134 LT 669); destruction of earlier will after execution of later will in belief later will valid (*Re Davies' Estate, Russell v Delaney* [1951] 1 All ER 920); will mutilated on expressed intention—not fulfilled—of making another (*Re Botting's Estate, Botting v Botting* [1951] 2 All ER 997; *Re Addison's Estate* (1964) 108 Sol Jo 504: testator took will from solicitor's office saying he wanted to make a new will because of his wife's death. No will was found on his death nine months later. The proper inference was that he destroyed the will intending to make a new one. There was no revocation and the will, as contained in a copy, was admitted). See also *Re Bridgewater's Estate* [1965] 1 All ER 717, [1965] 1 WLR 416 (three wills, each with a revocation clause. Testator wrote to solicitor saying he had deposited second will at a bank, having destroyed the third. On his death only the earliest will was found. Held, the letter was admissible as evidence of intention to destroy the third will with a view to reviving the second, and as evidence of the destruction. The third will, as contained in a copy, was admitted); lapse of time immaterial if intention at date of destruction was clear (*Re Bromham's Estate, Wass v Treasury Solicitor* [1952] 1 All ER 110n); will revoked in mistaken belief that certain legatees were dead (*Campbell v French* (1797) 3 Ves 321); a printed form of will, with revocation clause, executed with blanks which were subsequently filled in—probate refused, it being held that the revocation was dependent on another will being made (*Re Irvine's Goods* [1919] 2 IR 485); destruction in mistaken belief as to distribution on intestacy (*Re Southerden's Estate, Adams v Southerden* [1925] P 177, CA). considered in *Blyth v Skkes* [2019] EWHC 54 (Ch) where it was held (obiter) that the testatrix would not have revoked her will if she had been aware that the effect of revocation would be to disqualify her ex son-in-law from any entitlement at all. Where a second will which was incomplete revoked the first,

both wills were admitted with the revocatory clause excluded (*Re Hope-Brown's Goods*, sub nom *Re Brown's Goods* [1942] P 136, [1942] 2 All ER 176: followed in *Re Allen* (1962) 106 Sol Jo 115 (all dispositions in a later will, executed on a printed form which included a revocation clause, were proved to have been added after execution. The revocation clause was held to be conditional upon the later will being effective: the earlier will was therefore not revoked)). See also *Re Cocke's Goods* [1960] 2 All ER 289, [1960] 1 WLR 491 (two inconsistent wills, the later having a revocation clause but no effective residuary gift: both wills admitted, the revocation clause in the second, and clauses in the first will inconsistent with those in the second, being omitted). When a testator destroyed a will under belief that he no longer had anything to leave the revocation was held to be conditional and the will admitted to probate (*Re Carey* (1977) 121 Sol Jo 173).

[1] *Blyth v Sykes* [2019] EWHC 54 (Ch) at [26]-[27] adding that the doctrine has nothing to do with family relatives.

[2] *Re Southerden's Estate, Adams v Southerden* [1925] P 177, CA.

AVOIDANCE OF GIFTS TO ATTESTING WITNESSES OR THEIR SPOUSES

34.103 Section 15 of the Wills Act 1837 makes gifts to an attesting witness or the spouse of an attesting witness 'utterly null and void'. The operation of s 15 is restricted by the Wills Act 1968, s 1. Section 1 provides that the operation of s 15 is to be disregarded if the will is duly executed without his attestation and without that of any other such person.

Section 28(4)(a) of the Trustee Act 2000 provides that any payments to which a trustee is entitled in respect of services are to be treated as remuneration for services (and not as a gift) for the purposes s 15 of the Wills Act 1837. This exemption applies where there is a charging clause in the will.

34.104 Section 15 will apply in the case of a marriage of a same sex couple which has the same effect in relation to same sex couples as it has in relation to opposite sex couples[1], and in relation to the attestation of a will by a person to whose civil partner there is made a gift of a kind described by s 15[2]. Section 15 cannot be extended to persons signing at the direction of the testator who receive a gift under the will[3], but the Court of Appeal has said that it is plainly undesirable that beneficiaries should be permitted to execute a will in their favour in any capacity and Parliament should consider changing the law to ensure this cannot happen.[4]

[1] See the Marriage (Same Sex Couples) Act 2013, ss 1(1) and 11(1).

[2] Civil Partnership Act 2004 s 71, Sch 4, Pt 1, para 3(a).

[3] *Barrett v Bern* [2012] Ch 573 per Vos J at 597 (reversed on a different point).

[4] *Barrett v Bern* [2012] Ch 573 at 612. This topic is included in the Law Commission's Consultation Paper 'Making a Will' (Law Com no 231).

Chapter 36

DISCLOSURE

DISCLOSURE OF DOCUMENTS

General rules as to disclosure

36.00 The Disclosure Pilot Scheme ('the Pilot') has introduced substantial changes to the disclosure process. The general rules as to disclosure set out in paras **36.01–36.08** no longer apply to proceedings in the Business and Property Courts of England and Wales or in one of the B&CPs District Registries with effect from 1 January 2019. The Pilot is contained in CPR Practice Direction 51U ('PD 51U').

A key part of the changes introduced by the Pilot is the removal of standard disclosure in its current form. PD 51U provides for Initial Disclosure (see para **32.08**) and five new models of what is now referred to as Extended Disclosure. These are referred to as the 'Disclosure Models'. They are labelled A–E, with Model D 'Narrow search-based disclosure, with or without Narrative Documents'[1] being the nearest equivalent to standard disclosure. There is no automatic right to Model D, or to any of the other Disclosure Models.[2]

The Pilot is applicable to probate claims in the High Court. It does not apply in the County Court although this may be reviewed in the course of the Pilot.[3] It is not thought that the Pilot is intended to change any of the special rules applying to probate claims contained in CPR 57 and PD 57A[4], such as the rule for lodging of testamentary documents or filing of evidence about testamentary documents.

In most probate claims there is likely to be a need for some form of Extended Disclosure. This will require the parties to seek to agree a List of Issues for Disclosure in advance of the first case management conference.[5] The court may order that Extended Disclosure be given using different Disclosure Models for different Issues for Disclosure in the case.[6] This may be particularly beneficial in probate claims where some of the issues (such as due execution) are confined in time and scope, with others (such as testamentary capacity) having the potential to require more extended disclosure.

In all cases, an order for Extended Disclosure must be reasonable and proportionate having regard to the overriding objective including the following factors:

(1) the nature and complexity of the issues in the proceedings;
(2) the importance of the case, including any non-monetary relief sought;

(3) the likelihood of documents existing that will have probative value in supporting or undermining a party's claim or defence;
(4) the number of documents involved;
(5) the ease and expense of searching for and retrieval of any particular document (taking into account any limitations on the information available and on the likely accuracy of any costs estimates);
(6) the financial position of each party; and
(7) the need to ensure that each case is dealt with expeditiously, fairly and at a proportionate cost.[7]

The Pilot applies to all relevant[8] proceedings in the Business and Property Courts from 1 January 2019 irrespective of the date of commencement.[9] It does not disturb an order for disclosure made before that date.[10]

Note: The general rules as to disclosure set out in paras **36.01–36.08** are now only applicable to probate claims in the County Court.

1 'Narrative Document' is defined in para 1.11 of Appendix 1 to CPR PD 51U as meaning a document which is relevant only to the background or context of material facts or events and not directly to the Issues for Disclosure. Paragraph 7.3 of PD 51U defines 'Issues for Disclosure' as meaning for the purposes of disclosure only those key issues in dispute. It is a feature of many probate claims that there are likely to be a large number of Narrative Documents. An adverse document is not to be treated as a Narrative Document. A document is 'adverse' if it or any information it contains contradicts or materially damages the disclosing party's contention or version of events on an issue in dispute, or supports that of an opposing party on an issue in dispute: PD51U para 2.7.

2 CPR PD 51U para 8.2.

3 CPR PD 51U para 1.2.

4 Practice Direction 57 – Probate is here referred to as PD 57A.

5 CPR PD 51U para 7.6.

6 CPR PD 51U para 8.3.

7 CPR PD 51U para 6.4.

8 The Pilot does not apply to the proceedings listed in CPR PD 51U para 1.4 or to Part 8 proceedings. It does apply to all probate proceedings in the Business and Property Courts of England and Wales or in one of the B&CPs District Registries as they are required to be commenced using the Part 7 procedure and are allocated to the multi-track: CPR 57.3(b) and CPR 57.2(4).

9 *UTB LLC v Sheffield United Ltd* [2019] EWHC 914 (Ch) in which Sir Geoffrey Vos, Chancellor of the High Court, clarified the approach to transitional cases.

10 CPR PD 51U para 1.3.

DNA TESTING

36.27 The High Court has inherent jurisdiction to direct DNA testing in the case of a sample of a deceased's DNA. The power is one that is to be used sparingly[1].

1 *Spencer v Anderson (Paternity Testing: Jurisdiction)* [2016] EWHC 851 (Fam), [2016] 3 WLR 905, [2016] Fam Law 808.

PATERNITY

36.28 The High Court has inherent jurisdiction to direct that a party to proceedings where paternity is in issue give a saliva sample by way of mouth swabs for the purposes of establishing paternity and, if consent is refused, the

court is able to draw an adverse inference[1].

[1] *Nield-Moir v Freeman* [2018] EWHC 299 (Ch).

Chapter 37

COSTS AND CASE MANAGEMENT OF PROBATE CLAIMS

DIRECTIONS QUESTIONNAIRE AND DIRECTIONS

Directions

37.07 The parties are expected to endeavour to agree proposals for the management of the case at the directions stage and submit agreed directions, or their respective proposals, to the court at least seven days before any case management conference in accordance with CPR 29.4 and CPR 29 PD paras 4.6 to 4.8. If the directions are suitable the court may use them as the basis of making an order. Unless both directions and costs budgets are agreed, the claim is likely to be listed for a costs and case management conference. Case and Costs Management is dealt with in Chapter 17 of the Chancery Guide (2016).

37.09 For draft orders commonly made by the Master on allocation and case management conference see the justice.gov website at http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do. The costs and case management conference requires preparation well in advance of the hearing and if this has not been done the hearing may be adjourned and adverse costs orders made[1].

[1] Chancery Guide Ch 17 para 17.6.

OTHER PRE-TRIAL MATTERS

Trial timetable

37.20 Trial timetables have become essential following the introduction of trials with a fixed end date in the Chancery Division. The judge at trial, or at the pre-trial review, will determine the timetable of the trial. The advocates for parties should be ready to assist the court in this respect if so required. The time estimate given for the trial at the case management conference stage should be based on an approximate forecast of the trial timetable, and must be reviewed by each party at the stage of the pre-trial review and as preparation for trial proceeds thereafter[1]. If that review requires a change in the estimate the other parties' advocates and the court must be informed. When a trial timetable is set by the court, it ordinarily fixes the time for the oral submissions and factual and expert evidence, in greater or lesser detail. Trial timetables are

always subject to further order by the trial judge[2].

[1] Chancery Guide Ch 17 para 17.25.
[2] Chancery Guide Ch 20 para 20.7.

Pre-trial review

37.21 In cases estimated to take more than five days, a pre-trial review will be directed. The date for the pre-trial review is fixed at the time when the trial date is given[1]. The pre-trial review will, where possible, be heard by the trial judge. This requires the trial judge to have been nominated in advance of the trial. The pre-trial review is usually held between four and eight weeks before the trial date[2].

[1] Chancery Guide Ch 20 para 20.1.
[2] Chancery Guide Ch 20 para 20.3.

37.22 A pre-trial review should be attended by advocates who are to represent the parties at the trial[1].

[1] Chancery Guide Ch 20 para 20.4.

37.23 Not less than seven days before the dated fixed for the review the claimant or some other party if the court so directs must circulate a list of matters to be considered to the other parties who must respond with their comments at least two days before the review[1].

[1] Chancery Guide Ch 20 para 20.5.

37.24 The claimant or another party if so directed should deliver a bundle containing the matters to be considered and the proposals from other parties and the trial timetable and the results of inter party discussions and any other necessary documents to the Listing Officer by 10am on the day before the day fixed for the hearing[1].

[1] Chancery Guide Ch 20 para 20.6.

37.25 At the review the court will review the state of the case and deal with outstanding matters, and give any necessary directions as to how the case is to be tried[1]. Interim applications should not be stored up for the pre-trial review, which is intended primarily to review the issues in the case and the proposed trial timetable.

[1] Chancery Guide Ch 20 para 20.6.

Trial bundle

37.26 Unless the court otherwise orders the claimant must file the trial bundle made as provided in CPR Pt 39 PD paras 3.2–3.9 and Chancery Guide paras 21.34–21.72 not more than seven days nor less than three days before the start of the trial.

Skeleton arguments and reading lists

37.27 As a general rule for the purpose of all hearing before a judge skeleton arguments should be prepared. For trials and applications by order they should be delivered not less than two clear days before the date or first date on

which the application or trial is due to come on for hearing. For guidelines see Chancery Guide paras 21.73–21.81 (skeleton arguments) and 21.82 (reading lists). *Practice Direction on the Citation of Authorities*[1] lays down rules as to the citation of cases. Excessive citation of authority should be avoided and practitioners must have full regard to *Practice Direction (Citation of Authorities)* [2012] 1 WLR 780.

[1] [2001] 1 WLR 1001.

37.28 *Practice Direction (Reading Lists and Time Estimates)*[1] requires that a reading list and an estimated length of reading time and an estimated length of hearing signed by all advocates must be prepared in all matters where the lodging of bundles is required. Time estimates must make a realistic estimate for pre-reading by the judge. All trials in the Chancery Division in London, following practice and procedure successfully adopted in Manchester and elsewhere, are now conducted on a fixed-end trial basis[2].

[1] [2000] 1 All ER 640.
[2] Chancery Guide Ch 21 paras 21.20–21.26.

Chapter 38

INTERIM APPLICATIONS

CONSENT ORDERS

Summary judgment

38.43 Summary judgment under CPR Pt 24 is available but seldom likely to be appropriate in a probate claim. There are cases where it can be seen that a particular plea is bound to fail but they are comparatively rare. Where a case involves an issue as to testamentary capacity, the case will not be suitable for summary judgment where there is a fundamental issue between the parties about the state of a testator's mental health when a will was executed.[1] Further, given the nature of such a claim (see paras **26.07** ff), if a grant in solemn form is sought on an application for summary judgment the court will need to be satisfied that the requirements as to filing evidence about testamentary documents and lodging such documents have been complied with, and that all relevant parties have been joined or given notice of the proceedings. If this has not been done, a grant in common form would be appropriate.

[1] *Goss-Custard v Templeman* [2018] EWHC 2476 (Ch), [2018] WTLR 893; (*Re Beliss* (1929) 141 LT 245 considered) (and see para **34.36**).

Chapter 39

TRIAL

LISTS AND DURATION

Estimate of duration

39.06 With the introduction of fixed-end trials, estimates need to be kept under constant review. If after a case is listed in the Royal Courts of Justice the estimated length of the hearing is varied, or if the case is settled, withdrawn or discontinued, the solicitors for the parties must forthwith inform the Chancery Listing Officer in writing. Failure to do so may result in an adverse costs order being made[1].

The parties must inform the court immediately of any material change in a time-estimate[2].

[1] Chancery Guide Ch 21 para 21.11.
[2] Chancery Guide Ch 21 para 21.22.

Time limits

39.08 All cases in the Chancery Division are now to be given fixed-end dates. The court may, either at the outset of the trial or at any other time thereafter fix time limits for oral submissions, speeches and the examination and cross-examination of witnesses[1].

[1] Chancery Guide Ch 21 paras 21.20, 21.29 and 21.30.

THE HEARING

Opening oral submissions

39.09 Generally the claimant opens, unless the burden of proof of all issues in the case lies on the defendant, in which case the defendant has the right to begin. In general and subject to any direction to the contrary by the trial judge there should be a short opening statement on behalf of the claimant, at the conclusion of which the judge will invite short opening statements on behalf of the other parties[1]. Unless notified otherwise advocates should assume that the judge will have read the skeleton arguments and the principal documents referred to in the reading list lodged in advance of the hearing. The judge will state at an early stage how much he or she has read and what arrangements are to be made about reading documents not already read. If additional documents

need to be read by the judge a list should be provided during the opening[2].

[1] Chancery Guide Ch 21, para 21.90.
[2] Chancery Guide Ch 21 para 21.91.

Witness statements

39.10 Chapter 19 of the Chancery Guide lays down guidelines for the preparation of witness statements.

Closing oral submissions

39.15 After the evidence is concluded, and subject to contrary directions by the judge, the claimant will make closing oral submissions followed by the defendant(s) in the order they appear on the claim form, followed by a reply on behalf of the claimant[1]. This differs from the traditional order of speeches where the defendant made his submissions before the claimant. In a lengthy and complex case each party should provide written summaries of their closing submissions. The court may require the written summaries to set out the principal findings of fact for which a party contends[2].

[1] Chancery Guide Ch 21 para 21.93.
[2] Chancery Guide Ch 21 para 21.94.

Chapter 40

COSTS

COSTS OF PARTIES OPPOSING PROBATE

(a) Where the litigation has been caused by the testator, or those interested in the residuary estate

Where conduct of beneficiary under the will caused the litigation

40.30 An unsuccessful party is usually given his costs where one of the principal beneficiaries under a will has been actively engaged in its preparation, and has not shown by disinterested evidence that its dispositions were read over or explained to and approved of by the testator before its execution[1]. The mere fact that someone can be said to be responsible for a will having been executed otherwise than in front of a solicitor cannot make it appropriate to view him as the cause of litigation about it[2].

1 *Dale v Murrell* (March 1879, unreported). See also *Orton v Smith* (1873) LR 3 P & D 23; and *Wilson v Bassil* [1903] P 239, 72 LJP 89.
2 *Breslin v Bromley* [2015] EWHC 3760 (Ch), [2015] 6 Costs LR 1115 per Newey J at [4].

(b) Where the circumstances lead reasonably to an investigation

40.35 Where the circumstances led reasonably to an investigation, the court by reviewing all the facts and state of knowledge of the parties may consider the stage down to which this exception to the general rule that costs follow the event should be treated as applying. In *Kostic v Chaplin*[1] this exception to the general rule was treated as being applicable down to the date on which the expert reports were exchanged. From that point on, the losing party stood to be condemned in costs since there were no longer reasonable grounds for continuing with the investigation. The court declined to relieve a losing party of the costs of his unsuccessful opposition where that party had failed to show reasonable grounds for challenging a will on the ground of want of knowledge and approval[2].

1 [2007] EWHC 2909 (Ch), [2008] 2 Costs LR 271.
2 *Inchbald v Inchbald* [2017] EWHC 616 (Ch).

(c) Where the opposing party gives notice to cross-examine under CPR 57.7(5)

40.37 Under CPR 57.7(5), in probate claims the party opposing a will may give notice in his defence that he does not raise any positive case but insists on

the will being proved in solemn form and, for that purpose, will cross-examine the witnesses who attested the will. If a defendant gives such a notice, the court will not make an order for costs against him unless it considers there was no reasonable ground for opposing the will. It does not follow, because a defendant fails, that there was no reasonable ground for opposing the will[1]. On the other hand, once a defendant has sufficient material to form a view as to whether there were any reasonable grounds for opposing a will, he or she becomes at risk for costs incurred from that date and is no longer protected by rule CPR 57.7(5)[2].

[1] *Davies v Jones* [1899] P 161 at 164. For a case under the rule where it was held that there had been no reasonable ground for opposing the will, see *Re Spicer, Spicer v Spicer* [1899] P 38. See also *Perry v Dixon* (1899) 80 LT 297.

[2] *Elliott v Simmonds* [2016] EWHC 962 (Ch), [2016] WTLR 1375.

Chapter 41

ASSOCIATED ACTIONS

RECTIFICATION OF A WILL

41.01 An action for the rectification of a will under the Administration of Justice Act 1982, s 20 is not a probate claim within the meaning of CPR 57.1(2) but CPR 57.12 and CPR 57 PD(A) paras 9, 10 and 11 apply.

Under the section the court may order rectification to carry out the intentions of the testator if satisfied that the will fails to carry them out in consequence of a clerical error or of a failure to understand the instructions of the testator.

REMOVAL OF A PERSONAL REPRESENTATIVE

41.12 The claim form must be accompanied either by a sealed or certified copy of the grant of probate or letters of administration or, where the claim made is to substitute or remove an executor and is made before a grant of probate has been issued, the original, or if the original is not available, a copy of the will.

CPR 57.13 does not state that a claim under s 50 must be made by issuing a Part 8 claim form[1] but is the procedure which will usually be appropriate in view of the nature of the jurisdiction and is most consistent with PD 57A para 13(2)[1A] which requires the claim form to be accompanied by written evidence containing the grounds of the claim as well as the specified categories of information.[2]

[1] In contrast to CPR 57.16(1) in relation to claims under the Inheritance (Provision for Family and Dependants) Act 1975.

[1A] Practice Direction 57 – Probate is here referred to as PD 57A.

[2] *Schumacher v Clarke* [2019] EWHC 1031 (Ch). In that case a claim under s 50 had been started by a Part 7 claim. The claim was left as a Part 7 claim to avoid unnecessary delay but Chief Master Marsh declined to allow a full trial with cross-examination and said it would be exceptional for a s 50 application to necessitate a full trial. The Chief Master said it would be wrong to characterise the procedure as a summary one but the court proceeds in a pragmatic way taking into account the estate's need for a resolution as quickly as possible of the central issue which is that of selecting by whom the administration should be carried out.

41.16 The test for removing an executor is the same as that for removing a trustee, and is not more stringent. Friction and hostility between an executor and a beneficiary will not, of itself, be a good reason for removing the executor. If however, such hostility is obstructing the administration of an estate, it is a factor to be taken into account. A testator's choice of executors is also capable of being of relevance.[1] There has to be a good reason to interfere and remove.[2]

The additional cost of replacing some or all of the personal representatives is a material consideration, particularly where it is proposed to appoint professional persons. The size of the estate and the likely cost of the work needed will have to be considered.[3] In the particular circumstances of a case, the court may come to the conclusion that the safest and most appropriate course to ensure the proper administration of the estate is to appoint a suitably qualified professional person with no prior involvement with the parties or the estate. In other cases, the risk of increasing the costs of administration significantly will not be justified and the administration will be left in the hands of one of the personal representatives to carry out, especially where that person already has the benefit of being advised by an experienced solicitor in regard to the administration of the estate and has been acting on the advice received.[4]

[1] *Kershaw v Micklethwaite* [2010] EWHC 506 (Ch), [2011] WTLR 413.

[2] *Alkin v Raymond* [2010] WTLR 1117, [2010] Lexis Citation 17 at [32].

[3] *Harris v Earwicker* [2015] EWHC 1915 (Ch) at [9](vi) where the relevant principles were summarised by Chief Master Marsh as follows:

> 'i. It is unnecessary for the court to find wrongdoing or fault on the part of the personal representatives. The guiding principle is whether the administration of the estate is being carried out properly. Put another way, when looking at the welfare of the beneficiaries, is it in their best interests to replace one or more of the personal representatives?
>
> ii. If there is wrongdoing or fault and it is material such as to endanger the estate the court is very likely to exercise its powers under s.50. If, however, there may be some proper criticism of the personal representatives, but it is minor and will not affect the administration of the estate or its assets, it may well not be necessary to exercise that power.
>
> iii. The wishes of the testator, as reflected in the will, concerning the identity of the personal representatives is a factor to be taken into account.
>
> iv. The wishes of the beneficiaries may also be relevant . . . .however . . . the beneficiaries, or some of them, have no right to demand replacement and the court has to make a balanced judgment taking a broad view about what is in the interests of the beneficiaries as a whole. This is particularly important where . . . .there are competing views.
>
> v. The court needs to consider whether, in the absence of significant wrongdoing or fault, it has become impossible or difficult for the personal representatives to complete the administration of the estate . . . The court must review what has been done to administer the estate and what remains to be done. A breakdown of the relationship between some or all of the beneficiaries and the personal representatives will not without more justify their replacement. If, however, the breakdown of relations makes the task of the personal representatives difficult or impossible, replacement may be the only option.
>
> vi. The additional cost of replacing some or all of the personal representatives, particularly where it is proposed to appoint professional persons, is a material consideration. The size of estate and the scope and cost of the work which will be needed will have to be considered.'

[4] *Haynes v Andre* [2018] EWHC 489 (Ch).

FAMILY PROVISION

General

41.19 The law governing family provision is contained in the Inheritance (Provision for Family and Dependants) Act 1975[1]. Application is made to the High Court or to the county court[2]. The court conventionally treats claims under the Act as involving a two-stage process, namely: (i) has there been a failure to make reasonable financial provision, and, if so (ii) what order ought

to be made? Section 3(1) of the Act introduces factors which fall to be considered at both stages. Thus, the two questions will usually become: (i) did the will/intestacy make reasonable financial provision for the claimant, and (ii) if not, what reasonable financial provision ought now to be made for him[3]?

If application is made in the High Court it can be made either to the Chancery Division or to the Family Division in the High Court[4] and the procedure in both Divisions is the same except for modifications dependant on the difference in organisation of the two Divisions.

The Masters in the Chancery Division and the district judges in the Family Division have power to hear applications under the Act. Hearings under the Act are, in the first instance, listed by the court as hearings in private under CPR 39.2(3)(c)[5].

1 As amended by the Law Reform (Succession) Act 1995, the Civil Partnership Act 2004 and by the Inheritance and Trustees' Powers Act 2014, s 6 and Sch 2. The Marriage (Same Sex Couples) Act 2013 provides that marriage of same sex couples is lawful and has the same effect in relation to same sex couples as it has in relation to opposite sex couples.

2 By virtue of the County Courts Act 1984, s 25 and the High Court and County Courts Jurisdiction Order 1991 (SI 1991/724), art 2(8) the county court has unlimited jurisdiction to hear and determine any application for an order under s 2 including any application for permission to apply for such an order.

3 *Ilott v The Blue Cross* [2017] UKSC 17, [2017] 4 All ER 545, [2017] WTLR 533 at [23] per Lord Hughes.

4 CPR 57.15(1).

5 CPR Pt 39 PD r 39.1.5(9).

Time limits

41.35 An application under the Inheritance (Provision for Family and Dependants) Act 1975 cannot without the leave of the court be made after six months from the date of the grant of representation[1]. The Inheritance (Provision for Family and Dependants) Act 1975, s 23 as amended by the Inheritance and Trustees' Powers Act 2014, s 7 and Sch 3 para 2 specifies the grants that are to be left out of account when considering for the purposes of the 1975 Act when representation with respect to the estate of a deceased person was first taken out.

If such leave is required it should be sought in a separate paragraph of the claim form or failing this by application notice in the proceedings. It has been stated that the time limit in the Inheritance (Provision for Family and Dependants) Act 1975, s 4 is not a disciplinary provision to be enforced for its own sake. It is designed to provide a measure of protection for executors and a measure of certainty for beneficiaries by enabling the estate to be distributed once the six-month period has elapsed.[2]

1 Inheritance (Provision for Family and Dependants) Act 1975, s 4.

2 *McNulty v McNulty* [2002] WTLR 737. In *Nesheim v Kosa* [2006] EWHC 2710 (Ch), [2007] Fam Law 1132, Briggs J, as he then was, stated that the time limit existed for particular purposes, namely to avoid the unnecessary delay in the administration of estates caused by the tardy bringing of proceedings under the Act and to avoid the difficulties that might be caused if distributions of an estate were made before proceedings were brought.

41.36 Applications for leave are usually heard by the Master or district judge prior to the main hearing and the evidence is normally limited to what is required for the application. The Inheritance (Provision for Family and

Dependants) Act 1975, s 4 does not itself give guidance as to how the court should approach the application for permission. The correct approach is to be found in the case law under s 4.[1]

[1] *Re Salmon, Coard v National Westminster Bank Ltd* [1981] Ch 167, [1980] 3 All ER 532 and *Re Dennis, Dennis v Lloyds Bank Ltd* [1981] 2 All ER 140. Permission to make a claim six years after the expiry of the time limit was refused in *Berger v Berger* [2013] EWCA Civ 1305. In *McNulty v Mc Nulty* [2002] WTLR 737 a claim by an elderly widow in relation to her husband's estate was permitted three and a half years out of time. Permission was refused in *Sargeant v Sargeant* [2018] EWHC 8 (Ch), [2018] WTLR 1451 to a widow to make a claim after ten years where no steps had been taken by the claimant to establish whether she could challenge a discretionary trust set up by her late husband's will. Permission was refused to a widow making a claim nearly 17 months out of time in *Cowan v Foreman* [2019] EWHC 349 (Fam), [2019] 1 FLR 1191 on the ground that the claim lacked sufficient merit in view of generous trust arrangements made. It was held that in future a privately agreed moratorium or standstill would not stop the clock in terms of the accrual of delay. It was said that a robust application of the extension power in s 4 would be consistent with the overriding objective and echo the sanctions jurisdiction exemplified by *Denton v TH White Ltd* [2014] EWCA Civ 906, [2015] 1 All ER 880. In *Bhusate v Patel* [2019] EWHC 470 (Ch), a widow was granted permission to bring a claim almost 25 years out of time where the merits were very strong and there were no distributed assets to recoup. With reference to part of the reasoning in *Cowan v Foreman*, it was said not to be right when exercising the s 4 discretion to have regard to the overriding objective or the approach to relief against sanction. That was said to involve conflating issues that, if they were related, were at best distant cousins.

General

41.39 On the hearing of a claim the personal representative must produce to the court the original grant of representation to the deceased's estate[1]. If the court makes an order under the Act, the original grant (together with a sealed copy of the order) must be sent to the Principal Registry of the Family Division for a memorandum of the order to be endorsed on or permanently annexed to the grant in accordance with the Inheritance (Provision for Family and Dependants) Act 1975, s 19(3)[2]. Every final order embodying terms of compromise made in proceedings under the Act with or without a hearing must contain a direction that a memorandum of the order should be endorsed on or permanently annexed to the probate or letters of administration and a copy of the order should be sent to the Principal Registry with the relevant grant of probate or letters of administration for endorsement[3]. An agreement settling a claim under the 1975 Act was held to be void for common mistake where it was subsequently discovered that the deceased had left a will under which the claimant obtained more than she had done under the agreement[4]. A claim under the Act abates on the death of the claimant. This is because the Act gives a personal right to bring a claim but that right is not itself a cause of action. It is a hope or a contingency. It cannot therefore be pursued by the personal representatives of a surviving spouse after her death[5].

[1] CPR Pt.57 PD(A) 18.1.

[2] CPR Pt.57 PD(A) 18.2.

[3] CPR Pt.57 PD(A) 18.3.

[4] *British Red Cross v Werry and Garcia* [2017] EWHC 875 (Ch), [2017] WTLR 441.

[5] *Roberts v Fresco* [2017] EWHC 283 (Ch) applying *Whyte v Ticehurst* [1986] Fam 64, [1986] 2 All ER 158.

Costs management of 1975 Act claims

41.41 Claims pursuant to the Inheritance (Provision for Family and Dependants) Act 1975 are specifically referred to as one of the categories of Part 8 claims in which an order for the provision of costs budgets may be particularly appropriate with a view to a costs management order being made[1].

[1] CPR Pt 3 PD 3E para 5(d).

PRESUMPTION OF DEATH

Applications under the Presumption of Death Act 2013

41.42 The Presumption of Death Act 2013 (PDA 2013) came into force on 1 October 2014. It enables applications to be made to the High Court for a declaration that a missing person is presumed to have died.

Jurisdiction

41.43 The court has jurisdiction to hear and determine an application if and only if: (i) the missing person was domiciled in England and Wales on the day on which he or she was last known to be alive; or (ii) the missing person had been habitually resident in England and Wales throughout the period of one year ending with that day; or (iii) if PDA 2013, s 1(4) is satisfied. That sub-section is satisfied if an application is made by the spouse or civil partner of the missing person, and the applicant is domiciled in England and Wales on the day on which the application is made or if the applicant has been habitually resident in England and Wales throughout the period of one year ending with that day. The sub-section cannot be relied on where the application is made by a parent, child or sibling of the missing person. In the case of such an application, jurisdiction must be founded on s 1(3).

The form of declaration made

41.44 Subject to jurisdiction being established, the court must make a declaration if it is satisfied that the missing person has died or has not been known to be alive for a period of at least seven years[1].

Where the court is satisfied that a missing person has died, but is uncertain at which moment during a period the missing person died, a declaration will be made pursuant to s 2(1)(a) that the missing person is presumed to have died at the end of that period.

Where the court is satisfied that the missing person has not been known to be alive for a period of at least seven years, but is not satisfied that the missing person has died, a declaration will be made pursuant to s 2(1)(b) that the missing person is presumed to have died at the end of the period of seven years beginning with the day after the day on which he was last known to be alive[2].

[1] PDA 2013, s 1(3).

[2] This was the form of declaration made in *Re Charles George Bingham* [2015] EWHC 226 (Ch) in relation to Lord Lucan, the Seventh Earl of Lucan.

The effect of a declaration

41.45 A declaration under the Act is conclusive of the missing person's presumed death and the date and time of death[1].

[1] PDA 2013, s 3.

Procedure

41.46 CPR Part 57 Section V and PD 57B sets out detailed rules of court concerning the information to be provided in the claim form, giving of notice of the claim to others who would be entitled themselves to be the claimant, and for advertisement of the claim and for intervening in a claim.

Section 11 of the PDA 2013 permits the missing person's spouse, civil partner, child or sibling to intervene in proceedings on an application under the Act. The Attorney General may intervene. Any other person may only intervene with the permission of the court[1].

The rules provide for a first directions hearing and then a final hearing. If the matter is not opposed, an order may be made by a permanent Master.

[1] An application for permission to intervene must be served on the claimant and must specify the applicant's relationship to the missing person or other interest in the proceedings and the reasons for seeking to intervene: CPR Pt 57 PD57B para 3.2. The prescribed form of advertisement requires any person seeking to intervene do so as soon as possible, and if possible within 21 days of the advertisement.

The Register of Presumed Deaths

41.47 The Act provides for the creation and maintenance by the Registrar General for England and Wales of the Register of Presumed Deaths. A certified copy of an entry in the Register of Presumed Deaths in relation to a person is to be received as evidence of the person's death without further or other proof, if it purports to be sealed or stamped with the seal of the General Register Office[1].

[1] PDA 2013, s 15 and Sch 1, para 4.

GUARDIANSHIP (MISSING PERSONS) ACT 2017

41.48 The Guardianship (Missing Persons) Act 2017 comes into force on 31 July 2019 and enables the Chancery Division or the Family Division to appoint a guardian to manage the property and financial affairs of a 'missing' person (as that term is defined in s 1 of the Act). Pursuant to s 22 of the Act, a Code of Practice was issued by the Ministry of Justice in June 2019.[1] It provides a useful summary of the provisions of the Act and examples of how the Act may operate in particular circumstances. A guardian may be appointed for up to four years beginning with the day on which the order is made.

[1] See www.gov.uk/government/publications/guardianship-of-missing-persons-draft-code-of-practice

APPENDICES

Appendix I

STATUTES

Contents

Part I – Probate Business

Wills Act 1837 247

Law of Property Act 1925 248

Public Records Act 1958 249

Senior Courts Act 1981 250

Forfeiture Act 1982 251

Family Law Act 1986 253

Children Act 1989 255

Access to Health Records Act 1990 264

Courts and Legal Services Act 1990 266

Adoption and Children Act 2002 269

Gender Recognition Act 2004 276

Mental Capacity Act 2005 281

Human Fertilisation and Embryology Act 2008 282

Marriage (Same Sex Couples) Act 2013 285

Guardianship (Missing Persons) Act 2017 287

Part II – Finance Acts etc

Inheritance Tax Act 1984 302

Note.

The following text contains extracts from Acts of Parliament having a bearing on the probate practice. In general, those enactments, since repealed, which remain applicable in relation to cases where death occurred prior to the relevant date of repeal have been retained for the purpose of reference.

PART I – PROBATE BUSINESS

WILLS ACT 1837

(7 Will 4 & 1 Vict c 26) as amended

A1.01

1 Meaning of certain words in this Act: "Will": "Real estate": "Personal estate": Number: Gender

. . . the words and expressions herein-after mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provisions or the context of the Act shall exclude such construction, be interpreted as follows; (that is to say,) the word "will" shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, [and also to an appointment by will of a guardian of a child], [and also to an appointment by will of a representative under section 4 of the Human Tissue Act 2004 [or section 8 of the Human Transplantation (Wales) Act 2013],] . . . and to any other testamentary disposition; and the words "real estate" shall extend to manors, advowsons, messuages, lands, tithes, rents, and hereditaments, . . . whether corporeal, incorporeal, or personal, . . . and to any estate, right, or interest (other than a chattel interest) therein; and the words "personal estate" shall extend to leasehold estates and other chattels real, and also to monies, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

Repealed in part, in relation to Northern Ireland, by the Statute Law Revision (Northern Ireland) Act 1954, the Statute Law Revision (Northern Ireland) Act 1976, and the Wills and Administration Proceedings (NI) Order 1994, SI 1994/1899, art 38, Sch 3.

First words omitted repealed by the Statute Law Revision Act 1893, s 1, Schedule.

Words from "and also to" to "of a child," in square brackets substituted by the Children Act 1989, s 108(5), (6), Sch 13, para 1, Sch 14, para 1.

Words from "and also to" to "," in square brackets inserted by the Human Tissue Act 2004, s 56, Sch 6, para 1. Date in force: 1 September 2006: see SI 2006/1997, art 3(2).

Words "or section 8 of the Human Transplantation (Wales) Act 2013" in square brackets inserted by the Human Transplantation (Wales) Act 2013, s 17. Date in force: 1 December 2015: see SI 2015/1679, art 3(e).

Second and third words omitted repealed by the Statute Law (Repeals) Act 1969, s 1, Schedule, Pt III.

Final words omitted repealed by the Trusts of Land and Appointment of Trustees 1996, s 25(2), Sch 4; for savings in relation to entailed interests created before the commencement of that Act, and savings consequential upon the abolition of the doctrine of conversion, see s 25(4), (5) thereof.

LAW OF PROPERTY (AMENDMENT) ACT 1926

(16 & 17 Geo 5, c 11)

A1.138

3 Meaning of 'trust corporation'

(1) For the purposes of the Law of Property Act 1925, the Settled Land Act 1925, the Trustee Act 1925, the Administration of Estates Act 1925, and the [Senior Courts Act 1981], the expression "Trust Corporation" includes the Treasury Solicitor, the Official Solicitor and any person holding any other official position prescribed by the Lord Chancellor, and, in relation to the property of a bankrupt . . . , includes the trustee

in bankruptcy . . . , and, in relation to charitable ecclesiastical and public trusts, also includes any local or public authority so prescribed, and any other corporation constituted under the laws of the United Kingdom or any part thereof which satisfies the Lord Chancellor that it undertakes the administration of any such trusts without remuneration, or that by its constitution it is required to apply the whole of its net income after payment of outgoings for charitable ecclesiastical or public purposes, and is prohibited from distributing, directly or indirectly, any part thereof by way of profits amongst any of its members, and is authorised by him to act in relation to such trusts as a trust corporation.

(2) For the purposes of this provision, the expression "Treasury Solicitor" means the solicitor for the affairs of His Majesty's Treasury, and includes the solicitor for the affairs of the Duchy of Lancaster.

Sub-s (1): words "Senior Courts Act 1981" in square brackets substituted by the Constitutional Reform Act 2005, s 59(5), Sch 11, Pt 1, para 1(2). Date in force: 1 October 2009: see SI 2009/1604, art 2(d).

Sub-s (1): first words omitted repealed by the Deregulation Act 2015, s 19, Sch 6, Pt 1, para 2(1), (5)(a); for effect see para 3. Date in force: 1 October 2015: see SI 2015/1732, art 2(e)(i).

Sub-s (1): second words omitted repealed by the Deregulation Act 2015, s 19, Sch 6, Pt 1, para 2(1), (5)(b); for effect see para 3. Date in force: 1 October 2015: see SI 2015/1732, art 2(e)(i).

PUBLIC RECORDS ACT 1958

(6 & 7 Eliz 2, c 51)

[23rd July 1958]

A1.165

5 Access to public records

* * * * *

(5) The [Secretary of State] shall as respects all public records in places of deposit appointed by him under this Act outside the Public Record Office require arrangements to be made for their inspection by the public comparable to those made for public records in the Public Record Office, ...

Sub-s (5): words "Secretary of State" in square brackets substituted by SI 2015/1897, art 9, Schedule, para 1(1), (3)(f). Date in force: 9 December 2015: see SI 2015/1897, art 1(2).

Sub-s (5): words omitted repealed by the Freedom of Information Act 2000, ss 67, 86, Sch 5, Pt I, para 2(1), (4), Sch 8, Pt III. Date in force: 1 January 2005: see SI 2004/3122, art 2.

A1.166

8 Court records

(1) The Lord Chancellor shall be responsible for the public records of every court of record or magistrates' court which are not in the Public Record Office or a place of deposit appointed by [the Secretary of State] under this Act and shall have power to determine in the case of any such records [other than records of the Supreme Court,] the officer in whose custody they are for the time being to be:

. . .

[(1A) Records of the Supreme Court for which the Lord Chancellor is responsible under subsection (1) shall be in the custody of the chief executive of that court.]

(2), (3) . . .

(4) Where any private documents have remained in the custody of a court in England or Wales for more than fifty years without being claimed, the Keeper of Public Records may, with the approval of the Master of the Rolls, require the documents to be

transferred to the Public Record Office and thereupon the documents shall become public records for the purposes of this Act.

(5) Section three of this Act shall not apply to such of the records of ecclesiastical courts described in paragraph (n) of sub-paragraph (1) of paragraph 4 of the First Schedule to this Act as are not held in any office of the [Senior Courts] or in the Public Record Office, but, if the Lord Chancellor after consulting the President of the [Family Division] so directs as respects any of those records, those records shall be transferred to such place of deposit as may be appointed by the [Secretary of State] and shall thereafter be in the custody of such officer as may be so appointed.

(6) The public records which at the commencement of this Act are in the custody of the University of Oxford and which are included in the index a copy of which was transmitted to the principal probate registrar under section two of the Oxford University Act 1860 shall not be required to be transferred under the last foregoing subsection but the Lord Chancellor shall make arrangements with the University of Oxford as to the conditions under which those records may be inspected by the public.

Sub-s (1): words "the Secretary of State" in square brackets substituted by SI 2015/1897, art 9, Schedule, para 1(1), (4). Date in force: 9 December 2015: see SI 2015/1897, art 1(2).

Sub-s (1): words "other than records of the Supreme Court," in square brackets inserted by the Constitutional Reform Act 2005, s 56(1), (2)(a). Date in force: 1 October 2009: see SI 2009/1604, art 2(b).

Sub-s (1): words omitted repealed by the Courts Act 1971, s 56(4), Sch 11, Pt II.

Sub-s (1A): inserted by the Constitutional Reform Act 2005, s 56(1), (2)(b). Date in force: 1 October 2009: see SI 2009/1604, art 2(b).

Sub-s (2): repealed by the Supreme Court Act 1981, s 152(4), Sch 7.

Sub-s (3): repealed by the Administration of Justice Act 1969, ss 27(2), 35(2), Sch 2.

Sub-s (5): words "Senior Courts" in square brackets substituted by the Constitutional Reform Act 2005, s 59(5), Sch 11, Pt 2, para 4(1), (3). Date in force: 1 October 2009: see SI 2009/1604, art 2(d).

Sub-s (5): words "Family Division" in square brackets substituted by the Administration of Justice Act 1970, s 1(6), Sch 2, para 19.

Sub-s (5): words "Secretary of State" in square brackets substituted by SI 2015/1897, art 9, Schedule, para 1(1), (3)(i). Date in force: 9 December 2015: see SI 2015/1897, art 1(2).

[SENIOR COURTS ACT 1981]

(1981, c 54)

[28th July 1981]

PART II
JURISDICTION

The Court of Appeal

* * * * *

A1.304

16 Appeals from High Court

(1) Subject as otherwise provided by this or any other Act (and in particular to the provision in section 13(2)(a) of the Administration of Justice Act 1969 excluding appeals to the Court of Appeal in cases where leave to appeal from the High Court directly to the [Supreme Court] is granted under Part II of that Act), [or as provided by any order made by the Lord Chancellor under section 56(1) of the Access to Justice

Act 1999,] the Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of the High Court.

(2) An appeal from a judgment or order of the High Court when acting as a prize court shall not be to the Court of Appeal, but shall be to Her Majesty in Council in accordance with the Prize Acts 1864 to 1944.

Sub-s (1): words 'Supreme Court' in square brackets substituted by the Constitutional Reform Act 2005, s 40(4), Sch 9, Pt 1, para 36(1), (3). Date in force: 1 October 2009: see SI 2009/1604, art 2(d).

Sub-s (1): words from "or as provided" to "Access to Justice Act 1999," in square brackets inserted by SI 2016/917, art 9. Date in force: 3 October 2016: see SI 2016/917, art 1(2); for transitional provisions see art 8.

A1.305

17 Applications for new trial

(1) Where any cause or matter, or any issue in any cause or matter, has been tried in the High Court, any application for a new trial thereof, or to set aside a verdict, finding or judgment therein, shall be heard and determined by the Court of Appeal except where rules of court made in pursuance of subsection (2) provide otherwise.

(2) As regards cases where the trial was by a judge alone and no error of the court at the trial is alleged, or any prescribed class of such cases, rules of court may provide that any such application as is mentioned in subsection (1) shall be heard and determined by the High Court.

(3) Nothing in this section shall alter the practice in bankruptcy.

Sub-ss (1) derived from the Supreme Court of Judicature (Consolidation) Act 1925, s 30.

FORFEITURE ACT 1982

(1982, c 34)

[13 July 1982]

A1.359

2 Power to modify the rule

(1) Where a court determines that the forfeiture rule has precluded a person (in this section referred to as "the offender") who has unlawfully killed another from acquiring any interest in property mentioned in subsection (4) below, the court may make an order under this section modifying [or excluding] the effect of that rule.

(2) The court shall not make an order under this section modifying [or excluding] the effect of the forfeiture rule in any case unless it is satisfied that, having regard to the conduct of the offender and of the deceased and to such other circumstances as appear to the court to be material, the justice of the case requires the effect of the rule to be so modified [or excluded] in that case.

(3) In any case where a person stands convicted of an offence of which unlawful killing is an element, the court shall not make an order under this section modifying [or excluding] the effect of the forfeiture rule in that case unless proceedings for the purpose are brought before the expiry of the *period of three months beginning with his conviction* [relevant period].

[(3A) In subsection (3) above, the "relevant period" is the period of 6 months beginning with—

(a) the end of the period allowed for bringing an appeal against the conviction, or

(b) if such an appeal is brought, the conclusion of proceedings on the appeal.]

(4) The interests in property referred to in subsection (1) above are—

(a) any beneficial interest in property which (apart from the forfeiture rule) the offender would have acquired—

(i) under the deceased's will (including, as respects Scotland, any writing having testamentary effect) or the law relating to intestacy or by way of ius relicti, ius relictae or legitim;

(ii) on the nomination of the deceased in accordance with the provisions of any enactment;

(iii) as a donatio mortis causa made by the deceased; or

(iv) under a special destination (whether relating to heritable or moveable property); or

(b) any beneficial interest in property which (apart from the forfeiture rule) the offender would have acquired in consequence of the death of the deceased, being property which, before the death, was held on trust for any person.

(5) An order under this section may modify [or exclude] the effect of the forfeiture rule in respect of any interest in property to which the determination referred to in subsection (1) above relates and may do so in either or both of the following ways, that is—

(a) where there is more than one such interest, by excluding the application of the rule in respect of any *(but not all)* [or all] of those interests; and

(b) in the case of any such interest in property, by excluding the application of the rule in respect of [all or any] part of the property.

(6) On the making of an order under this section [modifying the effect of the forfeiture rule], the forfeiture rule shall have effect for all purposes (including purposes relating to anything done before the order is made) subject to the modifications made by the order.

(7) The court shall not make an order under this section modifying the effect of the forfeiture rule in respect of any interest in property which, in consequence of the rule, has been acquired before the coming into force of this section by a person other than the offender or a person claiming through him.

(8) In this section—

"property" includes any chose in action or incorporeal moveable property; and

"will" includes codicil.

Sub-s (1): words "or excluding" in square brackets inserted by the Succession (Scotland) Act 2016, s 15(1), (2). Date in force: 1 November 2016: see SSI 2016/210, reg 2(1)(a), (2).

Sub-s (2): words "or excluding" in square brackets inserted by the Succession (Scotland) Act 2016, s 15(1), (3)(a). Date in force: 1 November 2016: see SSI 2016/210, reg 2(1)(a), (2).

Sub-s (2): words "or excluded" in square brackets inserted by the Succession (Scotland) Act 2016, s 15(1), (3)(b). Date in force: 1 November 2016: see SSI 2016/210, reg 2(1)(a), (2).

Sub-s (3): words "or excluding" in square brackets inserted by the Succession (Scotland) Act 2016, s 15(1), (4). Date in force: 1 November 2016: see SSI 2016/210, reg 2(1)(a), (2).

Sub-s (3): words "period of three months beginning with his conviction" in italics repealed and subsequent words in square brackets substituted by the Succession (Scotland) Act 2016, s 16(1), (2). Date in force: 1 November 2016: see SSI 2016/210, reg 2(1)(a), (2).

Sub-s (3A): inserted by the Succession (Scotland) Act 2016, s 16(1), (3). Date in force: 1 November 2016: see SSI 2016/210, reg 2(1)(a), (2).

Sub-s (5): words "or exclude" in square brackets inserted by the Succession (Scotland) Act 2016, s 15(1), (5)(a). Date in force: 1 November 2016: see SSI 2016/210, reg 2(1)(a), (2).

Sub-s (5): in para (a) words "(but not all)" in italics repealed and subsequent words in square brackets substituted by the Succession (Scotland) Act 2016, s 15(1), (5)(b). Date in force: 1 November 2016: see SSI 2016/210, reg 2(1)(a), (2).

Sub-s (5): in para (b) words "all or any" in square brackets inserted by the Succession (Scotland) Act 2016, s 15(1), (5)(c). Date in force: 1 November 2016: see SSI 2016/210, reg 2(1)(a), (2).

Sub-s (6): words "modifying the effect of the forfeiture rule" in square brackets inserted by the Succession (Scotland) Act 2016, s 15(1), (6). Date in force: 1 November 2016: see SSI 2016/210, reg 2(1)(a), (2).

FAMILY LAW ACT 1986

(1986, c 55)

[7 November 1986]

PART II
RECOGNITION OF DIVORCES, ANNULMENTS AND LEGAL SEPARATIONS

Overseas divorces, annulments and legal separations

A1.392

45 Recognition in the United Kingdom of overseas divorces, annulments and legal separations

[(1) Subject to *subsection (2) of this section and*] to sections 51 and 52 of this Act, the validity of a divorce, annulment or legal separation obtained in a country outside the British Islands (in this Part referred to as an overseas divorce, annulment or legal separation) shall be recognised in the United Kingdom if, and only if, it is entitled to recognition—

(a) by virtue of sections 46 to 49 of this Act, or

(b) by virtue of any enactment other than this Part.

[(2) *Subsection (1) and the following provisions of this Part do not apply to an overseas divorce, annulment or legal separation as regards which provision as to recognition is made by [Articles 21 to 27, 41(1) and 42(1)] of the Council Regulation.*]

Sub-s (1): numbered as such and words "Subject to subsection (2) of this section and" in square brackets substituted in relation to England and Wales by SI 2001/310, reg 9(a) and in relation to Northern Ireland by SI 2001/660, reg 8(a); a corresponding amendment has been made in relation to Scotland by SSI 2001/36, reg 4(1), (5)(a), (b). Date in force (in relation to England and Wales): 1 March 2001: see SI 2001/310, reg 1. Date in force (in relation to Scotland): 1 March 2001: see SSI 2001/36, reg 1(1). Date in force (in relation to Northern Ireland): 30 March 2001: see SI 2001/660, reg 1.

Sub-s (1): words "subsection (2) of this section and to" in italics repealed in relation to England and Wales by SI 2019/519, reg 7, Schedule, para 15(1), (7)(a) and in relation to Scotland by SSI 2019/104, reg 4, Sch 1, para 2(1), (7)(a). Date in force (in relation to England and Wales): this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/519, reg 1(1). Date in force (in relation to Scotland): this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SSI 2019/104, reg 1.

Sub-s (2): inserted in relation to England and Wales by SI 2001/310, reg 9(b), in relation to Scotland by SSI 2001/36, reg 4(1), (5)(c) and in relation to Northern Ireland by SI 2001/660, reg 8(b). Date in force (in relation to England and Wales): 1 March 2001: see SI 2001/310, reg 1. Date in force (in relation to Scotland): 1 March 2001: see SSI 2001/36, reg 1(1). Date in force (in relation to Northern Ireland): 30 March 2001: see SI 2001/660, reg 1.

Sub-s (2): repealed in relation to England and Wales by SI 2019/519, reg 7, Schedule, para 15(1), (7)(b) and in relation to Scotland by SSI 2019/104, reg 4, Sch 1, para 2(1), (7)(b).

Date in force (in relation to England and Wales): this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/519, reg 1(1). Date in force (in relation to Scotland): this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SSI 2019/104, reg 1.

Sub-s (2): words "Articles 21 to 27, 41(1) and 42(1)" in square brackets substituted in relation to Scotland by SSI 2005/42, reg 4(1), (6) and in relation to England, Wales and Northern Ireland by SI 2005/265, reg 17. Date in force (Scotland): 1 March 2005: see SSI 2005/42, reg 1(1); for transitional provisions and effect see regs 6, 7(b) thereof. Date in force (in relation to England, Wales and Northern Ireland): 1 March 2005: see SI 2005/265, reg 1; for transitional provision see reg 20 thereof.

Supplemental

A1.401

54 Interpretation of Part II

(1) In this Part—

"annulment" includes any decree or declarator of nullity of marriage, however expressed;

[*"the Council Regulation" means Council Regulation (EC) No 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility;*]

"part of the United Kingdom" means England and Wales, Scotland or Northern Ireland;

"proceedings" means judicial or other proceedings.

(2) In this Part "country" includes a colony or other dependent territory of the United Kingdom but for the purposes of this Part a person shall be treated as a national of such a territory only if it has a law of citizenship or nationality separate from that of the United Kingdom and he is a citizen or national of that territory under that law.

Sub-s (1): definition "the Council Regulation" (as inserted by SI 2001/310, SSI 2001/36 and SI 2001/660) substituted in relation to Scotland by SSI 2005/42, reg 4(1), (7) and in relation to England, Wales and Northern Ireland by SI 2005/265, reg 18. Date in force (in relation to Scotland): 1 March 2005: see SSI 2005/42, reg 1(1); for transitional provisions and effect see regs 6, 7(b) thereof. Date in force (in relation to England, Wales and Northern Ireland): 1 March 2005: see SI 2005/265, reg 1; for transitional provision see reg 20 thereof.

Sub-s (1): definition "the Council Regulation" repealed in relation to England and Wales by SI 2019/519, reg 7, Schedule, para 15(1), (8) and in relation to Scotland by SSI 2019/104, reg 4, Sch 1, para 2(1), (8). Date in force (in relation to England and Wales): this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/519, reg 1(1). Date in force (in relation to Scotland): this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SSI 2019/104, reg 1.

CHILDREN ACT 1989

(1989, c 41)

[16th November 1989]

PART IV
CARE AND SUPERVISION

Care orders

A1.445

33 Effect of care order

(1) Where a care order is made with respect to a child it shall be the duty of the local authority designated by the order to receive the child into their care and to keep him in their care while the order remains in force.

(2) Where—

(a) a care order has been made with respect to a child on the application of an authorised person; but

(b) the local authority designated by the order was not informed that that person proposed to make the application,

the child may be kept in the care of that person until received into the care of the authority.

(3) While a care order is in force with respect to a child, the local authority designated by the order shall—

(a) have parental responsibility for the child; and

(b) have the power (subject to the following provisions of this section) to determine the extent to which[—

(i) a parent, guardian or special guardian of the child; or

(ii) a person who by virtue of section 4A has parental responsibility for the child,]

may meet his parental responsibility for him.

(4) The authority may not exercise the power in subsection (3)(b) unless they are satisfied that it is necessary to do so in order to safeguard or promote the child's welfare.

(5) Nothing in subsection (3)(b) shall prevent [a person mentioned in that provision who has care of the child] from doing what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting his welfare.

(6) While a care order is in force with respect to a child, the local authority designated by the order shall not—

(a) cause the child to be brought up in any religious persuasion other than that in which he would have been brought up if the order had not been made; or

(b) have the right—

(i) . . .

(ii) to agree or refuse to agree to the making of an adoption order, or an order under [section 84 of the Adoption and Children Act 2002], with respect to the child; or

(iii) to appoint a guardian for the child.

(7) While a care order is in force with respect to a child, no person may—

(a) cause the child to be known by a new surname; or

(b) remove him from the United Kingdom,

without either the written consent of every person who has parental responsibility for the child or the leave of the court.

(8) Subsection (7)(b) does not—

(a) prevent the removal of such a child, for a period of less than one month, by the authority in whose care he is; or

(b) apply to arrangements for such a child to live outside England and Wales (which are governed by paragraph 19 of Schedule 2 [in England, and section 124 of the Social Services and Well-being (Wales) Act 2014 in Wales]).

(9) The power in subsection (3)(b) is subject (in addition to being subject to the provisions of this section) to any right, duty, power, responsibility or authority which [a person mentioned in that provision] has in relation to the child and his property by virtue of any other enactment.

Sub-s (3): para (b)(i), (ii) substituted by the Adoption and Children Act 2002, s 139(1), Sch 3, paras 54, 63(a). Date in force: 30 December 2005: see SI 2005/2213, art 2(o).

Sub-s (5): words "a person mentioned in that provision who has care of the child" in square brackets substituted by the Adoption and Children Act 2002, s 139(1), Sch 3, paras 54, 63(b). Date in force: 30 December 2005: see SI 2005/2213, art 2(o).

Sub-s (6): para (b)(i) repealed by the Adoption and Children Act 2002, s 139(1), (3), Sch 3, paras 54, 63(c)(i), Sch 5. Date in force: 30 December 2005: see SI 2005/2213, art 2(o).

Sub-s (6): in para (b)(ii) words "section 84 of the Adoption and Children Act 2002" in square brackets substituted by the Adoption and Children Act 2002, s 139(1), Sch 3, paras 54, 63(c)(ii). Date in force: 30 December 2005: see SI 2005/2213, art 2(o).

Sub-s (8): in para (b) words from "in England, and" to "Social Services and Well-being (Wales) Act 2014 in Wales" in square brackets inserted by SI 2016/413, regs 55, 97. Date in force: 6 April 2016: see SI 2016/413, reg 2(1); for transitional provisions and savings see reg 325, Schedule.

Sub-s (9): words "a person mentioned in that provision" in square brackets substituted by the Adoption and Children Act 2002, s 139(1), Sch 3, paras 54, 63(d). Date in force: 30 December 2005: see SI 2005/2213, art 2(o).

PART XII
MISCELLANEOUS AND GENERAL

* * * * *

Jurisdiction and procedure etc

A1.451

105 Interpretation

(1) In this Act—

["activity condition" has the meaning given by section 11C;]

["activity direction" has the meaning given by section 11A;]

"adoption agency" means a body which may be referred to as an adoption agency by virtue of [section 2 of the Adoption and Children Act 2002];

[. . .]

"bank holiday" means a day which is a bank holiday under the Banking and Financial Dealings Act 1971;

["care home"—

(a) has the same meaning as in the Care Standards Act 2000 in respect of a care home in England; and

(b) means a place in Wales at which a care home service within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 is provided wholly or mainly to persons aged 18 or over;]

"care order" has the meaning given by section 31(11) and also includes any order which by or under any enactment has the effect of, or is deemed to be, a care order for the purposes of this Act; and any reference to a child who is in the care of an authority is a reference to a child who is in their care by virtue of a care order;

"child" means, subject to paragraph 16 of Schedule 1, a person under the age of eighteen;

[**"child arrangements order" has the meaning given by section 8(1);**]

"child assessment order" has the meaning given by section 43(2);

"child minder" has the meaning given by section 71;

[**"child of the family", in relation to parties to a marriage, or to two people who are civil partners of each other, means—**

(a) **a child of both of them, and**

(b) **any other child, other than a child placed with them as foster parents by a local authority or voluntary organisation, who has been treated by both of them as a child of their family;**]

[**"children's home"—**

(a) **has the same meaning as it has for the purposes of the Care Standards Act 2000 in respect of a children's home in England (see section 1 of that Act); and**

(b) **means a place in Wales at which a care home service within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 is provided wholly or mainly to children;**]

[**"clinical commissioning group" means a body established under section 14D of the National Health Service Act 2006;**]

"community home" has the meaning given by section 53;

[. . .]

[. . .]

. . .

"day care" [*(except in Part XA)*] has the same meaning as in section 18;

"disabled", in relation to a child, has the same meaning as in section 17(11);

. . .

"domestic premises" has the meaning given by section 71(12);

[**dwelling-house" includes—**

(a) **any building or part of a building which is occupied as a dwelling;**

(b) **any caravan, house-boat or structure which is occupied as a dwelling;**

and any yard, garden, garage or outhouse belonging to it and occupied with it;]

[**"education functions" has the meaning given by section 579(1) of the Education Act 1996;**]

"education supervision order" has the meaning given in section 36;

"emergency protection order" means an order under section 44;

[**"enforcement order" has the meaning given by section 11J;**]

"family assistance order" has the meaning given in section 16(2);

"family proceedings" has the meaning given by section 8(3);

"functions" includes powers and duties;

"guardian of a child" means a guardian (other than a guardian of the estate of a child) appointed in accordance with the provisions of section 5;

"harm" has the same meaning as in section 31(9) and the question of whether harm is significant shall be determined in accordance with section 31(10);

[. . .]

"health service hospital" [means a health service hospital within the meaning given by the National Health Service Act 2006 or the National Health Service (Wales) Act 2006];

"hospital" [*(except in Schedule 9A)*] has the same meaning as in the Mental Health Act 1983, except that it does not include a *special hospital within the meaning of that Act* [hospital at which high security psychiatric services within the meaning of that Act are provided];

"ill-treatment" has the same meaning as in section 31(9);

["income-based jobseeker's allowance" has the same meaning as in the Jobseekers Act 1995;]

[*"income-related employment and support allowance" means an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance);*]

["independent hospital"—

(a) in relation to England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section; and

(b) in relation to Wales, has the same meaning as in the Care Standards Act 2000;]

"independent school" has the same meaning as in [the Education Act 1996];

"local authority" means, in relation to England . . . , the council of a county, a metropolitan district, a London Borough or the Common Council of the City of London[, in relation to Wales, the council of a county or a county borough] and, in relation to Scotland, a local authority within the meaning of section 1(2) of the Social Work (Scotland) Act 1968;

["local authority foster parent" means a person authorised as such in accordance with regulations made by virtue of—

(a) paragraph 12F of Schedule 2; or

(b) sections 87 and 93 of the Social Services and Well-being (Wales) Act 2014 (regulations providing for approval of local authority foster parents);]

. . .

["Local Health Board" means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;]

"local housing authority" has the same meaning as in the Housing Act 1985;

. . .

. . .

["officer of the Service" has the same meaning as in the Criminal Justice and Court Services Act 2000;]

"parental responsibility" has the meaning given in section 3;

"parental responsibility agreement" has the meaning given in [sections 4(1)[, 4ZA(4)] and 4A(2)];

"prescribed" means prescribed by regulations made under this Act;

["private children's home" means a children's home in respect of which a person is registered under Part II of the Care Standards Act 2000 [or Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016] which is not a community home or a voluntary home;]

[. . .]

"privately fostered child" and "to foster a child privately" have the same meaning as in section 66;

"prohibited steps order" has the meaning given by section 8(1);

. . .

. . .

"registered pupil" has the same meaning as in [the Education Act 1996];

"relative", in relation to a child, means a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or [by marriage or civil partnership)] or step-parent;

. . .

. . .

"responsible person", in relation to a child who is the subject of a supervision order, has the meaning given in paragraph 1 of Schedule 3;

"school" has the same meaning as in [the Education Act 1996] or, in relation to Scotland, in the Education (Scotland) Act 1980;

["section 31A plan" has the meaning given by section 31A(6);]

"service", in relation to any provision made under Part III, includes any facility;

"signed", in relation to any person, includes the making by that person of his mark;

"special educational needs" has the same meaning as in [the Education Act 1996];

["special guardian" and "special guardianship order" have the meaning given by section 14A;]

["Special Health Authority" means a Special Health Authority established under [section 28 of the National Health Service Act 2006 or section 22 of the National Health Service (Wales) Act 2006,];]

"specific issue order" has the meaning given by section 8(1);

[. . .]

"supervision order" has the meaning given by section 31(11);

"supervised child" and "supervisor", in relation to a supervision order or an education supervision order, mean respectively the child who is (or is to be) under supervision and the person under whose supervision he is (or is to be) by virtue of the order;

"upbringing", in relation to any child, includes the care of the child but not his maintenance;

"voluntary home" has the meaning given by section 60;

"voluntary organisation" means a body (other than a public or local authority) whose activities are not carried on for profit;

["Welsh family proceedings officer" has the meaning given by section 35 of the Children Act 2004].

(2) References in this Act to a child whose father and mother were, or (as the case may be) were not, married to each other at the time of his birth must be read with section 1 of the Family Law Reform Act 1987 (which extends the meaning of such references).

(3) . . .

[(4) References in this Act to a child who is looked after—

(a) in relation to a child who is looked after by a local authority in England, has the meaning given in section 22; and

(b) in relation to a child who is looked after by a local authority in Wales, has the meaning given in section 74 of the Social Services and Well-being (Wales) Act 2014 (child or young person looked after by a local authority).]

(5) References in this Act to accommodation provided by or on behalf of a local authority are references to accommodation so provided in the exercise of functions [of that or any other local authority which are social services functions . . .].

[(5A) *References in this Act to a child minder shall be construed—*

(a) . . . ;

(b) in relation to . . . *Wales, in accordance with section 79A.]*

[(5B) In subsection (5) "social services functions" means—

(a) in England, social services functions within the meaning of the Local Authority Social Services Act 1970, and

(b) in Wales, social services functions within the meaning of the Social Services and Well-being (Wales) Act 2014.]

(6) In determining the "ordinary residence" of a child for any purpose of this Act, there shall be disregarded any period in which he lives in any place—

(a) which is a school or other institution;

(b) in accordance with the requirements of a supervision order under this Act . . .

[(ba) in accordance with the requirements of a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008; or]

(c) while he is being provided with accommodation by or on behalf of a local authority.

(7) References in this Act to children who are in need shall be construed in accordance with section 17.

[(7A) References in this Act to a hospital or accommodation made available or provided pursuant to arrangements made by the Secretary of State under the National Health Service Act 2006 are references to a hospital or accommodation made available or provided pursuant to arrangements so made in the exercise of the public health functions of the Secretary of State (within the meaning of that Act).

(7B) References in this Act to arrangements made by the National Health Service Commissioning Board or a clinical commissioning group under the National Health Service Act 2006 include references to arrangements so made by virtue of section 7A of that Act.]

(8) Any notice or other document required under this Act to be served on any person may be served on him by being delivered personally to him, or being sent by post to him in a registered letter or by the recorded delivery service at his proper address.

(9) Any such notice or other document required to be served on a body corporate or a firm shall be duly served if it is served on the secretary or clerk of that body or a partner of that firm.

(10) For the purposes of this section, and of section 7 of the Interpretation Act 1978 in its application to this section, the proper address of a person—

(a) in the case of a secretary or clerk of a body corporate, shall be that of the registered or principal office of that body;

(b) in the case of a partner of a firm, shall be that of the principal office of the firm; and

(c) in any other case, shall be the last known address of the person to be served.

Sub-s (1): definition "activity condition" inserted by the Children and Families Act 2014, s 12(4), Sch 2, Pt 1, paras 1, 38(1), (2)(a). Date in force: 22 April 2014: see SI 2014/889, art 4(b), (f).

Sub-s (1): definition "activity direction" inserted by the Children and Families Act 2014, s 12(4), Sch 2, Pt 1, paras 1, 38(1), (2)(a). Date in force: 22 April 2014: see SI 2014/889, art 4(b), (f).

Sub-s (1): in definition "adoption agency" words "section 2 of the Adoption and Children Act 2002" in square brackets substituted by the Adoption and Children Act 2002, s 139(1), Sch 3, paras 54, 70(a). Date in force: 30 December 2005: see SI 2005/2213, art 2(o).

Sub-s (1): definition "appropriate children's home" inserted by the Care Standards Act 2000, s 116, Sch 4, para 14(1), (23)(a)(i). Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(a); for transitional provisions see SI 2001/4150, arts 3(2), 4(1), (3), (4) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6). Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Sch 1 thereto.

Sub-s (1): definition "appropriate children's home" (omitted) repealed by the Children and Young Persons Act 2008, ss 8(2), 42, Sch 1, para 3(1), (2), Sch 4. Date in force (in relation to

England): 1 April 2011: see SI 2010/2981, art 4(a). Date in force (in relation to Wales): 6 April 2016: see SI 2016/452, art 2(b).

Sub-s (1): definition "care home" (as inserted by the Care Standards Act 2000, s 116, Sch 4, para 14(1), (23)(a)(ii)) substituted by SI 2018/195, regs 8, 12(a). Date in force: 2 April 2018: see SI 2018/195, reg 2(1).

Sub-s (1): definition "child arrangements order" inserted by the Children and Families Act 2014, s 12(4), Sch 2, Pt 1, paras 1, 38(1), (2)(b). Date in force: 22 April 2014: see SI 2014/889, art 4(b), (f).

Sub-s (1): definition "child minder" repealed by the Care Standards Act 2000, s 117(2), Sch 6. Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(g)(vi); for transitional provisions see arts 2, 3(2), (5)–(10), Schs 1, 2 thereto. Date in force (in relation to England): to be appointed: see the Care Standards Act 2000, s 122.

Sub-s (1): definition "child of the family" substituted by the Civil Partnership Act 2004, s 75(1), (3). Date in force: 5 December 2005: see SI 2005/3175, art 2(1), Sch 1.

Sub-s (1): definition "children's home" substituted by SI 2018/195, regs 8, 12(b). Date in force: 2 April 2018: see SI 2018/195, reg 2(1).

Sub-s (1): definition "clinical commissioning group" inserted by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 47, 56(1), (2)(a). Date in force: 1 April 2013: see SI 2013/160, art 2; for transitional provisions and savings see arts 5–7 thereof.

Sub-s (1): definition "contact activity condition" (omitted) inserted by the Children and Adoption Act 2006, s 15(1), Sch 2, paras 7, 11. Date in force: 8 December 2008: see SI 2008/2870, art 2(2)(e).

Sub-s (1): definition "contact activity condition" (omitted) repealed by the Children and Families Act 2014, s 12(4), Sch 2, Pt 1, paras 1, 38(1), (2)(c). Date in force: 22 April 2014: see SI 2014/889, art 4(b), (f).

Sub-s (1): definition "contact activity direction" (omitted) inserted by the Children and Adoption Act 2006, s 15(1), Sch 2, paras 7, 11. Date in force: 8 December 2008: see SI 2008/2870, art 2(2)(e).

Sub-s (1): definition "contact activity direction" (omitted) repealed by the Children and Families Act 2014, s 12(4), Sch 2, Pt 1, paras 1, 38(1), (2)(c). Date in force: 22 April 2014: see SI 2014/889, art 4(b), (f).

Sub-s (1): definition "contact order" (omitted) repealed by the Children and Families Act 2014, s 12(4), Sch 2, Pt 1, paras 1, 38(1), (2)(c). Date in force: 22 April 2014: see SI 2014/889, art 4(b), (f).

Sub-s (1): in definition "day care" words "(except in Part XA)" in square brackets inserted by the Care Standards Act 2000, s 116, Sch 4, para 14(1), (23)(a)(iv). Date in force (in relation to England): 2 July 2001: see SI 2001/2041, art 2(1)(d)(ii). Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Schs 1, 2 thereto.

Sub-s (1): in definition "day care" words "(except in Part XA)" in italics repealed, in relation to Wales, by the Children and Families (Wales) Measure 2010, s 72, Sch 1, paras 5, 7(a)(i). Date in force: 1 April 2011: see SI 2010/2582, art 2, Sch 1; for savings see art 4, Schs 2, 3 thereto.

Sub-s (1): definition "district health authority" (omitted) repealed by the Health Authorities Act 1995, ss 2(1), 5(1), Sch 1, para 118(10)(a), Sch 3.

Sub-s (1): definition "dwelling house" inserted by the Family Law Act 1996, s 52, Sch 6, para 5. Date in force: 1 October 1997: see SI 1997/1892, art 3(1)(a).

Sub-s (1): definition "education functions" inserted by SI 2010/1158, art 5(1), Sch 2, Pt 2, para 37(1), (13)(a). Date in force: 5 May 2010: see SI 2010/1158, art 1.

Sub-s (1): definition "enforcement order" inserted by the Children and Adoption Act 2006, s 15(1), Sch 2, paras 7, 11. Date in force: 8 December 2008: see SI 2008/2870, art 2(2)(e).

Sub-s (1): definition "Health Authority" (omitted) repealed by the National Health Service (Consequential Provisions) Act 2006, s 2, Sch 1, paras 124, 125(a). Date in force: 1 March 2007: see the National Health Service (Consequential Provisions) Act 2006, s 8(2).

Sub-s (1): in definition "health service hospital" words from "means a health" to "National Health Service (Wales) Act 2006" in square brackets substituted by the National Health Service (Consequential Provisions) Act 2006, s 2, Sch 1, paras 124, 125(b). Date in force: 1 March 2007: see the National Health Service (Consequential Provisions) Act 2006, s 8(2).

Sub-s (1): in definition "hospital" words "(except in Schedule 9A)" in square brackets inserted by the Care Standards Act 2000, s 116, Sch 4, para 14(1), (23)(a)(v). Date in force (in relation to

England): 2 July 2001: see SI 2001/2041, art 2(1)(d)(ii). Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Schs 1, 2 thereto.

Sub-s (1): in definition "hospital" words "(except in Schedule 9A)" in italics repealed, in relation to Wales, by the Children and Families (Wales) Measure 2010, s 72, Sch 1, paras 5, 7(a)(ii). Date in force: 1 April 2011: see SI 2010/2582, art 2, Sch 1; for savings see art 4, Schs 2, 3 thereto.

Sub-s (1): in definition "hospital" words "special hospital within the meaning of that Act" in italics repealed and subsequent words in square brackets substituted, in relation to England and Wales only, by SI 2000/90, arts 2(1), 3(2), Sch 2, para 5. Date in force: 1 April 2000: see SI 2000/90, art 1.

Sub-s (1): definition "income-based jobseeker's allowance" inserted by the Jobseekers Act 1995, s 41(4), Sch 2, para 19(4).

Sub-s (1): definition "income-based jobseeker's allowance" repealed by the Welfare Reform Act 2012, s 147, Sch 14, Pt 1. Date in force: to be appointed: see the Welfare Reform Act 2012, s 150(3).

Sub-s (1): definition "income-related employment and support allowance" inserted, in relation to England and Wales, by the Welfare Reform Act 2007, s 28(1), Sch 3, para 6(1), (5). Date in force: 27 October 2008: see SI 2008/787, art 2(4)(b), (f).

Sub-s (1): definition "income-related employment and support allowance" repealed by the Welfare Reform Act 2012, s 147, Sch 14, Pt 1. Date in force: to be appointed: see the Welfare Reform Act 2012, s 150(3).

Sub-s (1): definition "independent hospital" (as inserted by the Care Standards Act 2000, s 116, Sch 4, para 14(1), (23)(a)(vi)) substituted by SI 2010/813, art 7(1), (3). Date in force: 1 October 2010: see SI 2010/813, art 1.

Sub-s (1): in definitions "independent school", "registered pupil", "school" and "special educational needs" words "the Education Act 1996" in square brackets substituted by the Education Act 1996, s 582(1), Sch 37, para 91.

Sub-s (1): in definition "local authority" words omitted repealed by the Local Government (Wales) Act 1994, ss 22(4), 66(8), Sch 10, para 13, Sch 18.

Sub-s (1): in definition "local authority" words ", in relation to Wales, the council of a county or a county borough" in square brackets inserted by the Local Government (Wales) Act 1994, ss 22(4), 66(8), Sch 10, para 13.

Sub-s (1): definition "local authority foster parent" substituted by SI 2016/413, regs 55, 106(a). Date in force: 6 April 2016: see SI 2016/413, reg 2(1); for transitional provisions and savings see reg 325, Schedule.

Sub-s (1): definition "local education authority" (omitted) repealed by SI 2010/1158, art 5(1), (2), Sch 2, Pt 2, para 37(1), (13)(b), Sch 3, Pt 2. Date in force: 5 May 2010: see SI 2010/1158, art 1.

Sub-s (1): definition "Local Health Board" inserted by SI 2007/961, art 3, Schedule, para 20(1), (3). Date in force: 1 April 2007: see SI 2007/961, art 1(1).

Sub-s (1): definition "mental nursing home" (omitted) repealed by the Care Standards Act 2000, s 117(2), Sch 6. Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(c)(viii); for transitional provisions see SI 2001/4150, arts 3(2), 4(1)–(3), (5) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6). Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(g)(vi); for transitional provisions see arts 2, 3(2), (5)–(10), Sch 1 thereto.

Sub-s (1): definition "nursing home" (omitted) repealed by the Care Standards Act 2000, s 117(2), Sch 6. Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(c)(viii); for transitional provisions see SI 2001/4150, arts 3(2), 4(1)–(3), (5) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6). Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(g)(vi); for transitional provisions see arts 2, 3(2), (5)–(10), Sch 1 thereto.

Sub-s (1): definition "officer of the Service" inserted by the Criminal Justice and Court Services Act 2000, s 74, Sch 7, Pt II, paras 87, 95. Date in force: 1 April 2001: see SI 2001/919, art 2(f)(ii).

Sub-s (1): in definition "parental responsibility agreement" words "sections 4(1) and 4A(2)" in square brackets substituted by the Adoption and Children Act 2002, s 139(1), Sch 3, paras 54, 70(c). Date in force: 30 December 2005: see SI 2005/2213, art 2(o).

Sub-s (1): in definition "parental responsibility agreement" reference to ", 4ZA(4)" in square brackets inserted by the Human Fertilisation and Embryology Act 2008, s 56, Sch 6, Pt 1,

para 31. Date in force (for certain purposes): 6 April 2009: see SI 2009/479, art 6(1)(e). Date in force (for remaining purposes): 1 September 2009: see SI 2009/479, art 6(2).

Sub-s (1): definition "private children's home" inserted by the Care Standards Act 2000, s 116, Sch 4, para 14(1), (23)(a)(vii). Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(a); for transitional provisions see SI 2001/4150, arts 3(2), 4(1), (3), (4) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6). Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Sch 1 thereto.

Sub-s (1): in definition "private children's home" words from "or Part 1" to "Regulation and Inspection of Social Care (Wales) Act 2016" in square brackets inserted by SI 2018/195, regs 8, 12(c). Date in force: 2 April 2018: see SI 2018/195, reg 2(1).

Sub-s (1): definition "Primary Care Trust" (omitted) inserted, in relation to England and Wales only, by SI 2000/90, arts 2(1), 3(1), Sch 1, para 24(1), (10). Date in force: 8 February 2000: see SI 2000/90, art 1.

Sub-s (1): definition "Primary Care Trust" (omitted) repealed by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 47, 56(1), (2)(b). Date in force: 1 April 2013: see SI 2013/160, art 2; for transitional provisions and savings see arts 5–7 thereof.

Sub-s (1): definition "protected child" (omitted) repealed by the Adoption and Children Act 2002, s 139(1), (3), Sch 3, paras 54, 70(d), Sch 5. Date in force: 30 December 2005: see SI 2005/2213, art 2(o).

Sub-s (1): definition "registered children's home" (omitted) repealed by the Care Standards Act 2000, s 117(2), Sch 6. Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(c)(viii); for transitional provisions see SI 2001/4150, arts 3(2), 4(1)–(3), (5) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6). Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(g)(vi); for transitional provisions see arts 2, 3(2), (5)–(10), Schs 1, 3 thereto.

Sub-s (1): in definition "relative" words "by marriage or civil partnership)" in square brackets substituted by the Civil Partnership Act 2004, s 75(1), (4). Date in force: 5 December 2005: see SI 2005/3175, art 2(1), Sch 1.

Sub-s (1): definition "residence order" (omitted) repealed by the Children and Families Act 2014, s 12(4), Sch 2, Pt 1, paras 1, 38(1), (2)(c). Date in force: 22 April 2014: see SI 2014/889, art 4(b), (f).

Sub-s (1): definition "residential care home" (omitted) repealed by the Care Standards Act 2000, s 117(2), Sch 6. Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(c)(viii); for transitional provisions see SI 2001/4150, arts 3(2), 4(1)–(3), (5) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6). Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(g)(vi); for transitional provisions see arts 2, 3(2), (5)–(10), Sch 1 thereto.

Sub-s (1): definition "section 31A plan" inserted by the Adoption and Children Act 2002, s 139(1), Sch 3, paras 54, 70(b). Date in force: 30 December 2005: see SI 2005/2213, art 2(o).

Sub-s (1): definition "special guardian" and "special guardianship order" inserted by the Adoption and Children Act 2002, s 139(1), Sch 3, paras 54, 70(e). Date in force: 30 December 2005: see SI 2005/2213, art 2(o).

Sub-s (1): definition "Special Health Authority" substituted by the Health Authorities Act 1995, ss 2(1), 5(1), Sch 1, para 118(10)(c).

Sub-s (1): in definition "Special Health Authority" words from "section 28 of" to "National Health Service (Wales) Act 2006," in square brackets substituted by the National Health Service (Consequential Provisions) Act 2006, s 2, Sch 1, paras 124, 125(d). Date in force: 1 March 2007: see the National Health Service (Consequential Provisions) Act 2006, s 8(2).

Sub-s (1): definition "Strategic Health Authority" (omitted) inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 16(1), (3). Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Sub-s (1): definition "Strategic Health Authority" (omitted) repealed by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 47, 56(1), (2)(c). Date in force: 1 April 2013: see SI 2013/160, art 2; for transitional provisions and savings see arts 5–7 thereof.

Sub-s (1): definition "Welsh family proceedings officer" inserted by the Children Act 2004, s 40, Sch 3, paras 5, 11. Date in force: 1 April 2005: by virtue of SI 2005/700, art 2(2).

Sub-s (3): repealed by the Children and Families Act 2014, s 12(4), Sch 2, Pt 1, paras 1, 38(1), (3). Date in force: 22 April 2014: see SI 2014/889, art 4(b), (f).

Sub-s (4): substituted by SI 2016/413, regs 55, 106(b). Date in force: 6 April 2016: see SI 2016/413, reg 2(1); for transitional provisions and savings see reg 325, Schedule.

Sub-s (5): words from "of that or any other" to "within the meaning of" in square brackets substituted by the Local Government Act 2000, s 107, Sch 5, para 22. Date in force (in relation to England): 26 October 2000: see SI 2000/2849, art 2(f). Date in force (in relation to Wales): 28 July 2001 (unless the National Assembly for Wales by order provides for this amendment to come into force before that date): see the Local Government Act 2000, s 108(4), (6)(b).

Sub-s (5): words omitted repealed by SI 2016/413, regs 55, 106(c). Date in force: 6 April 2016: see SI 2016/413, reg 2(1); for transitional provisions and savings see reg 325, Schedule.

Sub-s (5A): inserted by the Care Standards Act 2000, s 116, Sch 4, para 14(1), (23)(b). Date in force (in relation to England): 2 July 2001: see SI 2001/2041, art 2(1)(d)(ii). Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Schs 1, 2 thereto.

Sub-s (5A): repealed, in relation to Wales, by the Children and Families (Wales) Measure 2010, ss 72, 73, Sch 1, paras 5, 7(b), Sch 2. Date in force: 1 April 2011: see SI 2010/2582, arts 2, 4, Schs 1, 2; for savings see art 4, Sch 2 thereto.

Sub-s (5A): para (a) repealed, in relation to Scotland, by the Regulation of Care (Scotland) Act 2001, s 79, Sch 3, paras 15(1), (2)(a). Date in force: 1 April 2002: see the Regulation of Care (Scotland) Act 2001, s 81(2) and SSI 2002/162, arts 1(2), 2(f), (h); for transitional provisions see SSI 2002/162, arts 3, 4(6), (9), (10), 7, 8(c), 12, 13.

Sub-s (5A): in para (b) words omitted repealed by the Childcare Act 2006, s 103, Sch 2, para 17, Sch 3, Pt 2. Date in force: 1 September 2008: see SI 2008/2261, art 2; for transitional provisions and savings see arts 3, 4, Schs 1, 2 thereto.

Sub-s (5B): inserted in relation to England and Wales by SI 2016/413, reg 106(d); a corresponding amendment has been made in relation to Scotland by the Regulation of Care (Scotland) Act 2001, s 79, Sch 3, paras 15(1), (2)(b). Date in force (in relation to Scotland): 1 April 2002: see the Regulation of Care (Scotland) Act 2001, s 81(2) and SSI 2002/162, arts 1(2), 2(f), (h); for transitional provisions see SSI 2002/162, arts 3, 4(6), (9), (10), 7, 8(c), 12, 13. Date in force (in relation to England and Wales): 6 April 2016: see SI 2016/413, reg 2(1).

Sub-s (6): in para (b) words omitted repealed by the Criminal Justice and Immigration Act 2008, ss 6(2), 149, Sch 4, Pt 1, paras 33, 36(a), Sch 28, Pt 1. Date in force: 30 November 2009: see SI 2009/3074, art 2(f), (k), (l), (p)(v), (t)(i), (u)(xi); for transitional provisions and savings see the Criminal Justice and Immigration Act 2008, s 148(2), Sch 27, Pt 1, paras 1(1), 5.

Sub-s (6): para (ba) inserted by the Criminal Justice and Immigration Act 2008, s 6(2), Sch 4, Pt 1, paras 33, 36(b). Date in force: 30 November 2009: see SI 2009/3074, art 2(f), (k), (p)(v), (t)(i); for transitional provisions and savings see the Criminal Justice and Immigration Act 2008, s 148(2), Sch 27, Pt 1, paras 1(1), 5.

Sub-ss (7A), (7B): inserted by the Health and Social Care Act 2012, s 55(2), Sch 5, paras 47, 55(1), (3). Date in force: 1 April 2013: see SI 2013/160, art 2; for transitional provisions and savings see arts 5–7 thereof.

ACCESS TO HEALTH RECORDS ACT 1990

(1990 c 23)

[13th July 1990]

Preliminary

A1.458

[2 Health Professionals]

[In this Act 'health professional' has the same meaning as in the Data Protection Act 2018 (see section 204 of that Act).]

Substituted by the Data Protection Act 2018, s 211(1)(a), Sch 19, Pt 1, paras 36, 37. Date in force: 25 May 2018: see SI 2018/625, reg 2(1)(g).

A1.459

3 Right of access to health records

(1) An application for access to a health record, or to any part of a health record, may be made to the holder of the record by any of the following, namely—

(a) . . .

(b) . . .

[(cc) . . .]

(e) . . .

[(ee) where the record is held in Scotland and the patient is incapable, within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4) in relation to making or authorising the application, any person entitled to act on behalf of the patient under that Act;]

(f) where the patient has died, the patient's personal representative and any person who may have a claim arising out of the patient's death.

[(g) where the patient has died, a medical examiner exercising functions by virtue of section 20 of the Coroners and Justice Act 2009 in relation to the death].

(2) . . . Where an application is made under subsection (1) above the holder shall, within the requisite period, give access to the record, or the part of a record, to which the application relates—

(a) in the case of a record, by allowing the applicant to inspect the record or, where section 5 below applies, an extract setting out so much of the record as is not excluded by that section;

(b) in the case of a part of a record, by allowing the applicant to inspect an extract setting out that part or, where that section applies, so much of that part as is not so excluded; or

(c) in either case, if the applicant so requires, by supplying him with a copy of the record or extract.

(3) Where any information contained in a record or extract which is so allowed to be inspected, or a copy of which is so supplied, is expressed in terms which are not intelligible without explanation, an explanation of those terms shall be provided with the record or extract, or supplied with the copy.

(4) No fee shall be required for giving access under subsection (2) above . . . [.]

(5) For the purposes of subsection (2) above the requisite period is—

(a) where the application relates to a record, or part of a record, none of which was made before the beginning of the period of 40 days immediately preceding the date of the application, the period of 21 days beginning with that date;

(b) in any other case, the period of 40 days beginning with that date.

(6) Where—

(a) an application under subsection (1) above does not contain sufficient information to enable the holder of the record to identify the patient or, . . . to satisfy himself that the applicant is entitled to make the application; and

(b) within the period of 14 days beginning with the date of the application, the holder of the record requests the applicant to furnish him with such further information as he may reasonably require for that purpose,

subsection (5) above shall have effect as if for any reference to that date there were substituted a reference to the date on which that further information is so furnished.

Sub-s (1): paras (a)–(e) repealed with savings by the Data Protection Act 1998, s 74(2), Sch 16, Pt I; for savings see Sch 14, para 17 thereto. Date in force: 1 March 2000: see SI 2000/183, art 2(1).

Sub-s (1): para (cc) substituted, for paras (c) and (d) as originally enacted, by the Children (Scotland) Act 1995, s 105(4), Sch 4, para 50(2).

Sub-s (1): para (ee) inserted by the Adults with Incapacity (Scotland) Act 2000, s 88(2), Sch 5, para 21. Date in force: 1 April 2002: see SSI 2001/81, art 3, Sch 2.

Sub-s (1): para (g) inserted by the Coroners and Justice Act 2009, s 177(1), Sch 21, Pt 1, para 29(1), (2). Date in force: to be appointed: see the Coroners and Justice Act 2009, s 182(4)(e).

Sub-s (2): words omitted repealed by virtue of the Data Protection Act 2018, s 211(1)(a), Sch 19, Pt 1, paras 36, 38(1), (2). Date in force: 25 May 2018: see SI 2018/625, reg 2(1)(g).

Sub-s (4): words omitted repealed by the Data Protection Act 2018, s 211(1)(a), Sch 19, Pt 1, paras 36, 38(1), (3). Date in force: 25 May 2018: see SI 2018/625, reg 2(1)(g).

Sub-s (6): in para (a) words omitted repealed with savings by the Data Protection Act 1998, s 74(2), Sch 16, Pt I; for savings see Sch 14, para 17 thereto. Date in force: 1 March 2000: see SI 2000/183, art 2(1).

COURTS AND LEGAL SERVICES ACT 1990

(1990, c 41)

[1 November 1990]

PART II
LEGAL SERVICES

Licensed conveyancers

A1.469

53 The Council for Licensed Conveyancers

[(1) The Council for Licensed Conveyancers has the powers necessary to enable it to become designated as an approved regulator in relation to one or more of the reserved legal activities within subsection (1A).

(1A) The reserved legal activities to which this subsection applies are—

(a) the exercise of a right of audience;

(b) the conduct of litigation;

(c) probate activities.

(2) If the Council becomes an approved regulator in relation to one or more of those activities, it may, in that capacity, authorise a person to carry on a relevant activity . . . .

(3) Where the Council authorises [a person] to carry on a relevant activity, it is to do so by issuing a licence to [the person in respect of that activity].]

(4) [If the person granted a licence under this section is a licensed conveyancer, the] licence may be granted as a separate licence or as part of a composite licence comprising the licensed conveyancer's licence issued under Part II of the Administration of Justice Act 1985 and any other licence which the Council may grant to the licensed conveyancer concerned.

[(4A) If the person granted a licence under this section is not a licensed conveyancer, the licence may be granted as a separate licence or as part of a composite licence comprising that and any other licence under this section which the Council may grant to the person.

(4B) A licence under this section granted to a person who is not a licensed conveyancer ceases to have effect if the person becomes a licensed conveyancer.]

(5) . . .

[(6) Where the Council exercises any of its powers in connection with—

(a) an application for designation as an approved regulator in relation to a reserved legal activity within subsection (1A), or

(b) the authorising of a person to carry on a relevant activity,

it is to do so subject to any requirements to which it is subject in accordance with the provisions of the Legal Services Act 2007.]

(7) Schedule 8 makes further provision in connection with the powers given to the Council by this section and the provision made by the Act of 1985 in relation to licensed conveyancers, including amendments of Part II of that Act.

(8) The [Lord Chancellor] may by order make such—

(a) amendments of, or modifications to, the provisions of Part II of the Act of 1985; or

(b) transitional or consequential provision,

as he considers necessary or expedient in connection with the provision made by this section and Schedule 8.

(9) Subject to any provision made by this section, Schedule 8 or any order made by the [Lord Chancellor] under subsection (8), the provisions of Part II of the Act of 1985 shall, with the necessary modifications, apply with respect to [persons who apply for, or hold, an advocacy, litigation or probate licence and]—

(a) any application for an advocacy, litigation or probate licence;

(b) any such licence;

(c) the practice of any [person] which is carried on by virtue of any such licence;

(d) rules made by the Council under Schedule 8;

[(da) any case of an individual who describes himself or herself, or holds himself or herself out, as a licensed CLC practitioner without holding a licence in force under this section;]

(e) . . .

(f) any other matter dealt with by this section or Schedule 8,

as they apply with respect to [persons who apply for, or hold, a licence under Part 2 of the Act of 1985 and] the corresponding matters dealt with by Part II of that Act.

[(9A) The modifications mentioned in subsection (9) may differ depending on whether the person applying for, or holding, an advocacy, litigation or probate licence is or is not a licensed conveyancer.

(9B) Subsection (9) does not apply to section 34 of the Act of 1985 (modification of existing enactments relating to conveyancing etc).]

[(10) For the purposes of this section—

(a) "right of audience", "conduct of litigation", "probate activities" and "reserved legal activity" have the same meaning as in the Legal Services Act 2007;

(b) references to designation as an approved regulator are to designation as an approved regulator—

(i) by Part 1 of Schedule 4 to the Legal Services Act 2007, by virtue of an order under paragraph 5 of Schedule 22 to that Act, or

(ii) under Part 2 of Schedule 4 to that Act;

(c) "relevant activity" means an activity which is a reserved legal activity—

(i) which is within subsection (1A), and

(ii) in relation to which the Council is designated as an approved regulator by Part 1 of Schedule 4 to that Act (by virtue of an order under paragraph 5 of Schedule 22 to that Act) or under Part 2 of that Schedule.]

[(11) In this section—

"advocacy licence" means a licence issued under this section by which the Council authorises the person concerned to exercise a right of audience;

"CLC practitioner services" has the same meaning as in section 32B of the Act of 1985;

"licensed CLC practitioner" means a person, other than a licensed conveyancer, who holds a licence under this section;

"litigation licence" means a licence issued under this section by which the Council authorises the person concerned to carry on activities which constitute the conduct of litigation;

"the practice of a licensed CLC practitioner" means the provision by a person, as the holder of a licence under this section, of CLC practitioner services in accordance with the licence; and

"probate licence" means a licence issued under this section by which the Council authorises the person concerned to carry on activities that constitute probate activities.]

Sub-ss (1), (1A), (2), (3): substituted, for sub-ss (1)–(3) as originally enacted, by the Legal Services Act 2007, s 182, Sch 17, Pt 2, paras 33, 34(1), (2). Date in force: 1 January 2010: see SI 2009/3250, art 2(f)(iii).

Sub-s (2): words omitted repealed by the Deregulation Act 2015, s 87(1), (2). Date in force: 29 June 2015: see SI 2015/1402, art 2(a).

Sub-s (3): words "a person" in square brackets substituted by the Deregulation Act 2015, s 87(1), (3)(a). Date in force: 29 June 2015: see SI 2015/1402, art 2(a).

Sub-s (3): words "the person in respect of that activity" in square brackets substituted by the Deregulation Act 2015, s 87(1), (3)(b). Date in force: 29 June 2015: see SI 2015/1402, art 2(a).

Sub-s (4): words from "If the person" to "licensed conveyancer, the" in square brackets substituted by the Deregulation Act 2015, s 87(1), (4). Date in force: 29 June 2015: see SI 2015/1402, art 2(a).

Sub-ss (4A), (4B): inserted by the Deregulation Act 2015, s 87(1), (5). Date in force: 29 June 2015: see SI 2015/1402, art 2(a).

Sub-s (5): repealed by the Legal Services Act 2007, ss 182, 210, Sch 17, Pt 2, paras 33, 34(1), (3), Sch 23. Date in force: 1 January 2010: see SI 2009/3250, art 2(f)(iii).

Sub-s (6): substituted by the Legal Services Act 2007, s 182, Sch 17, Pt 2, paras 33, 34(1), (4). Date in force: 1 January 2010: see SI 2009/3250, art 2(f)(iii).

Sub-s (8): words "Lord Chancellor" in square brackets substituted by the Legal Services Act 2007, s 182, Sch 17, Pt 2, paras 33, 34(1), (5). Date in force: 31 March 2009: see SI 2009/503, art 2(c)(ii).

Sub-s (9): words "Lord Chancellor" in square brackets substituted by the Legal Services Act 2007, s 182, Sch 17, Pt 2, paras 33, 34(1), (6)(a). Date in force: 31 March 2009: see SI 2009/503, art 2(c)(ii).

Sub-s (9): words from "persons who apply" to "probate licence and" in square brackets inserted by the Deregulation Act 2015, s 87(1), (6)(a). Date in force: 29 June 2015: see SI 2015/1402, art 2(a).

Sub-s (9): in para (c) word "person" in square brackets substituted by the Deregulation Act 2015, s 87(1), (6)(b). Date in force: 29 June 2015: see SI 2015/1402, art 2(a).

Sub-s (9): para (da) inserted by the Deregulation Act 2015, s 87(1), (6)(c). Date in force: 29 June 2015: see SI 2015/1402, art 2(a).

Sub-s (9): para (e) repealed by the Legal Services Act 2007, ss 182, 210, Sch 17, Pt 2, paras 33, 34(1), (6)(b), Sch 23. Date in force: 31 March 2009: see SI 2009/503, art 2(c)(ii).

Sub-s (9): words from "persons who apply" to "of 1985 and" in square brackets inserted by the Deregulation Act 2015, s 87(1), (6)(d). Date in force: 29 June 2015: see SI 2015/1402, art 2(a).

Sub-ss (9A), (9B): inserted by the Deregulation Act 2015, s 87(1), (7). Date in force: 29 June 2015: see SI 2015/1402, art 2(a).

Sub-s (10): inserted by the Legal Services Act 2007, s 182, Sch 17, Pt 2, paras 33, 34(1), (7). Date in force: 1 January 2010: see SI 2009/3250, art 2(f)(iii).

Sub-s (11): inserted by the Deregulation Act 2015, s 87(1), (8). Date in force: 29 June 2015: see SI 2015/1402, art 2(a).

ADOPTION AND CHILDREN ACT 2002

(2002, c 38)

[7th November 2002]

PART 1
ADOPTION

CHAPTER 1

INTRODUCTORY

A1.498

1 Considerations applying to the exercise of powers

(1) [Subsections (2) to (4) apply] whenever a court or adoption agency is coming to a decision relating to the adoption of a child.

(2) The paramount consideration of the court or adoption agency must be the child's welfare, throughout his life.

(3) The court or adoption agency must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child's welfare.

(4) The court or adoption agency must have regard to the following matters (among others)—

(a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),

(b) the child's particular needs,

(c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,

(d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,

(e) any harm (within the meaning of the Children Act 1989 (c 41)) which the child has suffered or is at risk of suffering,

(f) the relationship which the child has with relatives, [with any person who is a prospective adopter with whom the child is placed,] and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—

(i) the likelihood of any such relationship continuing and the value to the child of its doing so,

(ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,

(iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child.

(5) [In placing a child for adoption, an adoption agency in Wales] must give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background.

(6) [In coming to a decision relating to the adoption of a child, a court or adoption agency] must always consider the whole range of powers available to it in the child's case (whether under this Act or the Children Act 1989); and the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so.

(7) In this section, "coming to a decision relating to the adoption of a child", in relation to a court, includes—

(a) coming to a decision in any proceedings where the orders that might be made by the court include an adoption order (or the revocation of such an order), a placement order (or the revocation of such an order) or an order under section 26 [or 51A] (or the revocation or variation of such an order),

(b) coming to a decision about granting leave in respect of any action (other than the initiation of proceedings in any court) which may be taken by an adoption agency or individual under this Act,

but does not include coming to a decision about granting leave in any other circumstances.

(8) For the purposes of this section—

(a) references to relationships are not confined to legal relationships,

(b) references to a relative, in relation to a child, include the child's mother and father.

[(9) In this section "adoption agency in Wales" means an adoption agency that is—

(a) a local authority in Wales, or

(b) a registered adoption society whose principal office is in Wales.]

Sub-s (1): words "Subsections (2) to (4) apply" in square brackets substituted by the Children and Families Act 2014, s 3(1), (3)(a). Date in force: 25 July 2014: see SI 2014/889, art 6(b).

Sub-s (4): in para (f) words from "with any person" to "child is placed," in square brackets inserted by the Children and Social Work Act 2017, s 9. Date in force: 31 October 2017: see SI 2017/918, reg 2(b).

Sub-s (5): words "In placing a child for adoption, an adoption agency in Wales" in square brackets substituted by the Children and Families Act 2014, s 3(1), (2). Date in force: 25 July 2014: see SI 2014/889, art 6(b).

Sub-s (6): words "In coming to a decision relating to the adoption of a child, a court or adoption agency" in square brackets substituted by the Children and Families Act 2014, s 3(1), (3)(b). Date in force: 25 July 2014: see SI 2014/889, art 6(b).

Sub-s (7): in para (a) words "or 51A" in square brackets inserted by the Children and Families Act 2014, s 9(2). Date in force: 22 April 2014: see SI 2014/889, art 4(a).

Sub-s (9): inserted by the Children and Families Act 2014, s 3(1), (3)(c). Date in force: 25 July 2014: see SI 2014/889, art 6(b).

See further, the application of this section, with modifications, in relation to an external adoption order effected within the period of six months of the making of the adoption, and in respect of adoptions under the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption: the Adoptions with a Foreign Element Regulations 2005, SI 2005/392, regs 11(1)(a), 52, 55.

See further, in relation to the application of this section, with modifications, to the arrangements by which a parental order may be obtained under the Human Fertilisation and Embryology Act 2008, s 54: the Human Fertilisation and Embryology (Parental Orders) Regulations 2010, SI 2010/985, reg 2, Sch 1.

CHAPTER 3

Placement for Adoption and Adoption Orders

Placement and adoption: general

A1.508

53 Modification of 1989 Act [and 2014 Act] in relation to adoption

(1) Where—

(a) a local authority are authorised to place a child for adoption, or

(b) a child who has been placed for adoption by a local authority is less than six weeks old,

regulations may provide for the following provisions . . . to apply with modifications, or not to apply, in relation to the child.

[(2) The provisions are—

(a) section 22(4)(b), (c) and (d) and (5)(b) of the 1989 Act (duty to ascertain wishes and feelings of certain persons);

(b) sections 6(4)(b) and 78(3)(a) of the 2014 Act (duty to ascertain wishes and feelings of certain persons);

(c) paragraphs 15 and 21 of Schedule 2 to the 1989 Act (promoting contact with parents and parents' obligations to contribute towards maintenance);

(d) section 95 of and paragraph 1 of Schedule 1 to the 2014 Act (promoting contact with parents and parents' obligations to contribute towards maintenance).]

(3) Where a registered adoption society is authorised to place a child for adoption or a child who has been placed for adoption by a registered adoption society is less than six weeks old, regulations may provide—

(a) for section 61 of [the 1989 Act] to have effect in relation to the child whether or not he is accommodated by or on behalf of the society,

(b) for subsections (2)(b) to (d) and (3)(b) of that section (duty to ascertain wishes and feelings of certain persons) to apply with modifications, or not to apply, in relation to the child.

(4) Where a child's home is with persons who have given notice of intention to adopt, no contribution is payable (whether under a contribution order or otherwise) under Part 3 of Schedule 2 to [the 1989 Act (contributions towards maintenance of children looked after by local authorities) or under Schedule 1 to the 2014 Act (contributions towards maintenance of looked after children)] in respect of the period referred to in subsection (5).

(5) That period begins when the notice of intention to adopt is given and ends if—

(a) the period of four months beginning with the giving of the notice expires without the prospective adopters applying for an adoption order, or

(b) an application for such an order is withdrawn or refused.

(6) In this section, "notice of intention to adopt" includes notice of intention to apply for a Scottish or Northern Irish adoption order.

Section heading: words "and 2014 Act" in square brackets inserted by SI 2016/413, regs 188, 197(e). Date in force: 6 April 2016: see SI 2016/413, reg 2(1); for transitional provisions and savings see reg 325, Schedule.

Sub-s (1): words omitted repealed by SI 2016/413, regs 188, 197(a). Date in force: 6 April 2016: see SI 2016/413, reg 2(1); for transitional provisions and savings see reg 325, Schedule.

Sub-s (2): substituted by SI 2016/413, regs 188, 197(b). Date in force: 6 April 2016: see SI 2016/413, reg 2(1); for transitional provisions and savings see reg 325, Schedule.

Sub-s (3): in para (a) words "the 1989 Act" in square brackets substituted by SI 2016/413, regs 188, 197(c). Date in force: 6 April 2016: see SI 2016/413, reg 2(1); for transitional provisions and savings see reg 325, Schedule.

Sub-s (4): words from "the 1989 Act" to "looked after children)" in square brackets substituted by SI 2016/413, regs 188, 197(d). Date in force: 6 April 2016: see SI 2016/413, reg 2(1); for transitional provisions and savings see reg 325, Schedule.

See further, the application of this section, with modifications, in relation to an external adoption order effected within the period of six months of the making of the adoption, and in respect of adoptions under the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption: the Adoptions with a Foreign Element Regulations 2005, SI 2005/392, regs 11(1)(q), 52, 55.

PART 3
MISCELLANEOUS AND FINAL PROVISIONS

CHAPTER 2

FINAL PROVISIONS

A1.533

144 General interpretation etc

(1) In this Act—

"appropriate Minister" means—

(a) in relation to England, Scotland or Northern Ireland, the Secretary of State,

(b) in relation to Wales, the Assembly,

and in relation to England and Wales means the Secretary of State and the Assembly acting jointly,

"the Assembly" means the National Assembly for Wales,

"body" includes an unincorporated body,

"by virtue of" includes "by" and "under",

"child", except where used to express a relationship, means a person who has not attained the age of 18 years,

"the Convention" means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993,

"Convention adoption order" means an adoption order which, by virtue of regulations under section 1 of the Adoption (Intercountry Aspects) Act 1999 (c 18) (regulations giving effect to the Convention), is made as a Convention adoption order,

"Convention country" means a country or territory in which the Convention is in force,

["court" means the High Court or the family court,]

"enactment" includes an enactment comprised in subordinate legislation,

"fee" includes expenses,

"guardian" has the same meaning as in the 1989 Act and includes a special guardian within the meaning of that Act,

"information" means information recorded in any form,

"local authority" means any unitary authority, or any county council so far as they are not a unitary authority,

"Northern Irish adoption agency" means an adoption agency within the meaning of Article 3 of the Adoption (Northern Ireland) Order 1987 (SI 1987/2203 (NI 22)),

"Northern Irish adoption order" means an order made, or having effect as if made, under Article 12 of the Adoption (Northern Ireland) Order 1987,

"notice" means a notice in writing,

["registration authority" (in Part 1)—

(a) in relation to England, has the same meaning as in the Care Standards Act 2000 (c 14), and

(b) in relation to Wales, means the Welsh Ministers,]

"regulations" means regulations made by the appropriate Minister, unless they are required to be made by the Lord Chancellor, the Secretary of State or the Registrar General,

"relative", in relation to a child, means a grandparent, brother, sister, uncle or aunt, whether of the full blood or half-blood or by marriage [or civil partnership],

["rules" means Family Procedure Rules made by virtue of section 141(1),]

"Scottish adoption order" means an order made, or having effect as if made, under section 12 of the Adoption (Scotland) Act 1978 (c 28) [or section 28(1) of the Adoption and Children (Scotland) Act 2007 (asp 4)],

"subordinate legislation" has the same meaning as in the Interpretation Act 1978 (c 30),

"unitary authority" means—

(a) the council of any county so far as they are the council for an area for which there are no district councils,

(b) the council of any district comprised in an area for which there is no county council,

(c) the council of a county borough,

(d) the council of a London borough,

(e) the Common Council of the City of London.

(2) Any power conferred by this Act to prescribe a fee by . . . regulations includes power to prescribe—

(a) a fee not exceeding a prescribed amount,

(b) a fee calculated in accordance with the . . . regulations,

(c) a fee determined by the person to whom it is payable, being a fee of a reasonable amount.

(3) In this Act, "Scottish adoption agency" means—

(a) a local authority, or

(b) a voluntary organisation providing a registered adoption service;

but in relation to the provision of any particular service, references to a Scottish adoption agency do not include a voluntary organisation unless it is registered in respect of that service or a service which, in Scotland, corresponds to that service.

Expressions used in this subsection have the same meaning as in the [Public Services Reform (Scotland) Act 2010 (asp 8)] and "registered" means registered under [Chapter 3 of Part 5] of that Act.

(4) In this Act, a couple means—

(a) a married couple, or

[(aa) two people who are civil partners of each other, or]

(b) two people (whether of different sexes or the same sex) living as partners in an enduring family relationship.

(5) Subsection (4)(b) does not include two people one of whom is the other's parent, grandparent, sister, brother, aunt or uncle.

(6) References to relationships in subsection (5)—

(a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for adoption, and

(b) include the relationship of a child with his adoptive, or former adoptive, parents,

but do not include any other adoptive relationships.

(7) For the purposes of this Act, a person is the partner of a child's parent if the person and the parent are a couple but the person is not the child's parent.

Sub-s (1): definition "court" substituted by the Crime and Courts Act 2013, s 17(6), Sch 11, Pt 1, paras 151, 159. Date in force: 22 April 2014: see SI 2014/954, art 2(e); for transitional provisions see art 3.

Sub-s (1): definition "registration authority" substituted by SI 2019/772, regs 14, 21. Date in force: 29 April 2019: see SI 2019/772, reg 1(2).

Sub-s (1): in definition "relative" words "or civil partnership" in square brackets inserted by the Civil Partnership Act 2004, s 79(1), (11). Date in force: 30 December 2005: see SI 2005/3175, art 2(9).

Sub-s (1): definition "rules" substituted by the Courts Act 2003, s 109(1), Sch 8, para 414. Date in force: 1 April 2005: see SI 2005/910, art 3(y); for transitional provisions see SI 2005/911, arts 2–5.

Sub-s (1): in definition "Scottish adoption order" words "or section 28(1) of the Adoption and Children (Scotland) Act 2007 (asp 4)" inserted by SI 2011/1740, art 2, Sch 1, Pt 1, para 6(1), (7). Date in force: 15 July 2011: see SI 2011/1740, art 1(2).

Sub-s (2): first words omitted repealed by the Children and Families Act 2014, s 7(8), Sch 1, paras 1, 10(a). Date in force: 13 May 2014: see SI 2014/889, art 5(b), (f).

Sub-s (2): in para (b) words omitted repealed by the Children and Families Act 2014, s 7(8), Sch 1, paras 1, 10(b). Date in force: 13 May 2014: see SI 2014/889, art 5(b), (f).

Sub-s (3): words "Public Services Reform (Scotland) Act 2010 (asp 8)" in square brackets substituted by SI 2011/2581, art 2, Sch 2, Pt 1, para 4(b)(i). Date in force: 28 October 2011: see SI 2011/2581, art 1(2)(b).

Sub-s (3): words "Chapter 3 of Part 5" in square brackets substituted by SI 2011/2581, art 2, Sch 2, Pt 1, para 4(b)(ii). Date in force: 28 October 2011: see SI 2011/2581, art 1(2)(b).

Sub-s (4): para (aa) inserted by the Civil Partnership Act 2004, s 79(1), (12). Date in force: 30 December 2005: see SI 2005/3175, art 2(9).

A1.537

SCHEDULE 6
GLOSSARY

Section 147

In this Act, the expressions listed in the left-hand column below have the meaning given by, or are to be interpreted in accordance with, the provisions of this Act or (where stated) of the 1989 Act [or the 2014 Act] listed in the right-hand column.

Expression	*Provision*
the 1989 Act	section 2(5)
[the 2014 Act	section 2(5)]
Adopted Children Register	section 77
Adoption and Children Act Register	section 125
adoption (in relation to Chapter 4 of Part 1)	section 66
adoption agency	section 2(1)
adoption agency placing a child for adoption	section 18(5)
Adoption Contact Register	section 80
adoption order	section 46(1)
Adoption Service	section 2(1)
adoption society	section 2(5)
adoption support agency	section 8
adoption support services	section 2(6)
appointed day (in relation to Chapter 4 of Part 1)	section 66(2)
appropriate Minister	section 144
Assembly	section 144
body	section 144
by virtue of	section 144

Expression	*Provision*
care order	section 105(1) of the 1989 Act
child	sections 49(5) and 144
[child arrangements order	section 8(1) of the 1989 Act]
child assessment order	section 43(2) of the 1989 Act
child in the care of a local authority	section 105(1) of the 1989 Act
[child looked after by a local authority (in relation to a local authority in England)	section 22 of the 1989 Act
child looked after by a local authority (in relation to a local authority in Wales)	section 74 of the 2014 Act]
child placed for adoption by an adoption agency	section 18(5)
child to be adopted, adopted child	section 49(5)
consent (in relation to making adoption orders or placing for adoption)	section 52
the Convention	section 144
Convention adoption	section 66(1)(c)
Convention adoption order	section 144
Convention country	section 144
couple	section 144(4)
court	section 144
disposition (in relation to Chapter 4 of Part 1)	section 73
enactment	section 144
fee	section 144
guardian	section 144
information	section 144
interim care order	section 38 of the 1989 Act
local authority	section 144
[local authority foster parent	section 105(1) of the 1989 Act]
Northern Irish adoption agency	section 144
Northern Irish adoption order	section 144
notice	section 144
notice of intention to adopt	section 44(2)
overseas adoption	section 87
parental responsibility	section 3 of the 1989 Act
partner, in relation to a parent of a child	section 144(7)
placement order	section 21
placing, or placed, for adoption	sections 18(5) and 19(4)
prohibited steps order	section 8(1) of the 1989 Act
records (in relation to Chapter 5 of Part 1)	section 82
registered adoption society	section 2(2)
registers of live-births (in relation to Chapter 5 of Part 1)	section 82
registration authority (in Part 1)	section 144
regulations	section 144

Expression	*Provision*
relative	section 144, read with section 1(8)
. . .	. . .
rules	section 144
Scottish adoption agency	section 144(3)
Scottish adoption order	section 144
specific issue order	section 8(1) of the 1989 Act
subordinate legislation	section 144
supervision order	section 31(11) of the 1989 Act
unitary authority	section 144
voluntary organisation	section 2(5)

Words "or the 2014 Act" in square brackets inserted by SI 2016/413, regs 188, 198(a). Date in force: 6 April 2016: see SI 2016/413, reg 2(1); for transitional provisions and savings see reg 325, Schedule.

Entry "the 2014 Act" inserted by SI 2016/413, regs 188, 198(b). Date in force: 6 April 2016: see SI 2016/413, reg 2(1); for transitional provisions and savings see reg 325, Schedule.

Entry "child arrangements order" inserted by the Children and Families Act 2014, s 12(4), Sch 2, Pt 2, paras 59, 65(1), (2). Date in force: 22 April 2014: see SI 2014/889, art 4(b), (f).

Entries "child looked after by a local authority (in relation to a local authority in England)" and "child looked after by a local authority (in relation to a local authority in Wales)" substituted, for definition "child looked after by a local authority" as originally enacted, by SI 2016/413, regs 188, 198(c). Date in force: 6 April 2016: see SI 2016/413, reg 2(1); for transitional provisions and savings see reg 325, Schedule.

Entry "local authority foster parent" substituted by SI 2016/413, regs 188, 198(d). Date in force: 6 April 2016: see SI 2016/413, reg 2(1); for transitional provisions and savings see reg 325, Schedule.

In entry relating to "local authority foster parent" reference to "23(3)" in italics repealed and subsequent reference in square brackets substituted by the Children and Young Persons Act 2008, s 8(2), Sch 1, para 14. Date in force (in relation to England): 1 April 2011: see SI 2010/2981, art 4(a). Date in force (in relation to Wales): to be appointed: see the Children and Young Persons Act 2008, s 44(3), (4), (5)(a).

Entry "residence order" (omitted) repealed by the Children and Families Act 2014, s 12(4), Sch 2, Pt 2, paras 59, 65(1), (3). Date in force: 22 April 2014: see SI 2014/889, art 4(b), (f).

GENDER RECOGNITION ACT 2004

(2004, CHAPTER 7)

[1st July 2004]

Consequences of issue of gender recognition certificate etc

A1.577

21 Foreign gender change and marriage

(1) A person's gender is not to be regarded as having changed by reason only that it has changed under the law of a country or territory outside the United Kingdom.

[(1A) Subsections (2) to (5) apply only in . . . Northern Ireland.]

(2) . . .

(3) . . .

(4) . . .

(5) . . .

(6) Nothing in this section prevents the exercise of any *enforceable [EU] right* [right which forms part of retained EU law by virtue of section 3 or 4 of the European Union (Withdrawal) Act 2018].

Sub-s (1A): inserted by the Marriage (Same Sex Couples) Act 2013, s 12, Sch 5, Pt 1, paras 1, 12(a). Date in force: 10 December 2014: see SI 2014/3169, art 2.

Sub-s (1A): words omitted repealed by SI 2014/3229, art 29, Sch 5, para 15(1), (7). Date in force: 16 December 2014: see SI 2014/3229, art 1(2).

Sub-ss (2)–(5): repealed by the Marriage and Civil Partnership (Scotland) Act 2014, s 29, Sch 2, Pt 1, paras 1, 12. Date in force: 16 December 2014: see SSI 2014/287, art 3, Schedule.

Sub-s (6): reference to "EU" in square brackets substituted by SI 2011/1043, art 6(1)(f). Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.

Sub-s (6): words "enforceable EU right" in italics repealed and subsequent words in square brackets substituted by SI 2019/305, reg 2. Date in force: this amendment has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/305, reg 1.

Supplementary

A1.581

25 Interpretation

[(1)] In this Act—

"the acquired gender" is to be construed in accordance with section 1(2),

"approved country or territory" has the meaning given by section 2(4),

"the appointed day" means the day appointed by order under section 26,

. . .

"enactment" includes an enactment contained in an Act of the Scottish Parliament or in any Northern Ireland legislation,

"full gender recognition certificate" and "interim gender recognition certificate" mean the certificates issued as such under section 4[, *5 or 5A*] [4C, 4E, 4F, 5, 5A or 5D] and "gender recognition certificate" means either of those sorts of certificate,

"gender dysphoria" means the disorder variously referred to as gender dysphoria, gender identity disorder and transsexualism,

"Gender Recognition Panel" (and "Panel") is to be construed in accordance with Schedule 1,

["protected civil partnership" means a civil partnership under the law of England and Wales;

"protected marriage" means—

(a) a marriage under the law of England and Wales, or

(b) a marriage under the law of a country or territory outside the United Kingdom,]

["protected Scottish civil partnership" means a civil partnership registered in Scotland,]

["protected Scottish marriage" means a marriage solemnised in Scotland,]

["registered psychologist" means a person registered in the part of the register maintained under [*the Health and Social Work Professions Order 2001*] [the Health Professions Order 2001] which relates to practitioner psychologists,]

["statutory declaration of consent" has the meaning given by section 3(6B)(a),]

"subordinate legislation" means an Order in Council, an order, rules, regulations, a scheme, a warrant, bye-laws or any other instrument made under an enactment, and

"UK birth register entry" has the meaning given by section 10(2).

[(2) A civil partnership which was registered outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 of the Civil Partnership Act 2004 is to be treated for the purposes of this Act as having been registered in Scotland if—

(a) the parties to the civil partnership elected Scotland as the relevant part of the United Kingdom under the Order, and

(b) details of the civil partnership have been sent to the Registrar General for Scotland.

(3) A marriage which was registered outside the United Kingdom under the Foreign Marriage Act 1892 (other than a marriage registered by virtue of section 18 of that Act) is to be treated for the purposes of this Act as having been solemnised in Scotland if details of the marriage have been sent to the Registrar General for Scotland.

(4) A marriage which was solemnised outside the United Kingdom and registered under an Order in Council made under the Registration of Births, Deaths and Marriages (Special Provisions) Act 1957 is to be treated for the purposes of this Act as having been solemnised in Scotland if details of the marriage have been sent to the Registrar General for Scotland.

(5) A consular marriage in relation to which the relevant part of the United Kingdom is Scotland is to be treated for the purposes of this Act as having been solemnised in Scotland.

(6) In subsection (5)—

"consular marriage" means a marriage solemnised in accordance with Part 1 of Schedule 6 to the Marriage (Same Sex Couples) Act 2013 and any Order in Council made under it,

"relevant part of the United Kingdom", in relation to such a marriage, means the part of the United Kingdom determined in accordance with paragraph 1(2)(b) of that Part of that Schedule for the purposes of the marriage.]

Sub-s (1): numbered as such by the Marriage and Civil Partnership (Scotland) Act 2014, s 29, Sch 2, Pt 1, paras 1, 2(a). Date in force: 16 December 2014: see SSI 2014/287, art 3, Schedule.

Sub-s (1): definition "chartered psychologist" (omitted) repealed by SI 2009/1182, art 4(2), Sch 5, Pt 1, para 8(b). Date in force: 1 July 2009: see SI 2009/1357, art 2(1)(d).

Sub-s (1): in definition ""full gender recognition certificate" and "interim gender recognition certificate"" words ", 5 or 5A" in square brackets substituted by the Civil Partnership Act 2004, s 250(1), (7). Date in force: 5 December 2005: see SI 2005/3175, art 3, Sch 2.

Sub-s (1): in definitions ""full gender recognition certificate" and "interim gender recognition certificate"" words "5 or 5A" in italics repealed and subsequent words in square brackets substituted by the Marriage and Civil Partnership (Scotland) Act 2014, s 29, Sch 2, Pt 1, paras 1, 2(b). Date in force: 16 December 2014: see SSI 2014/287, art 3, Schedule.

Sub-s (1): definitions "protected civil partnership" and "protected marriage" inserted by the Marriage (Same Sex Couples) Act 2013, s 12, Sch 5, Pt 1, paras 1, 14(a). Date in force: to be appointed: see the Marriage (Same Sex Couples) Act 2013, s 21(3).

Sub-s (1): definition "protected Scottish civil partnership" inserted by the Marriage and Civil Partnership (Scotland) Act 2014, s 29, Sch 2, Pt 1, paras 1, 2(c). Date in force: 16 December 2014: see SSI 2014/287, art 3, Schedule.

Sub-s (1): definition "protected Scottish marriage" inserted by the Marriage and Civil Partnership (Scotland) Act 2014, s 29, Sch 2, Pt 1, paras 1, 2(c). Date in force: 16 December 2014: see SSI 2014/287, art 3, Schedule.

Sub-s (1): definition "registered psychologist" inserted by SI 2009/1182, art 4(2), Sch 5, Pt 1, para 8(b). Date in force: 1 July 2009: see SI 2009/1357, art 2(1)(d).

Sub-s (1): in definition "registered psychologist" words "the Health and Social Work Professions Order 2001" in square brackets substituted by the Health and Social Care Act 2012, s 213(8)(d). Date in force: 1 August 2012: see SI 2012/1319, art 2(1), (4).

Sub-s (1): in definition "registered psychologist" words "the Health and Social Work Professions Order 2001" in italics repealed and subsequent words in square brackets substituted by the Children and Social Work Act 2017, s 62, Sch 5, Pt 2, para 48(d). Date in force: to be appointed: see the Children and Social Work Act 2017, s 70(2).

Sub-s (1): definition "statutory declaration of consent" inserted by the Marriage (Same Sex Couples) Act 2013, s 12, Sch 5, Pt 1, paras 1, 14(b). Date in force: to be appointed: see the Marriage (Same Sex Couples) Act 2013, s 21(3).

Sub-ss (2)–(6): inserted by the Marriage and Civil Partnership (Scotland) Act 2014, s 29, Sch 2, Pt 1, paras 1, 2(d). Date in force: 16 December 2014: see SSI 2014/287, art 3, Schedule.

PART 5
CIVIL PARTNERSHIP FORMED OR DISSOLVED ABROAD ETC

CHAPTER 2

Overseas Relationships Treated as Civil Partnerships

A1.605

216 The same-sex requirement

(1) Two people are not to be treated as having formed a civil partnership as a result of having registered an overseas relationship if, at the critical time, they were not of the same sex under United Kingdom law.

(2) But if a full gender recognition certificate is issued under the 2004 Act to a person who has registered an overseas relationship which is within subsection (4), after the issue of the certificate the relationship is no longer prevented from being treated as a civil partnership on the ground that, at the critical time, the parties were not of the same sex.

(3) However, subsection (2) does not apply to an overseas relationship which is within subsection (4) if either of the parties has formed a subsequent civil partnership or lawful marriage.

(4) An overseas relationship is within this subsection if (and only if), at the time mentioned in section 215(2)—

(a) one of the parties ('A') was regarded under the relevant law as having changed gender (but was not regarded under United Kingdom law as having done so), and

(b) the other party was (under United Kingdom law) of the gender to which A had changed under the relevant law.

(5) In this section—

'the critical time' means the time determined in accordance with section 215(2) or (as the case may be) (3);

'the 2004 Act' means the Gender Recognition Act 2004 (c 7);

'United Kingdom law' means any enactment or rule of law applying in England and Wales, Scotland and Northern Ireland.

(6) Nothing in this section prevents the exercise of any *enforceable* [*EU*] *right* [right which forms part of retained EU law by virtue of section 3 or 4 of the European Union (Withdrawal) Act 2018].

Sub-s (6): words "enforceable EU right" in italics repealed and subsequent words in square brackets substituted by SI 2019/305, reg 3. Date in force: this amendment has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/305, reg 1.

Sub-s (6): reference to "EU" in square brackets substituted by SI 2011/1043, art 6(1)(f). Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.

A1.608

219 Power to make provision corresponding to EC Regulation 2201/2003

(1) The Lord Chancellor may by regulations make provision—

(a) as to the jurisdiction of courts in England and Wales . . . in proceedings for the dissolution or annulment of a civil partnership or for legal separation of the civil partners in cases where a civil partner—

(i) is or has been habitually resident in a member State,

(ii) is a national of a member State, or

(iii) is domiciled in a part of the United Kingdom or the Republic of Ireland, and

(b) as to the recognition in England and Wales . . . of any judgment of a court of another member State which orders the dissolution or annulment of a civil partnership or the legal separation of the civil partners.

. . .

Repealed in relation to Scotland by SSI 2019/104, reg 4, Sch 1, para 4(1), (2). Date in force: this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SSI 2019/104, reg 1; for saving and transitional provisions see reg 6 thereof.

Sub-s (1): in paras (a), (b) words omitted repealed by SI 2010/976, art 15(5), Sch 18, Pt 1, paras 72, 73(a). Date in force: 12 April 2010 (being the date on which the Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010, SI 2010/977 came into force): see SI 2010/976, art 1(2); for transitional provisions see arts 28–31 thereof.

CHAPTER 3

Dissolution etc: Jurisdiction and Recognition

A1.610

234 Recognition in the UK of overseas dissolution, annulment or separation

(1) *Subject to subsection (2)*, the validity of an overseas dissolution, annulment or legal separation is to be recognised in *the United Kingdom* [Scotland] if, and only if, it is entitled to recognition by virtue of sections 235 to 237.

(2) *This section and sections 235 to 237 do not apply to an overseas dissolution, annulment or legal separation as regards which provision as to recognition is made by section 219 regulations.*

(3) For the purposes of *subsections (1) and (2)* [subsection (1)] and sections 235 to 237, an overseas dissolution, annulment or legal separation is a dissolution or annulment of a civil partnership or a legal separation of civil partners which has been obtained outside the United Kingdom (whether before or after this section comes into force).

Sub-s (1): words "Subject to subsection (2)," in italics repealed, in relation to England, Wales and Northern Ireland, by SI 2019/495, reg 4(1), (3)(a); a corresponding amendment has been made in relation to Scotland by SSI 2019/104, reg 4, Sch 1, para 4(1), (5)(a)(i). Date in force: this amendment has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1.

Sub-s (1): words "the United Kingdom" in italics repealed and subsequent words in square brackets substituted, in relation to Scotland, by SSI 2019/104, reg 4, Sch 1, para 4(1), (5)(a)(ii). Date in force: this amendment has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SSI 2019/104, reg 1; for saving and transitional provisions see reg 6 thereof.

Sub-s (2): repealed in relation to England, Wales and Northern Ireland by SI 2019/495, reg 4(1), (3)(b) and in relation to Scotland by SSI 2019/104, reg 4, Sch 1, para 4(1), (5)(b). Date in force: this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1.

Sub-s (3): words "subsections (1) and (2)" in italics revoked and subsequent words in square brackets substituted in relation to England, Wales and Northern Ireland by SI 2019/495, reg 4(1), (3)(c) and in relation to Scotland by SSI 2019/10, reg 4, Sch 1, para 4(1), (5)(c). Date in force: this amendment has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1.

MENTAL CAPACITY ACT 2005

(2005, CHAPTER 9)

[7th April 2005]

PART 1
PERSONS WHO LACK CAPACITY

Lasting powers of attorney

A1.621

13 Revocation of lasting powers of attorney etc

(1) This section applies if—

(a) P has executed an instrument with a view to creating a lasting power of attorney, or

(b) a lasting power of attorney is registered as having been conferred by P,

and in this section references to revoking the power include revoking the instrument.

(2) P may, at any time when he has capacity to do so, revoke the power.

(3) P's bankruptcy[, or the making of a debt relief order (under Part 7A of the Insolvency Act 1986) in respect of P,] revokes the power so far as it relates to P's property and affairs.

(4) But where P is bankrupt merely because an interim bankruptcy restrictions order has effect in respect of him [or where P is subject to an interim debt relief restrictions order (under Schedule 4ZB of the Insolvency Act 1986)], the power is suspended, so far as it relates to P's property and affairs, for so long as the order has effect.

(5) The occurrence in relation to a donee of an event mentioned in subsection (6)—

(a) terminates his appointment, and

(b) except in the cases given in subsection (7), revokes the power.

(6) The events are—

(a) the disclaimer of the appointment by the donee in accordance with such requirements as may be prescribed for the purposes of this section in regulations made by the Lord Chancellor,

(b) subject to subsections (8) and (9), the death or bankruptcy of the donee [or the making of a debt relief order (under Part 7A of the Insolvency Act 1986) in respect of the donee] or, if the donee is a trust corporation, its winding-up or dissolution,

(c) subject to subsection (11), the dissolution or annulment of a marriage or civil partnership between the donor and the donee,

(d) the lack of capacity of the donee.

(7) The cases are—

(a) the donee is replaced under the terms of the instrument,

(b) he is one of two or more persons appointed to act as donees jointly and severally in respect of any matter and, after the event, there is at least one remaining donee.

(8) The bankruptcy of a donee [or the making of a debt relief order (under Part 7A of the Insolvency Act 1986) in respect of a donee] does not terminate his appointment, or revoke the power, in so far as his authority relates to P's personal welfare.

(9) Where the donee is bankrupt merely because an interim bankruptcy restrictions order has effect in respect of him, [or where the donee is subject to an interim debt

relief restrictions order (under Schedule 4ZB of the Insolvency Act 1986),] his appointment and the power are suspended, so far as they relate to P's property and affairs, for so long as the order has effect.

(10) Where the donee is one of two or more appointed to act jointly and severally under the power in respect of any matter, the reference in subsection (9) to the suspension of the power is to its suspension in so far as it relates to that donee.

(11) The dissolution or annulment of a marriage or civil partnership does not terminate the appointment of a donee, or revoke the power, if the instrument provided that it was not to do so.

Sub-s (3): words from ", or the making" to "respect of P," in square brackets inserted by SI 2012/2404, art 3(2), Sch 2, para 53(1), (3)(a). Date in force: 1 October 2012: see SI 2012/2404, art 1; for transitional provisions see art 5 thereof.

Sub-s (4): words from "or where P" to "Insolvency Act 1986)" in square brackets inserted by SI 2012/2404, art 3(2), Sch 2, para 53(1), (3)(b). Date in force: 1 October 2012: see SI 2012/2404, art 1; for transitional provisions see art 6 thereof.

Sub-s (6): words from "or the making" to "of the donee" in square brackets inserted by SI 2012/2404, art 3(2), Sch 2, para 53(1), (3)(c). Date in force: 1 October 2012: see SI 2012/2404, art 1; for transitional provisions see art 5 thereof.

Sub-s (8): words from "or the making" to "of a donee" in square brackets inserted by SI 2012/2404, art 3(2), Sch 2, para 53(1), (3)(d). Date in force: 1 October 2012: see SI 2012/2404, art 1; for transitional provisions see art 5 thereof.

Sub-s (9): words from "or where the" to "Insolvency Act 1986)," in square brackets inserted by SI 2012/2404, art 3(2), Sch 2, para 53(1), (3)(e). Date in force: 1 October 2012: see SI 2012/2404, art 1; for transitional provisions see art 6 thereof.

HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008

2008 CHAPTER 22

[13th November 2008]

PART 2
PARENTHOOD IN CASES INVOLVING ASSISTED REPRODUCTION

Parental orders

A1.665

54 Parental orders[: two applicants]

(1) On an application made by two people ("the applicants"), the court may make an order providing for a child to be treated in law as the child of the applicants if—

(a) the child has been carried by a woman who is not one of the applicants, as a result of the placing in her of an embryo or sperm and eggs or her artificial insemination,

(b) the gametes of at least one of the applicants were used to bring about the creation of the embryo, and

(c) the conditions in subsections (2) to [(8A)] are satisfied.

(2) The applicants must be—

(a) husband and wife,

(b) civil partners of each other, or

(c) two persons who are living as partners in an enduring family relationship and are not within prohibited degrees of relationship in relation to each other.

(3) Except in a case falling within subsection (11), the applicants must apply for the order during the period of 6 months beginning with the day on which the child is born.

(4) At the time of the application and the making of the order—

(a) the child's home must be with the applicants, and

(b) either or both of the applicants must be domiciled in the United Kingdom or in the Channel Islands or the Isle of Man.

(5) At the time of the making of the order both the applicants must have attained the age of 18.

(6) The court must be satisfied that both—

(a) the woman who carried the child, and

(b) any other person who is a parent of the child but is not one of the applicants (including any man who is the father by virtue of section 35 or 36 or any woman who is a parent by virtue of section 42 or 43),

have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.

(7) Subsection (6) does not require the agreement of a person who cannot be found or is incapable of giving agreement; and the agreement of the woman who carried the child is ineffective for the purpose of that subsection if given by her less than six weeks after the child's birth.

(8) The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by either of the applicants for or in consideration of—

(a) the making of the order,

(b) any agreement required by subsection (6),

(c) the handing over of the child to the applicants, or

(d) the making of arrangements with a view to the making of the order,

unless authorised by the court.

[(8A) An order relating to the child must not previously have been made under this section or section 54A, unless the order has been quashed or an appeal against the order has been allowed.]

(9) For the purposes of an application under this section—

(a) in relation to England and Wales[—

(i) the court" means the High Court or the family court, and

(ii) proceedings on the application are to be "family proceedings" for the purposes of the Children Act 1989],

(b) in relation to Scotland, "the court" means the Court of Session or the sheriff court of the sheriffdom within which the child is, and

(c) in relation to Northern Ireland, "the court" means the High Court or any county court within whose division the child is.

(10) Subsection (1)(a) applies whether the woman was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

(11) An application which—

(a) relates to a child born before the coming into force of this section, and

(b) is made by two persons who, throughout the period applicable under subsection (2) of section 30 of the 1990 Act, were not eligible to apply for an order under that section in relation to the child as husband and wife,

may be made within the period of six months beginning with the day on which this section comes into force.

Section heading: words ": two applicants" in square brackets inserted by SI 2018/1413, art 2(1), (2). Date in force: 3 January 2019: see SI 2018/1413, art 1(1).

Sub-s (1): in para (c) reference to "(8A)" in square brackets substituted by SI 2018/1413, art 2(1), (3). Date in force: 3 January 2019: see SI 2018/1413, art 1(1).

Sub-s (8A): inserted by SI 2018/1413, art 2(1), (4). Date in force: 3 January 2019: see SI 2018/1413, art 1(1).

Sub-s (9): para (a)(i), (ii) substituted by the Crime and Courts Act 2013, s 17(6), Sch 11, Pt 1, para 206. Date in force: 22 April 2014: see SI 2014/954, art 2(a), (e); for transitional provision see art 3.

A1.665A

[54A Parental orders: one applicant]

[(1) On an application made by one person ("the applicant"), the court may make an order providing for a child to be treated in law as the child of the applicant if—

(a) the child has been carried by a woman who is not the applicant, as a result of the placing in her of an embryo or sperm and eggs or her artificial insemination,

(b) the gametes of the applicant were used to bring about the creation of the embryo, and

(c) the conditions in subsections (2) to (8) are satisfied.

(2) Except in a case falling within subsection (11), the applicant must apply for the order within the period of 6 months beginning with the day on which the child is born.

(3) At the time of the application and the making of the order—

(a) the child's home must be with the applicant, and

(b) the applicant must be domiciled in the United Kingdom or in the Channel Islands or the Isle of Man.

(4) At the time of the making of the order the applicant must have attained the age of 18.

(5) The court must be satisfied that both—

(a) the woman who carried the child, and

(b) any other person who is a parent of the child but is not the applicant (including any man who is the father by virtue of section 35 or 36 or any woman who is a parent by virtue of section 42 or 43),

have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.

(6) Subsection (5) does not require the agreement of a person who cannot be found or is incapable of giving agreement; and the agreement of the woman who carried the child is ineffective for the purpose of that subsection if given by her less than six weeks after the child's birth.

(7) The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by the applicant for or in consideration of—

(a) the making of the order,

(b) any agreement required by subsection (5),

(c) the handing over of the child to the applicant, or

(d) the making of arrangements with a view to the making of the order,

unless authorised by the court.

(8) An order relating to the child must not previously have been made under section 54 or this section, unless the order has been quashed or an appeal against the order has been allowed.

(9) Section 54(9) applies for the purposes of an application under this section.

(10) Subsection (1)(a) applies whether the woman was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

(11) An application which relates to a child born before the coming into force of this section may be made within the period of six months beginning with the day on which this section comes into force.]

Inserted by SI 2018/1413, art 2(1), (5). Date in force: 3 January 2019: see SI 2018/1413, art 1(1).

A1.666

55 Parental orders: supplementary provision

(1) The Secretary of State may by regulations provide—

(a) for any provision of the enactments about adoption to have effect, with such modifications (if any) as may be specified in the regulations, in relation to orders under section 54 [or 54A], and applications for such orders, as it has effect in relation to adoption, and applications for adoption orders, and

(b) for references in any enactment to adoption, an adopted child or an adoptive relationship to be read (respectively) as references to the effect of an order under section 54 [or 54A], a child to whom such an order applies and a relationship arising by virtue of the enactments about adoption, as applied by the regulations, and for similar expressions in connection with adoption to be read accordingly.

(2) The regulations may include such incidental or supplemental provision as appears to the Secretary of State to be necessary or desirable in consequence of any provision made by virtue of subsection (1)(a) or (b).

(3) In this section 'the enactments about adoption' means—

(a) the Adoption (Scotland) Act 1978 (c 28),

(b) the Adoption and Children Act 2002 (c 38),

(c) the Adoption and Children (Scotland) Act 2007 (asp 4), and

(d) the Adoption (Northern Ireland) Order 1987 (SI 1987/2203 (NI 22)).

Sub-s (1): in paras (a), (b) words "or 54A" in square brackets inserted by SI 2018/1413, art 2(1), (6). Date in force: 3 January 2019: see SI 2018/1413, art 1(1).

MARRIAGE (SAME SEX COUPLES) ACT 2013

2013 Chapter 30

[17th July 2013]

PART 1
MARRIAGE OF SAME SEX COUPLES IN ENGLAND AND WALES

Other provisions relating to marriages of same sex couples

A1.699

9 Conversion of civil partnership into marriage

(1) The parties to an England and Wales civil partnership may convert their civil partnership into a marriage under a procedure established by regulations made by the Secretary of State.

(2) The parties to a civil partnership within subsection (3) may convert their civil partnership into a marriage under a procedure established by regulations made by the Secretary of State.

(3) A civil partnership is within this subsection if—

(a) it was formed outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 of the Civil Partnership Act 2004 (registration at British consulates etc or by armed forces personnel), and

(b) the part of the United Kingdom that was relevant for the purposes of section 210(2)(b) or (as the case may be) section 211(2)(b) of that Act was England and Wales.

(4) Regulations under this section may in particular make—

(a) provision about the making by the parties to a civil partnership of an application to convert their civil partnership into a marriage;

(b) provision about the information to be provided in support of an application to convert;

(c) provision about the making of declarations in support of an application to convert;

(d) provision for persons who have made an application to convert to appear before any person or attend at any place;

(e) provision conferring functions in connection with applications to convert on relevant officials, relevant armed forces personnel, the Secretary of State, or any other persons;

(f) provision for fees, of such amounts as are specified in or determined in accordance with the regulations, to be payable in respect of—

(i) the making of an application to convert;

(ii) the exercise of any function conferred by virtue of paragraph (e).

(5) Functions conferred by virtue of paragraph (e) of subsection (4) may include functions relating to—

(a) the recording of information on the conversion of civil partnerships;

(b) the issuing of certified copies of any information recorded;

[(ba) the carrying out, on request, of searches of any information recorded and the provision, on request, of records of any information recorded (otherwise than in the form of certified copies);]

(c) the conducting of services or ceremonies (other than religious services or ceremonies) following the conversion of a civil partnership.

[(5A) Subsection (5B) applies where regulations under this section provide for a fee to be payable to a superintendent registrar or registrar.

(5B) The regulations may provide for such part of the fee as may be specified in or determined in accordance with the regulations to be payable by the superintendent registrar or registrar to the Registrar General in such circumstances as may be set out in the regulations.

(5C) The regulations may provide for the reduction, waiver or refund of part or all of a fee whether by conferring a discretion or otherwise.]

(6) Where a civil partnership is converted into a marriage under this section—

(a) the civil partnership ends on the conversion, and

(b) the resulting marriage is to be treated as having subsisted since the date the civil partnership was formed.

(7) In this section—

"England and Wales civil partnership" means a civil partnership which is formed by two people registering as civil partners of each other in England or Wales (see Part 2 of the Civil Partnership Act 2004);

"relevant armed forces personnel" means—

(a) a member of Her Majesty's forces;

(b) a civilian subject to service discipline (within the meaning of the Armed Forces Act 2006);

and for this purpose "Her Majesty's forces" has the same meaning as in the Armed Forces Act 2006;

"relevant official" means—

(a) the Registrar General;

(b) a superintendent registrar;

(c) a registrar;

(d) a consular officer in the service of Her Majesty's government in the United Kingdom;

(e) a person authorised by the Secretary of State in respect of the solemnization of marriages or formation of civil partnerships in a country or territory in which Her Majesty's government in the United Kingdom has for the time being no consular representative.

Sub-s (5): para (ba) inserted by the Deregulation Act 2015, s 99(1), (3). Date in force: 26 May 2015: see the Deregulation Act 2015, s 115(3)(k).

Sub-ss (5A)–(5C): inserted by the Immigration Act 2016, s 89(1), (2)(a), Sch 15, Pt 1, para 5. Date in force: 12 July 2016: see SI 2016/603, reg 3(r), (w).

GUARDIANSHIP (MISSING PERSONS) ACT 2017

2017 Chapter 27

[27th April 2017]

Missing persons

A1.722A

1 Missing persons

(1) For the purposes of this Act, a person is "missing" if—

(a) the person is absent from his or her usual place of residence,

(b) the person is absent from his or her usual day-to-day activities, and

(c) the first or second condition is met.

(2) The first condition is met if the person's whereabouts—

(a) are not known at all, or

(b) are not known with sufficient precision to enable the person to be contacted for the purposes of decisions relating to his or her property and financial affairs.

(3) The second condition is met if—

(a) the person is unable to make decisions relating to his or her property and financial affairs or to communicate such decisions with a view to their implementation (or both), and

(b) the reason for that is something beyond the person's control, other than illness, injury or lack of capacity in relation to a matter (within the meaning of the Mental Capacity Act 2005).

(4) A person who is detained, whether in a prison or another place, is to be treated for the purposes of this Act as absent from his or her usual place of residence and usual day-to-day activities.

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

Guardianship orders

A1.722B

2 Applying for a guardianship order

(1) A person may apply to the court for an order appointing a guardian in respect of some or all of a missing person's property and financial affairs (a "guardianship order").

(2) The court has jurisdiction to hear and determine an application under this section in relation to property or financial affairs of a missing person only if—

(a) the person was domiciled in England and Wales on the day before he or she was first known to be missing,

(b) the person had been habitually resident in England and Wales throughout the period of one year ending with that day, or

(c) the application is made by the person's spouse or civil partner and the applicant—

(i) is domiciled in England and Wales on the day on which the application is made, or

(ii) has been habitually resident in England and Wales throughout the period of one year ending with that day.

(3) If a person is missing for two or more separate periods, the reference in subsection (2)(a) to the day before he or she was first known to be missing is to be read as a reference to the day before the latest period began.

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

A1.722C

3 Making a guardianship order

(1) The court may make a guardianship order on an application under section 2 if subsection (2) or (3) of this section applies (and see also sections 19 and 20).

(2) This subsection applies if the court is satisfied that—

(a) the person whose property or financial affairs are the subject of the application is missing,

(b) the person was missing throughout the period of 90 days ending with the day on which the application was made,

(c) in all the circumstances, the appointment of a guardian in respect of property or financial affairs of the missing person is in the missing person's best interests (see section 18), and

(d) there is a person who could be appointed as guardian (see the requirements in section 4(1)),

(and in this Act the condition in paragraph (b) is referred to as "the absence condition").

(3) This subsection applies if the court is satisfied that—

(a) subsection (2) does not apply because (and only because) the absence condition is not met, but

(b) a decision is needed, or is likely to be needed, in relation to property or financial affairs of the missing person before the day on which that condition would be met,

(and in this Act the condition in paragraph (b) is referred to as "the urgency condition").

(4) The court must send a copy of a guardianship order to the Public Guardian.

(5) The Secretary of State may by regulations made by statutory instrument amend subsection (2)(b) by increasing or reducing the period for the time being specified there.

(6) Regulations under this section may include transitional, transitory or saving provision.

(7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

A1.722D

4 Choice of guardian

(1) The court may only appoint a person as a guardian in respect of property or financial affairs of a missing person if it is satisfied that the person—

(a) is an individual aged at least 18 or a trust corporation (as defined in section 68 of the Trustee Act 1925),

(b) consents to the appointment,

(c) is suitable to act as the guardian of the property or financial affairs, and

(d) if appointed, will act in the missing person's best interests (see section 18).

(2) For the purposes of determining whether a person ("the proposed guardian") is suitable to act as the guardian of property or financial affairs, the court must, among other things, have regard to—

(a) the proposed guardian's relationship with the missing person;

(b) the missing person's views on the proposed guardian, so far as they are known to, or reasonably ascertainable by, the court;

(c) whether the proposed guardian has the skills and knowledge necessary to carry out the functions proposed to be conferred on the proposed guardian by the guardianship order;

(d) any conflict between the proposed guardian's interests and the missing person's interests.

(3) For the purposes of determining whether there is a conflict between the proposed guardian's interests and the missing person's interests, the court must, among other things, consider—

(a) any connection between the proposed guardian's property and financial affairs and the missing person's property and financial affairs, and

(b) how any such connection might affect the taking of decisions by the proposed guardian if appointed.

(4) There is not a conflict between the proposed guardian's interests and the missing person's interests merely because the proposed guardian—

(a) is the missing person's spouse, civil partner, parent, child, sibling or other relative,

(b) was living with the missing person immediately before that person became a missing person, or

(c) may benefit from being appointed as guardian, whether directly or indirectly.

(5) The court may make a guardianship order appointing a person as a guardian whether or not the person is proposed in the application for the order.

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

A1.722E

5 Guardian's role: property and financial affairs

(1) A guardianship order must appoint the guardian in relation to—

(a) all of the missing person's property and financial affairs, or

(b) property or financial affairs of the missing person specified or described in the order.

(2) A guardianship order may not relate to the property and financial affairs of more than one person.

(3) A guardianship order may be made in respect of any property or financial affairs of the missing person, whether or not mentioned in the application, subject to subsection (4).

(4) A guardianship order may be made only in respect of property or financial affairs in respect of which the court is satisfied that—

(a) the conditions in section 3(2)(c) and (d) are met, and

(b) where the order is made in reliance on section 3(3), the urgency condition is met.

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

A1.722F

6 Guardian's role: rights and powers etc

(1) A guardianship order must appoint the guardian to exercise on behalf of the missing person—

(a) all of the missing person's rights and powers in relation to the property or financial affairs to which the order relates, or

(b) such of those rights and powers as are specified or described in the order,

(but see subsections (5) to (8)).

(2) A guardianship order may—

(a) impose duties on the guardian;

(b) include conditions and restrictions.

(3) The court's powers under subsection (2) include power—

(a) to require the guardian to give the Public Guardian security for the exercise of the guardian's functions;

(b) to require the guardian to submit to the Public Guardian such reports at such times or intervals as the court may direct;

(c) to make provision suspending the guardian's authority to exercise rights and powers for a period.

(4) The rights and powers that a guardian may be appointed to exercise include—

(a) selling, letting or mortgaging the missing person's property;

(b) making investments;

(c) executing deeds and other documents;

(d) recovering money owed to the missing person;

(e) discharging debts and other obligations of the missing person (whether legally enforceable or not);

(f) resigning trusteeships held by the missing person;

(g) bringing or conducting legal proceedings;

(h) making a gift out of the missing person's property.

(5) A guardianship order has effect subject to the restrictions in subsections (6) to (8).

(6) A guardian may not—

(a) execute a will for the missing person, or

(b) exercise a power vested in the missing person as a trustee in relation to another person's property.

(7) A guardian may only make a gift out of the missing person's property if the guardianship order expressly authorises the making of the gift, the making of gifts of a description which includes the gift or the making of gifts generally.

(8) Subsection (7) does not apply in relation to a gift made for the maintenance of, or otherwise for the benefit of, a dependant of the missing person.

(9) "Dependant", in relation to a missing person, means an individual who, if the missing person were not missing, would reasonably rely on the missing person to provide for his or her maintenance.

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

A1.722G

7 Period of guardianship

(1) A guardian is appointed for the period specified in the guardianship order.

(2) The period specified in a guardianship order must end before the end of the period of 4 years beginning with the day on which the order is made.

(3) Subsections (1) and (2) do not prevent the court from making further guardianship orders in respect of some or all of the missing person's property and financial affairs, including orders reappointing a person as a guardian.

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

Guardians

A1.722H

8 Guardians and effect of guardianship order

(1) A guardian must act in what the guardian reasonably believes to be the missing person's best interests (see section 18).

(2) A guardian is to be treated as the missing person's agent with the authority conferred by the guardianship order and this Act.

(3) Before taking a decision in relation to which it would be reasonable to expect the missing person to consult a particular person, the guardian must consult that person unless it is not reasonably practicable to do so.

(4) A guardianship order does not affect any rights, powers or other interests of third parties in relation to the missing person's property or financial affairs.

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

A1.722I

9 Expenses, remuneration and records

(1) A guardian is entitled to be reimbursed out of the missing person's property for reasonable expenses incurred in connection with the exercise of functions as a guardian.

(2) The court may direct that a guardian is entitled to remuneration payable out of the missing person's property for exercising functions as a guardian.

(3) A guardian must—

(a) keep records of the exercise of functions as a guardian, including accounts relating to the exercise of those functions, and

(b) on ceasing to be a guardian, give a copy of the records to such persons as the court directs.

(4) The court may, on an application, order a person to provide the applicant with accounts or other information relating to the person's exercise of functions as a guardian in the form and manner specified in the order.

(5) When giving a direction under subsection (3) or considering an application under subsection (4), the court must have regard to—

(a) the need to keep the missing person's affairs confidential, and

(b) the need to impose only such requirements as are reasonable in all the circumstances,

(and, regarding applications, see also sections 19 and 20).

(6) Directions under subsection (3) and orders under subsection (4) may include conditions and restrictions.

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

A1.722J

10 Directions by the court to guardians

(1) The court may give a direction to a guardian about—

(a) whether or how to act in a particular case, or

(b) the scope of the guardian's authority under the guardianship order and this Act.

(2) The court may do so on an application or without an application being made (and see sections 19 and 20).

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

A1.722K

11 Actions outside guardian's authority etc

(1) The court may make a declaration—

(a) that action taken by a guardian, when purporting to exercise functions as a guardian, was within or outside the scope of the guardian's authority under the guardianship order and this Act, or

(b) that a guardian performed or failed to perform a duty under the guardianship order, this Act or regulations under section 58 of the Mental Capacity Act 2005 or a duty owed to the missing person under a rule of law.

(2) It may do so on an application or without an application being made (and see sections 19 and 20).

(3) If the court makes a declaration under subsection (1) that a guardian acted outside the scope of the guardian's authority or failed to perform a duty as described in that subsection, it may—

(a) make an order disallowing expenses incurred by the guardian or remuneration to which the guardian would otherwise be entitled;

(b) make an order requiring the guardian to make a payment of an amount determined by the court to the missing person or the missing person's estate;

(c) make such other order as the court considers appropriate for the purpose of compensating the missing person or the missing person's estate for any loss resulting from the action or failure.

(4) Subsection (3) does not prevent the court from exercising powers available to it otherwise than by virtue of that subsection.

(5) If the court makes a declaration under subsection (1), or otherwise determines, that a guardian acted outside the scope of the guardian's authority or failed to perform a duty as described in that subsection but—

(a) the guardian shows that the guardian behaved honestly and reasonably in doing so, and

(b) the court considers that, having regard to all the circumstances, the guardian ought to be relieved of personal liability,

the court may relieve the guardian, either entirely or partly, of personal liability in respect of the action or failure.

(6) In considering whether to relieve a guardian of personal liability, the court must have regard to—

(a) the care and skill that it is reasonable to expect the guardian to have exercised in the circumstances, and

(b) in the case of a person acting as a guardian in the course of a business or profession, any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

Variation and revocation of guardianship orders

A1.722L

12 Variation of guardianship order

(1) The court may make an order varying a guardianship order, on an application or without an application being made.

(2) It may do so only if it is satisfied that—

(a) the person whose property or financial affairs are the subject of the guardianship order is missing,

(b) the absence condition or the urgency condition is met, and

(c) in all the circumstances, the proposed variation is in the missing person's best interests (see section 18),

(and see also sections 19 and 20).

(3) The power under subsection (1) includes power to—

(a) appoint a different person to be the guardian;

(b) add or remove property or financial affairs, subject to subsection (4);

(c) add, remove or alter conditions or restrictions;

(d) alter the period for which the guardian is appointed, subject to subsection (5);

(e) do anything else that the court could do on making a guardianship order.

(4) Where the court varies a guardianship order in circumstances in which the urgency condition (but not the absence condition) is met, it may only make provision in respect of property or financial affairs in respect of which it is satisfied that the urgency condition is met.

(5) The court may not vary a guardianship order so that the period for which the guardian is appointed ends after the last day of the 4 year period specified in section 7(2).

(6) The court must send a copy of an order varying a guardianship order to the Public Guardian.

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

A1.722M

13 Revocation of guardianship order

(1) The court may make an order revoking a guardianship order, on an application or without an application being made.

(2) If a guardian has reasonable grounds to believe that the person whose property or financial affairs are the subject of the guardianship order is no longer missing, the guardian must apply to the court as soon as reasonably practicable for the revocation of the order.

(3) The court may revoke a guardianship order only if it is satisfied that—

(a) the person whose property or financial affairs are the subject of the guardianship order is no longer missing, or

(b) in all the circumstances, revocation is in the missing person's best interests (see section 18),

(and see also sections 19 and 20).

(4) The court must send a copy of an order revoking a guardianship order to the Public Guardian.

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

A1.722N

14 Automatic revocation

(1) A guardianship order is revoked—

(a) on the death of the missing person;

(b) on the making of a declaration of presumed death in respect of the missing person under section 2 of the Presumption of Death Act 2013;

(c) on the death of the guardian;

(d) on the expiry of the guardian's period of appointment.

(2) A guardianship order made after the death of the missing person is to be treated as having been immediately revoked under subsection (1)(a).

(3) Where a person becomes aware that a guardianship order appointing the person as guardian has been revoked under subsection (1)(a) or (b), the person must inform the Public Guardian as soon as reasonably practicable.

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

A1.722O

15 Protection following variation or revocation

(1) Where a guardian acts within the scope of the authority conferred by the guardianship order and this Act at a time when—

(a) the guardianship order has been revoked under section 14, but

(b) the guardian does not know that,

the guardian does not incur any personal liability (either to the missing person or any other person) because of the revocation.

(2) Where a person deals with a guardian at a time when—

(a) the guardianship order has been varied or revoked, but

(b) the person does not know that,

the transaction between them is, in favour of that person, as valid as if the guardianship order had not been varied or revoked.

(3) Where the interest of a purchaser depends on whether a transaction between a guardian and another person was valid by virtue of subsection (2), it is to be conclusively presumed in favour of the purchaser that the other person did not at the material time know of the variation or revocation of the guardianship order if—

(a) the transaction between the guardian and the other person was completed within the period of 12 months beginning with the day on which the guardianship order was made, or

(b) before the completion of the purchase, or within the period of 3 months beginning with the day of its completion, the other person makes a statutory declaration that the person did not at the material time know of the variation or revocation of the guardianship order.

(4) For the purposes of this section—

(a) knowledge that a guardianship order has been revoked includes knowledge of the occurrence of an event which caused it to be revoked under section 14, and

(b) "purchaser" and "purchase" have the meaning given in section 205(1) of the Law of Property Act 1925.

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

Two or more guardians

A1.722P

16 Appointment of two or more guardians

(1) The court may appoint two or more guardians in respect of some or all of a missing person's property and financial affairs.

(2) It may appoint them—

(a) at the same time or at different times;

(b) by means of the same guardianship order or separate guardianship orders.

(3) It may do so whether or not the appointment of two or more guardians is proposed in an application for, or for the variation of, a guardianship order.

(4) The Schedule to this Act makes further provision about the appointment of two or more guardians.

(5) The Secretary of State may by regulations made by statutory instrument make provision about the appointment of two or more guardians, including provision modifying this Act as it applies where two or more guardians are appointed.

(6) Regulations under this section may—

(a) amend the Schedule to this Act,

(b) make different provision for different purposes, and

(c) include transitional, transitory or saving provision.

(7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

Sub-ss (5)–(7): Specified date: 27 April 2017: see s 25(2)(a).
Sub-ss (1)–(4): Appointment: 31 July 2019: see SI 2019/1032, reg 3.

Supervision of guardians

A1.722Q

17 Supervision of guardians by the Public Guardian

(1) Section 58 of the Mental Capacity Act 2005 (functions of the Public Guardian) is amended as follows.

(2) After subsection (2) insert—

"(2A) The Public Guardian also has the following functions—

(a) establishing and maintaining a register of guardianship orders,

(b) supervising guardians,

(c) receiving security which the court requires a guardian to give for the exercise of the guardian's functions,

(d) receiving reports from guardians,

(e) reporting to the court on such matters relating to proceedings under the Guardianship (Missing Persons) Act 2017 as the court requires,

(f) dealing with representations (including complaints) about the way in which a guardian is exercising the guardian's functions, and

(g) publishing, in any manner the Public Guardian thinks appropriate, information about the exercise of his or her functions in connection with guardians and guardianship orders."

(3) In subsection (3), after "this Act" insert "or the Guardianship (Missing Persons) Act 2017".

(4) In subsection (4)—

(a) in paragraph (a), after "court" insert "or guardians", and

(b) after paragraph (f) insert—

"(g) the making of reports to the Public Guardian by guardians."

(5) In subsection (5), after "functions" insert "in relation to lasting powers of attorney or deputies".

(6) After subsection (6) insert—

"(7) In this section "guardian" and "guardianship order" have the same meaning as in the Guardianship (Missing Persons) Act 2017."

Specified date (for certain purposes): 27 April 2017: see s 25(2)(b).
Appointment (for remaining purposes): 31 July 2019: see SI 2019/1032, reg 3.

Missing person's best interests

A1.722R

18 Missing person's best interests

(1) In determining for the purposes of this Act what is in a missing person's best interests, the court or a guardian—

(a) must consider all the relevant circumstances of which the court or guardian is aware, and

(b) must, among other things, take the steps described in subsections (2) to (4).

(2) The court or guardian must consider, so far as is reasonably ascertainable—

(a) any relevant wishes and feelings expressed by the missing person at any time, including any relevant written statement made by the missing person,

(b) the beliefs and values that would be likely to influence the missing person, and

(c) any other factors that the missing person would be likely to consider.

(3) The court or guardian must take into account the views of any persons of whom the court or guardian (as appropriate) is aware with a relevant interest in relation to the missing person's property or financial affairs, where it is reasonably practicable and appropriate to do so.

(4) The court or guardian must consider the consequences of taking a proposed action.

(5) Nothing in this Act requires the court or a guardian—

(a) to decide a matter by reference to the decision the missing person is likely to have taken in relation to the matter, or

(b) to consider any question as to whether or when the missing person might cease to be missing.

(6) The Secretary of State may by regulations made by statutory instrument provide that, for the purposes of this Act, doing something specified or described in the regulations, or doing it in circumstances specified or described in the regulations, is or is not to be treated as being in a missing person's best interests.

(7) Regulations under this section may—

(a) make different provision for different purposes, and

(b) include transitional, transitory or saving provision.

(8) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

Sub-ss (6)–(8): Specified date: 27 April 2017: see s 25(2)(c).
Sub-ss (1)–(5): Appointment: 31 July 2019: see SI 2019/1032, reg 3.

A1.722S

19 Requirement for applicants to have sufficient interest

(1) The court must refuse to hear an application under a provision listed in subsection (2) if it considers that the applicant does not have a sufficient interest in relation to the missing person's property or financial affairs.

(2) Those provisions are—

(a) section 2 (guardianship order);

(b) section 9 (accounts and information);

(c) section 10 (directions to guardians);

(d) section 11 (actions outside guardian's authority);

(e) section 12 (variation of guardianship order);

(f) section 13 (revocation of guardianship order).

(3) For the purposes of subsection (1), the following are to be treated as having a sufficient interest—

(a) the missing person and the missing person's personal representatives;

(b) the missing person's spouse, civil partner, parent, child or sibling;

(c) in relation to an application under section 2, a person who was the guardian in respect of some or all of the missing person's property and financial affairs at any time during the period of one year ending with the day on which the application is made;

(d) in relation to an application under section 10, 12 or 13, the guardian.

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

A1.722T

20 Giving notice of applications

(1) Where an application under a provision listed in subsection (2) is made—

(a) the applicant must send notice of the application and any other information specified by rules of court to the persons specified by rules of court, and

(b) the application must be advertised in accordance with rules of court.

(2) Those provisions are—

(a) section 2 (guardianship order);

(b) section 12 (variation of guardianship order);

(c) section 13 (revocation of guardianship order).

(3) The court must refuse to hear an application under a provision listed in subsection (2) if it knows that a requirement under subsection (1) has not been met.

(4) If the court makes an order on an application in circumstances in which a requirement under subsection (1) has not been met—

(a) the failure to meet the requirement does not invalidate the order, but

(b) where the court considers varying or revoking a guardianship order which it knows was made or varied in such circumstances, it must consider the effect of the failure.

(5) Rules of court may make provision imposing obligations to send notice to persons specified in the rules and to advertise where—

(a) an application is made under a provision of this Act which is not listed in subsection (2), or

(b) the court proposes to exercise a power under this Act without an application being made.

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

A1.722U

21 Right to intervene

(1) The missing person's spouse, civil partner, parent, child or sibling may intervene in—

(a) proceedings on an application for a guardianship order;

(b) proceedings relating to the variation or revocation of a guardianship order;

(c) other proceedings relating to the exercise of functions by a guardian.

(2) Any other person may intervene in such proceedings only with the permission of the court.

(3) The court must refuse permission to intervene if it considers that the applicant does not have a sufficient interest in relation to the missing person's property or financial affairs.

(4) References in this section to intervening in proceedings include arguing before the court any question which the court considers it necessary to have fully argued for the purposes of the proceedings.

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

A1.722V

22 Codes of practice

(1) The Lord Chancellor must prepare and issue one or more codes of practice—

(a) for the guidance of guardians,

(b) for the guidance of persons making applications under this Act, and

(c) with respect to such other matters concerned with this Act as the Lord Chancellor thinks fit.

(2) A guardian must have regard to any relevant code issued under this section.

(3) If it appears to a court or tribunal conducting legal proceedings that—

(a) a provision of a code issued under this section, or

(b) a failure to comply with such a code,

is relevant to a question arising in the proceedings, the provision or failure must be taken into account in deciding the question.

(4) The Lord Chancellor may from time to time revise a code issued under this section.

(5) The Lord Chancellor may delegate the preparation or revision of all or part of a code under this section.

(6) Before preparing or revising a code under this section, the Lord Chancellor must consult such persons as the Lord Chancellor considers appropriate.

(7) The Lord Chancellor may not issue a code or revised code under this section unless—

(a) a draft has been laid before both Houses of Parliament by the Lord Chancellor, and

(b) the 40 day period has elapsed without either House resolving not to approve the draft.

(8) The Lord Chancellor must arrange for any code or revised code issued under this section to be published in such a way as the Lord Chancellor considers appropriate for bringing it to the attention of those likely to be concerned with its provisions.

(9) "The 40 day period", in relation to the draft of a code or revised code, means—

(a) if the draft is laid before the Houses of Parliament on different days, the period of 40 days beginning with the later of the two days;

(b) in any other case, the period of 40 days beginning with the day on which it is laid before the Houses.

(10) In calculating the 40 day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

Appointment: 19 June 2019: see SI 2019/1032, reg 2(a).

General

A1.722W

23 The court

(1) The Lord Chancellor must by regulations made by statutory instrument designate the High Court or the Court of Protection to have the functions of the court under this Act.

(2) The Lord Chancellor must consult the Lord Chief Justice before making regulations under this section.

(3) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise the Lord Chief Justice's functions under this section.

(4) Regulations under this section may include transitional, transitory or saving provision.

(5) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

Appointment: 19 June 2019: see SI 2019/1032, reg 2(b).

A1.722X

24 Interpretation

(1) In this Act—

"the absence condition" has the meaning given in section 3;

"the court" means the court for the time being designated by the Lord Chancellor under section 23;

"guardian" means a person appointed as a guardian under this Act;

"guardianship order" has the meaning given in section 2;

"missing", in relation to a person, has the meaning given in section 1 (and see subsection (2));

"the missing person" means—

(a) in relation to an application or order under this Act, the missing person whose property or financial affairs are or would be the subject of the application or order, and

(b) in relation to a guardian, the missing person in respect of whose property or financial affairs the guardian is appointed,

(and see subsection (2));

"personal representative", in relation to a person who has died, means—

(a) a person responsible for administering the person's estate under the law of England and Wales, or

(b) a person who, under the law of another country or territory, has functions equivalent to those of administering the person's estate under the law of England and Wales;

"property" includes any thing in action and any interest in real or personal property;

"sibling" means a sibling of the full blood or the half blood;

"the urgency condition" has the meaning given in section 3;

"will" includes codicil.

(2) References in the following provisions to a missing person include a person whose property or financial affairs are or were the subject of a guardianship order but who is no longer missing—

(a) sections 8, 9, 11, 14(1), 15(1) and 18, and

(b) sections 19 and 21, so far as they apply to applications or proceedings in connection with such a person.

(3) References in this Act to action by a guardian (however expressed) include inaction.

Specified date: 27 April 2017: see s 25(2)(d).

A1.722Y

25 Extent, commencement and short title

(1) This Act extends to England and Wales only.

(2) The following come into force on the day on which this Act is passed—

(a) section 16(5) to (7),

(b) section 17, so far as it confers power to make regulations,

(c) section 18(6) to (8), and

(d) section 24 and this section.

(3) Subject to subsection (2), the provisions of this Act come into force on such day as the Secretary of State may appoint by regulations made by statutory instrument.

(4) Regulations under this section may—

(a) appoint different days for different purposes, and

(b) include transitional, transitory or saving provision.

(5) This Act may be cited as the Guardianship (Missing Persons) Act 2017.

Specified date: 27 April 2017: see s 25(2)(d).

A1.722Z

SCHEDULE

APPOINTMENT OF TWO OR MORE GUARDIANS

Section 16

Powers of court when appointing two or more guardians

1

(1) This paragraph applies where, when making or varying a guardianship order, the court appoints two or more guardians in respect of some or all of a missing person's property and financial affairs, whether by appointing them at the same time or at different times.

(2) The court must—

(a) provide for the guardians to act jointly in relation to the property or financial affairs,

(b) provide for each guardian to have sole responsibility in relation to different parts of the missing person's property and financial affairs, or

(c) provide for a combination of joint and sole responsibilities.

(3) For the purposes of sub-paragraph (2)(c), the court provides for a combination of joint and sole responsibilities if it provides—

(a) for the guardians to act jointly in relation to parts of the missing person's property and financial affairs, and

(b) for one or more of the guardians to have sole responsibility in relation to other parts of the missing person's property and financial affairs.

(4) The court may make different provision in relation to different guardians so far as it provides for them to have sole responsibility in relation to different parts of the missing person's property and financial affairs, including provision imposing different conditions and restrictions.

(5) The court may provide that different guardians are appointed for different periods.

Power of court to remove guardians

2

(1) This paragraph applies where a guardianship order appoints two or more guardians.

(2) The court's powers under section 12 to vary the order include a power to remove one or more of the guardians without appointing a replacement (but not to remove all of the guardians without replacing any of them).

Guardians appointed to act jointly

3

(1) This paragraph applies where a guardianship order appoints two or more guardians to act jointly in relation to property or financial affairs.

(2) The guardians must act unanimously in relation to the property or financial affairs.

(3) A condition or restriction imposed by the court in respect of the property or financial affairs applies to each of the guardians.

(4) A direction given by the court under section 10 in respect of the property or financial affairs applies to each of the guardians.

Death of a guardian

4

(1) This paragraph applies where—

(a) a guardianship order appoints two or more guardians, and

(b) one of the guardians dies.

(2) The order is not revoked under section 14(1)(c) on the guardian's death unless—

(a) no other guardian appointed under the order remains alive, or

(b) the only other guardian remaining alive is appointed only to act jointly with the deceased guardian.

(3) If, by virtue of this paragraph, the order is not revoked on the guardian's death, a guardian appointed under the order who remains alive must apply to the court for the variation or revocation of the order as soon as reasonably practicable after becoming aware of the death.

Expiry of period of appointment of a guardian

5

(1) This paragraph applies where—

(a) a guardianship order appoints two or more guardians, and

(b) a guardian's period of appointment expires.

(2) The order is not revoked under section 14(1)(d) if the period of appointment of another guardian appointed under the order has not expired.

(3) But section 15(2) applies in relation to a person who deals with the guardian mentioned in sub-paragraph (1)(b) after that guardian's period of appointment expires as if the guardianship order had been revoked under section 14(1)(d) on the expiry of that period.

Appointment: 31 July 2019: see SI 2019/1032, reg 3.

PART II – FINANCE ACTS ETC.

Note.

For the earlier statutes, since repealed, relating to estate duty, see Appendix I to the Twenty-fifth edition of this work; the provisions of the Finance Acts 1975 et seq, consolidated in the Inheritance Tax/Capital Transfer Tax Act 1984, are to be found in Appendix 1 to the Twenty-sixth edition of this work.

For Tables of Rates of Inheritance Tax and Capital Transfer Tax, see Appendix IV.

For Inheritance Tax and Capital Transfer Tax (Delivery of Accounts) Regulations, see Appendix II.

INHERITANCE TAX ACT 1984

(1984, c 51)

[31 July 1984]

PART I
GENERAL

Rates

A1.727

7 Rates

(1) [Subject to subsections (2), (4) and (5) below] [and to [section 8D and] Schedule 1A] the tax charged on the value transferred by a chargeable transfer made by any transferor shall be charged at the following rate or rates, that is to say—

(a) if the transfer is the first chargeable transfer made by that transferor in the period of [seven years] ending with the date of the transfer, at the rate or rates applicable to that value under the . . . Table in Schedule 1 to this Act;

(b) in any other case, at the rate or rates applicable under that Table to such part of the aggregate of—

(i) that value, and

(ii) the values transferred by previous chargeable transfers made by him in that period,

as is the highest part of that aggregate and is equal to that value.

[(2) Except as provided by subsection (4) below, the tax charged on the value transferred by a chargeable transfer made before the death of the transferor shall be charged at one half of the rate or rates referred to in subsection (1) above.]

(3) In [the Table] in Schedule 1 to this Act any rate shown in the third column is that applicable to such portion of the value concerned as exceeds the lower limit shown in the first column but does not exceed the upper limit (if any) shown in the second column.

[(4) Subject to subsection (5) below, subsection (2) above does not apply in the case of a chargeable transfer made at any time within the period of seven years ending with the death of the transferor but, in the case of a chargeable transfer made within that period but more than three years before the death, the tax charged on the value transferred shall be charged at the following percentage of the rate or rates referred to in subsection (1) above—

(a) where the transfer is made more than three but not more than four years before the death, 80 per cent;

(b) where the transfer is made more than four but not more than five years before the death, 60 per cent;

(c) where the transfer is made more than five but not more than six years before the death, 40 per cent; and

(d) where the transfer is made more than six but not more than seven years before the death, 20 per cent.

(5) If, in the case of a chargeable transfer made before the death of the transferor, the tax which would fall to be charged in accordance with subsection (4) above is less than the tax which would have been chargeable (in accordance with subsection (2) above) if the transferor had not died within the period of seven years beginning with the date of the transfer, subsection (4) above shall not apply in the case of that transfer.]

Sub-s (1): words "Subject to subsections (2), (4) and (5) below" in square brackets inserted by the Finance Act 1986, s 101(1), (3), Sch 19, Pt I, para 2, with respect to transfers of value made, and other events occurring, on or after 18 March 1986.

Sub-s (1): words in square brackets beginning with the words "and to" inserted by the Finance Act 2012, s 209, Sch 33, paras 2, 3. Date in force: this amendment has effect in cases where D's death occurs on or after 6 April 2012: see the Finance Act 2012, s 209, Sch 33, para 10(1).

Sub-s (1): words "section 8D and" in square brackets inserted by the Finance (No 2) Act 2015, s 9(1), (2). Date in force: this amendment came into force on 18 November 2015 (date of Royal Assent of the Finance (No 2) Act 2015) in the absence of any specific commencement provision.

Sub-s (1): in para (a) words "seven years" in square brackets substituted by the Finance Act 1986, s 101(1), (3), Sch 19, Pt I, para 2, with respect to transfers of value made, and other events occurring, on or after 18 March 1986.

Sub-s (1): in para (a) word omitted repealed by the Finance Act 1986, ss 101(1), (3), 114(6), Sch 19, Pt I, para 2, Sch 23, Pt X, with respect to transfers of value made, and other events occurring, on or after 18 March 1986.

Sub-s (2): substituted by the Finance Act 1986, s 101(1), (3), Sch 19, Part I, para 2, with respect to transfers of value made, and other events occurring, on or after 18 March 1986.

Sub-s (3): words in square brackets substituted by the Finance Act 1986, s 101(1), (3), Sch 19, Part I, para 2, with respect to transfers of value made, and other events occurring, on or after 18 March 1986.

Sub-ss (4), (5): inserted by the Finance Act 1986, s 101(1), (3), Sch 19, Part I, para 2, with respect to transfers of value made, and other events occurring, on or after 18 March 1986.

PART IX
MISCELLANEOUS AND SUPPLEMENTARY

Miscellaneous

* * * * *

A1.742

267 Persons treated as domiciled in United Kingdom

(1) A person not domiciled in the United Kingdom at any time (in this section referred to as "the relevant time") shall be treated for the purposes of this Act as domiciled in the United Kingdom (and not elsewhere) at the relevant time if—

(a) he was domiciled in the United Kingdom within the three years immediately preceding the relevant time, or

[(aa) he is a formerly domiciled resident for the tax year in which the relevant time falls ("the relevant tax year"), or]

[(b) he was resident in the United Kingdom—

(i) for at least fifteen of the twenty tax years immediately preceding the relevant tax year, and

(ii) for at least one of the four tax years ending with the relevant tax year].

(2) Subsection (1) above shall not apply for the purposes of section 6(2) or (3) or 48(4) above and shall not affect the interpretation of any such provision as is mentioned in section 158(6) above.

(3) Paragraph (a) of subsection (1) above shall not apply in relation to a person who (apart from this section) has not been domiciled in the United Kingdom at any time since 9th December 1974, and paragraph (b) of that subsection shall not apply in relation to a person who has not been resident there at any time since that date; and that subsection shall be disregarded—

(a) in determining whether settled property which became comprised in the settlement on or before that date is excluded property,

(b) in determining the settlor's domicile for the purposes of section 65(8) above in relation to settled property which became comprised in the settlement on or before that date, and

(c) in determining for the purposes of section 65(8) above whether the condition in section 82(3) above is satisfied in relation to such settled property.

(4) For the purposes of this section the question whether a person was resident in the United Kingdom [for any tax year] shall be determined as for the purposes of income tax, . . .

[(5) In determining for the purposes of this section whether a person is, or at any time was, domiciled in the United Kingdom, sections 267ZA and 267ZB are to be ignored.]

Sub-s (1): in para (a) word omitted repealed by the Finance (No 2) Act 2017, s 30(1)(a). Date in force: this repeal has effect in relation to times after 5 April 2017: see the Finance (No 2) Act 2017, s 30(9); for effect and transitional provisions see s 30(10)–(17).

Sub-s (1): para (aa) inserted by the Finance (No 2) Act 2017, s 30(1)(b). Date in force: this amendment has effect in relation to times after 5 April 2017: see the Finance (No 2) Act 2017, s 30(9); for effect and transitional provisions see s 30(10)–(17).

Sub-s (1): para (b) substituted by the Finance (No 2) Act 2017, s 30(1)(c). Date in force: this amendment has effect in relation to times after 5 April 2017: see the Finance (No 2) Act 2017, s 30(9); for effect and transitional provisions see s 30(10)–(17).

Sub-s (3): repealed by the Finance (No 2) Act 2017, s 30(2). Date in force: this repeal has effect in relation to times after 5 April 2017: see the Finance (No 2) Act 2017, s 30(9); for effect and transitional provisions see s 30(10)–(17).

Sub-s (4): words "for any tax year" in square brackets substituted by the Finance (No 2) Act 2017, s 30(3). Date in force: this amendment has effect in relation to times after 5 April 2017: see the Finance (No 2) Act 2017, s 30(9); for effect and transitional provisions see s 30(10)–(17).

Sub-s (4): words omitted repealed, in relation to the year 1993–1994 and subsequent years of assessment, by the Finance Act 1993, s 208(3), (5), Sch 23, Part V.

Sub-s (5): inserted by the Finance Act 2013, s 177(1), (2). Date in force: this amendment came into force on 17 July 2013 (date of Royal Assent of the Finance Act 2013) in the absence of any specific commencement provision.

RULES, ORDERS AND REGULATIONS

Contents

Part 1 – Non-Contentious Business

SI 1987/2024 The Non-Contentious Probate Rules 1987 305

SI 1991/1478 The Parental Responsibility Agreement Regulations 1991 341

SI 2004/2543 Inheritance Tax (Delivery of Accounts) (Excepted Estates) Regulations 2004 342

SI 2005/3334 Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005 343

SI 2007/1253 Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 347

Part II – Contentious Business

[Part 57 – Probate, Inheritance, Presumption of Death and Guardianship of Missing Persons] 352

Practice Direction 57 – Probate 368

Practice Direction 57B – Proceedings under the Presumption of Death Act 2013 374

Practice Direction 57C – Proceedings under the Guardianship (Missing Persons) Act 2017 377

[Part 57A – Business and Property Courts] 383

Practice Direction 57AA – Business and Property Courts 384

Practice Direction 57AB – Shorter and Flexible Trials Schemes 388

PART I – NON-CONTENTIOUS BUSINESS

THE NON-CONTENTIOUS PROBATE RULES 1987

SI 1987/2024

Note.

Shown as amended by the Non-Contentious Probate (Amendment) Rules 1991 (SI 1991/1876), Non-Contentious Probate (Amendment) Rules 1998 (SI 1998/1903), Non-Contentious Probate (Amendment) Rules 1999 (SI 1999/1015), Non-Contentious Probate (Amendment) Rules 2003 (SI 2003/185), Non-Contentious Probate (Amendment) Rules 2004 (SI 2004/2985), Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (SI

2005/2114), Adoption and Children Act (Consequential Amendments) Order 2005 (SI 2005/3504), Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007 (SI 2007/1898), Constitutional Reform Act 2005 (Commencement No 11) Order 2009 (SI 2009/1604), Non-Contentious Probate (Amendment) Rules 2009 (SI 2009/1893), Legal Services Act 2007 (Consequential Amendments) Order 2009 (SI 2009/3348), Child Arrangements Order (Consequential Amendments to Subordinate Legislation) Order 2014 (SI 2014/852), Non-Contentious Probate (Amendment) Rules 2016 (SI 2016/972), Non-Contentious Probate (Amendment) Rules 2017 (SI 2017/1034) and Non-Contentious Probate (Amendment) Rules 2018 (SI 2018/1137). New/inserted text is inside square brackets.

ARRANGEMENT OF RULES

1. Citation and commencement
2. Interpretation
3. Application of other rules
4. Applications for grants through solicitors [or probate practitioners]
4A. Alternative procedure for grants through solicitors or probate practitioners
5. Personal applications
5ZA. Online procedure for personal applications
5A. Alternative procedure for personal applications
5B. . . .
6. Duty of [district judge or] registrar on receiving application for grant
7. Grants by registrars
8. Statement of truth in support of grant
9. Grant in additional name.
10. Exhibition of wills
11. Engrossments for purposes of record
12. Evidence as to due execution of will
13. Execution of will of blind or illiterate testator
14. Evidence as to terms, condition and date of execution of will
15. Attempted revocation of will
16. Affidavit as to due execution, terms, etc, of will
17. Wills proved otherwise than under section 9 of the Wills Act 1837
18. Wills of persons on military service and seamen
19. Evidence of foreign law
20. Order of priority for grant where deceased left a will
21. Grants to attesting witnesses, etc
22. Order of priority for grant in case of intestacy
23. Order of priority for grant in pre-1926 cases
24. Right of assignee to a grant
25. Joinder of administrator
26. Additional personal representatives
27. Grants where two or more persons entitled in same degree
28. Exceptions to rules as to priority
29. Grants in respect of settled land
30. Grants where deceased died domiciled outside England and Wales
31. Grants to attorneys
32. Grants on behalf of minors
33. Grants where a minor is a co-executor
34. Renunciation of the right of a minor to a grant
35. Grants in case of mental incapacity
36. Grants to trust corporations and other corporate bodies
37. Renunciation of probate and administration
38. Notice to Crown of intended application for grant
39. Resealing under Colonial Probates Acts 1892 and 1927
40. Application for leave to sue on guarantee

41. Amendment and revocation of grant
42. Certificate of delivery of Inland Revenue affidavit
43. Standing searches
44. Caveats
45. Probate actions
46. Citations
47. Citation to accept or refuse or to take a grant
48. Citation to propound a will
49. Address for service
50. Application for order to attend for examination or for subpoena to bring in a will
51. Grants to part of an estate under section 113 of the Act
52. Grants of administration under discretionary powers of court, and grants ad colligenda bona
53. Applications for leave to swear to death
54. Grants in respect of nuncupative wills and copies of wills
55. Application for rectification of a will
56. Notice of election by surviving spouse to redeem life interest
57. Index of grant applications
58. Inspection of copies of original wills and others documents
59. Issue of copies of original wills and other documents
60. Taxation of costs
61. Power to require application to be made by summons
62. Transfer of applications
62A. Exercise of a registrar's jurisdiction by another registrar
63. Power to make orders for costs
64. Exercise of powers of judge during Long Vacation
65. Appeals from district judges or registrars
66. Service of summons
67. Notices, etc
68. Application to pending proceedings
69. Revocation of previous rules

Schedules
First Schedule—Forms
Second Schedule—Revocations

The President of the Family Division, in exercise of the powers conferred upon him by section 127 of the Senior Courts Act 1981, and section 2(5) of the Colonial Probates Act 1892, and with the concurrence of the Lord Chancellor, hereby makes the following Rules:

A2.40

1 Citation and commencement.—
These Rules may be cited as the Non-Contentious Probate Rules 1987, and shall come into force on 1st January 1988.

A2.41

2 Interpretation
(1) In these Rules, unless the context otherwise requires—

"the Act" means the [Senior Courts Act 1981];

"authorised officer" means any officer of a registry who is for the time being authorised by the President to administer any oath or to take any affidavit required for any purpose connected with his duties;

"the Crown" includes the Crown in right of the Duchy of Lancaster and the Duke of Cornwall for the time being;

["district judge" means a district judge of the Principal Registry;]

"grant" means a grant of probate or administration and includes, where the context so admits, the resealing of such a grant under the Colonial Probates Acts 1892 and 1927;

"gross value" in relation to any estate means the value of the estate without deduction for debts, incumbrances, funeral expenses or inheritance tax (or other capital tax payable out of the estate);

["judge" means a judge of the High Court;]

< . . . >

["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);]

"personal applicant" means a person other than a trust corporation who seeks to obtain a grant without employing a solicitor [or probate practitioner], and "personal application" has a corresponding meaning;

["probate practitioner" means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes a probate activity (within the meaning of that Act);]

["registrar" means the district probate registrar of the district probate registry—

(i) to which an application for a grant is made or is proposed to be made,

(ii) in rules 26, 40, 41 and 61(2), from which the grant issued, and

(iii) in rules 46, 47 and 48, from which the citation has issued or is proposed to be issued;]

"registry" means the Principal Registry or a district probate registry;

["the senior district judge" means the Senior District Judge of the Family Division or, in his absence, the senior of the district judges in attendance at the Principal Registry;]

["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;]

< . . . >

< . . . >

"the Treasury Solicitor" means the solicitor for the affairs of Her Majesty's Treasury and includes the solicitor for the affairs of the Duchy of Lancaster and the solicitor of the Duchy of Cornwall;

"trust corporation" means a corporation within the meaning of section 128 of the Act as extended by section 3 of the Law of Property (Amendment) Act 1926.

(2) A form referred to by number means the form so numbered in the First Schedule; and such forms shall be used wherever applicable, with such variation as a [district judge or] registrar may in any particular case direct or approve.

Para (1): in definition "the Act" words "Senior Courts Act 1981" in square brackets substituted by the Constitutional Reform Act 2005, s 59(5), Sch 11, Pt 1, para 1(2). Date in force: 1 October 2009: see SI 2009/1604, art 2(d).

Para (1): definition "district judge" inserted by SI 1991/1876, r 6(a).

Para (1): definition "judge" inserted by SI 1991/1876, r 6(b).

Para (1): definition "oath" (omitted) revoked by SI 2018/1137, r 2(1), (2). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (1): definition "online portal" inserted by SI 2018/1137, r 2(1), (2). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (1): in definition "personal applicant" words "or probate practitioner" in square brackets inserted by SI 1998/1903, r 3(a). Date in force: 14 September 1998: see SI 1998/1903, r 1(1).

Para (1): definition "probate practitioner" (as inserted by SI 1998/1903, r 3(b)) substituted by SI 2009/3348, art 7. Date in force: 1 January 2010 (being the day on which the Legal Services Act 2007, s 13 came into force): see SI 2009/3348, art 2(1) and SI 2009/3250, art 2(b)(i).

Para (1): definition "registrar" substituted by SI 1991/1876, r 6(c).

Para (1): definition "the senior district judge" substituted, for definition "the Senior Registrar" as originally enacted, by SI 1991/1876, r 6(d).

Para (1): definition "statement of truth" inserted by SI 2018/1137, r 2(1), (3). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (1): definition "statutory guardian" omitted revoked by SI 1991/1876, r 2.

Para (1): definition "testamentary guardian" omitted revoked by SI 1991/1876, r 2.

Para (2): words in square brackets substituted by SI 1991/1876, r 7(1).

A2.42

[3 Application of other rules—

(1) Subject to the provisions of these rules and to any enactment, the rules of the Supreme Court 1965 as they were in force immediately before 26th April 1999 shall apply, with any necessary modifications to non-contentious probate matters, and any reference in these rules to those rules shall be construed accordingly.

(2) Nothing in Order 3 of the Rules of the Supreme Court shall prevent time from running in the Long Vacation.]

Substituted by SI 1999/1015, r 2 from 26 April 1999: see SI 1999/1015, r 1.

A2.43

4 Applications for grants through solicitors [or probate practitioners].—

(1) A person applying for a grant through a solicitor [or probate practitioner] may apply at any registry or sub-registry.

[(1A) A person applying for a grant through a solicitor or probate practitioner may also apply for a grant at any registry under rule 4A if invited to do so by that registry.]

(2) Every solicitor [or probate practitioner] through whom an application for a grant is made shall give the address of his place of business within England and Wales.

Provision heading: words 'or probate practitioners' in square brackets inserted by SI 1998/1903, r 4(a) from 14 September 1998: see SI 1998/1903, r 1(1).

Para (1): words 'or probate practitioner' in square brackets inserted by SI 1998/1903, r 4(b) from 14 September 1998: see SI 1998/1903, r 1(1).

Para (1A): inserted by SI 2017/1034, r 2(1). Date in force: 20 November 2017: see SI 2017/1034, r 1(1).

Para (2): words 'or probate practitioner' in square brackets inserted by SI 1998/1903, r 4(b) from 14 September 1998: see SI 1998/1903, r 1(1).

A2.43A

[4A Alternative procedure for applications through solicitors or probate practitioners]

[(1) An application under this rule must be made by completing and sending an online application form in accordance with instructions given by the registry.

< . . . >

(3) Where original documents are required by instructions given by the registry to be sent in support of the application, they must be sent separately to the registry in accordance with such instructions.]

Inserted by SI 2017/1034, r 2(2). Date in force: 20 November 2017: see SI 2017/1034, r 1(1).

Para (2): revoked by SI 2018/1137, r 3. Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

A2.44

5 Personal applications.—

(1) A personal applicant may apply for a grant at any registry or sub-registry.

(2) Save as provided for by rule 39 a personal applicant may not apply through an agent, whether paid or unpaid, and may not be attended by any person acting or appearing to act as his adviser.

(3) No personal application shall be proceeded with if—

(a) it becomes necessary to bring the matter before the court by action or summons, [unless a judge, district judge or registrar so permits];

(b) an application has already been made by a solicitor [or probate practitioner] on behalf of the applicant and has not been withdrawn; or

(c) the [district judge or] registrar so directs.

(4) After a will has been deposited in a registry by a personal applicant, it may not be delivered to the applicant or to any other person unless in special circumstances the [district judge or] registrar so directs.

(5) A personal applicant shall produce a certificate of the death of the deceased or such other evidence of the death as [required by instructions given by the registry or as] the [district judge or] registrar may approve.

(6) A personal applicant shall supply all information necessary to enable the papers leading to the grant to be prepared [as required by instructions given by the registry].

(7) Unless the [district judge or] registrar otherwise directs, every . . . affidavit required on a personal application shall be sworn or executed by all the deponents before an authorised officer.

(8) No legal advice shall be given to a personal applicant by an officer of a registry and every such officer shall be responsible only for embodying in proper form the applicant's instructions for the grant.

[(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.]

[(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.]

Para (3): in sub-para (a) words ', unless a judge, district judge or registrar so permits' in square brackets inserted by SI 1998/1903, r 5 from 14 September 1998: see SI 1998/1903, r 1(1).

Para (3): in sub-para (b) words 'or probate practitioner' in square brackets inserted by SI 1998/1903, r 6 from 14 September 1998: see SI 1998/1903, r 1(1).

Para (3): in sub-para (c) words "district judge or" in square brackets inserted by SI 1991/1876, r 7(1).

Para (4): words "district judge or" in square brackets inserted by SI 1991/1876, r 7(1).

Para (5): words "required by instructions given by the registry or as" in square brackets inserted by SI 2018/1137, r 4(1), (2). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (6): words "as required by instructions given by the registry" in square brackets substituted by SI 2018/1137, r 4(1), (3). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (7): words "district judge or" in square brackets inserted by SI 1991/1876, r 7(1).

Para (7): words omitted revoked by SI 2018/1137, r 4(1), (4). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (9): substituted by SI 2018/1137, r 4(1), (5). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (10): substituted by SI 2018/1137, r 4(1), (6). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

A2.44ZA

[5ZA Online procedure for personal applications]

[(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.]

Inserted by SI 2018/1137, r 5. Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

A2.44A

[5A Alternative procedure for personal applications]

[(1) A personal applicant may apply for a grant at any registry under this rule if invited to do so by that registry.

(2) An application under this rule must be made by completing and sending an online application form [(paying the appropriate fee electronically)] in accordance with instructions given by the registry.

(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;

(b) . . . and

(c) paragraph (6) applies as if for the words after "information" there were substituted "required by instructions given by the registry".

. . .

Inserted by SI 2016/972, r 2(2). Date in force: 1 November 2016: see SI 2016/972, r 1(1).

Para (2): words "(paying the appropriate fee electronically)" in square brackets inserted by SI 2018/1137, r 6(1), (3). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (3): sub-para (b) revoked by SI 2018/1137, r 6(1), (4). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (4): revoked by SI 2018/1137, r 6(1), (4). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

A2.44B

5B . . .

. . .

Inserted by SI 2017/1034, r 3(2). Date in force: 20 November 2017: see SI 2017/1034, r 1(1).

Revoked by SI 2018/1137, r 7. Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

A2.45

6 Duty of [district judge or] registrar on receiving application for grant.—

(1) A [district judge or] registrar shall not allow any grant to issue until all inquiries which he may see fit to make have been answered to his satisfaction.

(2) Except with the leave of a [district judge or] registrar, no grant of probate or of administration with the will annexed shall issue within seven days of the death of the deceased and no grant of administration shall issue within fourteen days thereof.

Provision heading: words in square brackets inserted by SI 1991/1876, r 7(1).

Paras (1), (2): words in square brackets inserted by SI 1991/1876, r 7(1).

A2.46

7 Grants by registrars.—

(1) No grant shall be made by a . . . registrar—

(a) in any case in which there is contention, until the contention is disposed of; or

(b) in any case in which it appears to him that a grant ought not to be made without the directions of a judge or a [district judge].

(2) In any case in which paragraph (1)(b) applies, the . . . registrar shall send a statement of the matter in question to the Principal Registry for directions.

(3) A [district judge] may either confirm that the matter be referred to a judge and give directions accordingly or may direct the . . . registrar to proceed with the matter in accordance with such instructions as are deemed necessary, which may include a direction to take no further action in relation to the matter.

Paras (1), (3): words omitted revoked, and words in square brackets substituted, by SI 1991/1876, r 7(2), (3).

Para (2): words omitted revoked by SI 1991/1876, r 7(2).

A2.47

8 [Statement of truth] in support of grant

(1) Every application for a grant other than one to which rule 39 applies shall be [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] by an oath by the applicant in the form applicable to the circumstances of the case, and by such other papers as the [district judge or] registrar may require.

(2) Unless otherwise directed by a [district judge or] registrar, [the applicant must state in the application] where the deceased died domiciled.

(3) Where the deceased died on or after 1st January 1926, [the applicant must state in the application] whether or not, to the best of the applicant's knowledge, information and belief, there was land vested in the deceased which was settled previously to his death and not by his will and which remained settled land notwithstanding his death.

(4) On an application for a grant of administration [the applicant must state in the application] in what manner all persons having a prior right to a grant have been cleared off and whether any minority or life interest arises under the will or intestacy.

Provision heading: words "Statement of truth" in square brackets substituted by SI 2018/1137, r 8(1), (2). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Paras (1), (2): words in square brackets inserted by SI 1991/1876, r 7(1).

Para (1): words from "by— (a) a" to "the online portal" in square brackets substituted by SI 2018/1137, r 8(1), (3). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (2): words "the applicant must state in the application" in square brackets substituted by SI 2018/1137, r 8(1), (4). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (3): words "the applicant must state in the application" in square brackets substituted by SI 2018/1137, r 8(1), (4). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (4): words "the applicant must state in the application" in square brackets substituted by SI 2018/1137, r 8(1), (4). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

A2.48

9 Grant in additional name.—

Where it is sought to describe the deceased in a grant by some name in addition to his true name, the applicant [must state in the application] the true name of the deceased and shall specify some part of the estate which was held in the other name, or give any other reason for the inclusion of the other name in the grant.

Words "must state in the application" in square brackets substituted by SI 2018/1137, r 9. Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

A2.49

10 Exhibition of wills.—

Subject to paragraph (2) below, every will in respect of which an application for a grant is made—

(a) . . .

(b) shall be exhibited to any affidavit which may be required under these Rules as to the validity, terms, condition or date of execution of the will.

(2) The [district judge or] registrar may allow a facsimile copy of a will to be . . . exhibited in lieu of the original document.

Provision heading: substituted by SI 2018/1137, r 10(1), (2). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (1): sub-para (a) revoked by SI 2018/1137, r 10(1), (3). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (2): words in square brackets inserted by SI 1991/1876, r 7(1).

Para (2): words omitted revoked by SI 2018/1137, r 10(1), (4). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

A2.50

11 Engrossment for purposes of record.—

(1) Where the [district judge or] registrar considers that in any particular case a facsimile copy of the original will would not be satisfactory for purposes of record, he may require an engrossment suitable for facsimile reproduction to be lodged.

(2) Where a will—

(a) contains alterations which are not to be admitted to proof; or

(b) has been ordered to be rectified by virtue of section 20(1) of the Administration of Justice Act 1982,

there shall be lodged an engrossment of the will in the form in which it is to be proved.

(3) Any engrossment lodged under this rule shall reproduce the punctuation, spacing and division into paragraphs of the will and shall follow continuously from page to page on both sides of the paper.

Para (1): words in square brackets inserted by SI 1991/1876, r 7(1).

A2.51

12 Evidence as to due execution of will.—

(1) Subject to paragraphs (2) and (3) below, where a will contains no attestation clause or the attestation clause is insufficient, or where it appears to the [district judge or] registrar that there is doubt about the due execution of the will, he shall before admitting it to proof require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present when the will was executed; and if the [district judge or] registrar, after considering the evidence, is satisfied that the will was not duly executed, he shall refuse probate and mark the will accordingly.

(2) If no affidavit can be obtained in accordance with paragraph (1) above, the [district judge or] registrar may accept evidence on affidavit from any person he may think fit to show that the signature on the will is in the handwriting of the deceased, or of any other matter which may raise a presumption in favour of due execution of the will, and may if he thinks fit require that notice of the application be given to any person who may be prejudiced by the will.

(3) A [district judge or] registrar may accept a will for proof without evidence as aforesaid if he is satisfied that the distribution of the estate is not thereby affected.

Para (3): words in square brackets inserted by SI 1991/1876, r 7(1).

A2.52

13 Execution of will of blind or illiterate testator.—

Before admitting to proof a will which appears to have been signed by a blind or illiterate testator or by another person by direction of the testator, or which for any other reason raises doubt as to the testator having had knowledge of the contents of the will at the time of its execution, the [district judge or] registrar shall satisfy himself that the testator had such knowledge.

Words in square brackets inserted by SI 1991/1876, r 7(1).

A2.53

14 Evidence as to terms, condition and date of execution of will.—

(1) Subject to paragraph (2) below, where there appears in a will any obliteration, interlineation, or other alteration which is not authenticated in the manner prescribed by section 21 of the Wills Act 1837, or by the re-execution of the will or by the execution of a codicil, the [district judge or] registrar shall require evidence to show whether the alteration was present at the time the will was executed and shall give directions as to the form in which the will is to be proved.

(2) The provisions of paragraph (1) above shall not apply to any alteration which appears to the [district judge or] registrar to be of no practical importance.

(3) If a will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the will, the [district judge or] registrar shall require the document to be produced and may call for such evidence in regard to the incorporation of the document as he may think fit.

(4) Where there is a doubt as to the date on which a will was executed, the [district judge or] registrar may require such evidence as he thinks necessary to establish the date.

Paras (1), (4): words in square brackets inserted by SI 1991/1876, r 7(1).

A2.54

15 Attempted revocation of will.—

Any appearance of attempted revocation of a will by burning, tearing, or otherwise destroying and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for to the [district judge's or] registrar's satisfaction.

Words in square brackets inserted by SI 1991/1876, r 7(5).

A2.55

16 Affidavit as to due execution, terms, etc, of will.—

A [district judge or] registrar may require an affidavit 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 by an attesting witness or other person present at the time of the execution of a will the deponent shall depose to the manner in which the will was executed.

Words in square brackets inserted by SI 1991/1876, r 7(1).

A2.56

17 Wills proved otherwise than under section 9 of the Wills Act 1837.—

(1) Rules 12 to 15 shall apply only to a will that is to be established by reference to section 9 of the Wills Act 1837 (signing and attestation of wills).

(2) A will that is to be established otherwise than as described in paragraph (1) of this rule may be so established upon the [district judge or] registrar being satisfied as to its terms and validity, and includes (without prejudice to the generality of the foregoing)—

(a) any will to which rule 18 applies; and

(b) any will which, by virtue of the Wills Act 1963, is to be treated as properly executed if executed according to the internal law of the territory or state referred to in section 1 of that Act.

Para (2): words in square brackets inserted by SI 1991/1876, r 7(1).

A2.57

18 Wills of persons on military service and seamen.—

Where the deceased died domiciled in England and Wales and it appears to the [district judge or] registrar that there is prima facie evidence that a will is one to which section 11 of the Wills Act 1837 applies, the will may be admitted to proof if the registrar is satisfied that it was signed by the testator or, if unsigned, that it is in the testator's handwriting.

Words in square brackets inserted by SI 1991/1876, r 7(1).

A2.58

19 Evidence of foreign law.—

Where evidence as to the law of any country or territory outside England and Wales is required on any application for a grant, the [district judge or] registrar may accept—

(a) an affidavit from any person whom, having regard to the particulars of his knowledge or experience given in the affidavit, he regards as suitably qualified to give expert evidence of the law in question; or

(b) a certificate by, or an act before, a notary practising in the country or territory concerned.

Words in square brackets inserted by SI 1991/1876, r 7(1).

A2.59

20 Order of priority for grant where deceased left a will.—
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) below);

(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 [district judge or] 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 [district judge or] 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 [district judge or] 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.

Paras (c), (e): words in square brackets inserted by SI 1991/1876, r 7(1).

A2.60

21 Grants to attesting witnesses, etc.
Where a gift to any person fails by reason of section 15 of the Wills Act 1837, such person shall not have any right to a grant as a beneficiary named in the will, without prejudice to his right to a grant in any other capacity.

A2.61

22 Order of priority for grant in case of intestacy.—
(1) Where the deceased died on or after 1st 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 [spouse or civil partner];

(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 paragraph (5) of rule 27, the personal representative of a person in any of the classes mentioned in paragraph (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-paragraphs (b) to (h) of paragraph (1) above shall be preferred to the personal representative of a spouse [or civil partner] 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.

Para (1): in sub-para (a) words 'spouse or civil partner' in square brackets substituted by SI 2005/2114, art 2(6), Sch 6, para 2(1), (2) from 5 December 2005: see SI 2005/2114, art 1.

Para (4): words 'or a civil partner' in square brackets inserted by SI 2005/2114, art 2(6), Sch 6, para 2(1), (3) from 5 December 2005: see SI 2005/2114, art 1.

A2.62

23 Order of priority for grant in pre-1926 cases.—

Where the deceased died before 1 January 1926, the person or persons entitled to a grant shall, subject to the provisions of any enactment, be determined in accordance with the principles and rules under which the court would have acted at the date of death.

A2.63

24 Right of assignee to a grant.—

(1) Where all the persons entitled to the estate of the deceased (whether under a will or on intestacy) have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall replace, in the order of priority for a grant of administration, the assignor or, if there are two or more assignors, the assignor with the highest priority.

(2) Where there are two or more assignees, administration may be granted with the consent of the others to any one or more (not exceeding four) of them.

(3) In any case where administration is applied for by an assignee the original instrument of assignment shall be produced and a copy of the same lodged in the registry.

A2.64

25 Joinder of administrator.—

(1) A person entitled in priority to a grant of administration may, without leave, apply for a grant with a person entitled in a lower degree, provided that there is no

other person entitled in a higher degree to the person to be joined, unless every other such person has renounced.

(2) Subject to paragraph (3) below, an application for leave to join with a person entitled in priority to a grant of administration a person having no right or no immediate right thereto shall be made to a [district judge or] registrar, and shall be supported by an affidavit by the person entitled in priority, the consent of the person proposed to be joined as administrator and such other evidence as the [district judge or] registrar may direct.

(3) Unless a [district judge or] registrar otherwise directs, there may without any such application be joined with a person entitled in priority to administration—

(a) any person who is nominated under paragraph (3) of rule 32 or paragraph (3) of rule 35;

(b) a trust corporation.

Paras (2), (3): words in square brackets inserted by SI 1991/1876, r 7(1).

A2.65

26 Additional personal representatives.—

(1) An application under section 114(4) of the Act to add a personal representative shall be made to a [district judge or] registrar and shall be supported by an affidavit by the applicant, the consent of the person proposed to be added as personal representative and such other evidence as the [district judge or] registrar may require.

(2) On any such application the [district judge or] registrar may direct that a note shall be made on the original grant of the addition of a further personal representative, or he may impound or revoke the grant or make such other order as the circumstances of the case may require.

Words in square brackets inserted by SI 1991/1876, r 7(1).

A2.66

27 Grants where two or more persons entitled in same degree.—

[(1) Subject to paragraphs (1A), (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, notice of the application shall be given to the executor or executors to whom power is to be reserved; and unless the [district judge or] registrar otherwise directs, [the applicant must state in the application] that such notice has been given.

(1A) Where power is to be reserved to executors who are . . . partners in a firm, . . . notice need not be given to them under paragraph (1) above if probate is applied for by another partner in that firm.]

(2) Where power is to be reserved to partners of a firm, notice for the purposes of paragraph (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 [district judge or] registrar may dispense with the giving of notice under paragraph (1) above if he is satisfied that the giving of such a notice is impracticable or would result in unreasonable delay or expense.

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

(5) Unless a [district judge or] registrar otherwise directs, administration shall be granted to a person of full age entitled thereto in preference to a guardian of a minor, and to a living person entitled thereto in preference to the personal representative of a deceased person.

(6) A dispute between persons entitled to a grant in the same degree shall be brought by summons before a [district judge or] registrar.

(7) The issue of a summons under this rule in a registry shall be noted forthwith in the index of pending grant applications.

(8) If the issue of a summons under this rule is known to the [district judge or] registrar, he shall not allow any grant to be sealed until such summons is finally disposed of.

Paras (1), (1A): substituted for original para (1) by SI 1991/1876, r 8(1).

Para (1): words "the applicant must state in the application" in square brackets substituted by SI 2018/1137, r 11. Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (1A): words omitted revoked by SI 1998/1903, r 7(1) from 14 September 1998: see SI 1998/1903, r 1(1).

Paras (3), (5), (6), (8): words in square brackets inserted by SI 1991/1876, r 7(1).

Para (7): substituted by SI 1998/1903, r 7(2) from 14 September 1998: see SI 1998/1903, r 1(1).

A2.67

28 Exceptions to rules as to priority.—

(1) Any person to whom a grant may or is required to be made under any enactment shall not be prevented from obtaining such a grant notwithstanding the operation of rules 20, 22, 25 or 27.

(2) Where the deceased died domiciled outside England and Wales rules 20, 22, 25 or 27 shall not apply except in a case to which paragraph (3) of rule 30 applies.

A2.68

[29 Grants in respect of settled land.—

(1) In this rule 'settled land' means land vested in the deceased which was settled prior to his death and not by his will and which remained settled land notwithstanding his death.

(2) The person or persons entitled to a grant of administration limited to settled land shall be determined in accordance with the following order of priority:

(i) the special executors in regard to settled land constituted by section 22 of the Administration of Estates Act 1925;

(ii) the trustees of the settlement at the time of the application for the grant; and

(iii) the personal representatives of the deceased.

(3) Where there is settled land and a grant is made in respect of the free estate only, the grant shall expressly exclude the settled land.]

Substituted by SI 1991/1876, r 9.

A2.69

30 Grants where deceased died domiciled outside England and Wales.—

(1) Subject to paragraph (3) below, where the deceased died domiciled outside England and Wales, [a district judge or registrar may order that a grant, limited in such way as the district judge or registrar may direct,] do issue to any of the following persons—

(a) to the person entrusted with the administration of the estate by the court having jurisdiction at the place where the deceased died domiciled; or

(b) where there is no person so entrusted, to the person beneficially entitled to the estate by the law of the place where the deceased died domiciled or, if there is more than one person so entitled, to such of them as the [district judge or] registrar may direct; or

(c) if in the opinion of the [district judge or] registrar the circumstances so require, to such person as the [district judge or] registrar may direct.

(2) A grant made under paragraph (1)(a) or (b) above may be issued jointly with such person as the [district judge or] registrar may direct if the grant is required to be made to not less than two administrators.

(3) Without any order made under paragraph (1) above—

(a) probate of any will which is admissible to proof may be granted—

(i) if the will is in the English or Welsh language, to the executor named therein; or

(ii) if the will describes the duties of a named person in terms sufficient to constitute him executor according to the tenor of the will, to that person; and

(b) where the whole or substantially the whole of the estate in England and Wales consists of immovable property, a grant in respect of the whole estate may be made in accordance with the law which would have been applicable if the deceased had died domiciled in England and Wales.

Para (1): first words in square brackets substituted and other words in square brackets inserted by SI 1991/1876, rr 7(1), 10.

Para (2): words in square brackets inserted by SI 1991/1876, r 7(1).

A2.70

31 Grants to attorneys.—

(1) Subject to paragraphs (2) and (3) below, the lawfully constituted attorney of a person entitled to a grant may apply for administration for the use and benefit of the donor, and such grant shall be limited until further representation be granted, or in such other way as the [district judge or] registrar may direct.

(2) Where the donor referred to in paragraph (1) above is an executor, notice of the application shall be given to any other executor unless such notice is dispensed with by the [district judge or] registrar.

[(3) Where the donor referred to in paragraph (1) above lacks capacity within the meaning of the Mental Capacity Act 2005 (c 9) and the attorney is acting under an enduring power of attorney or lasting power of attorney, the application shall be made in accordance with rule 35.]

Paras (1), (2): words in square brackets inserted by SI 1991/1876, r 7(1).

Para (3): substituted by SI 2007/1898, art 6, Sch 1, para 13(1), (2) from 1 October 2007: see SI 2007/1898, art 1.

A2.71

32 Grants on behalf of minors

(1) Where a person to whom a grant would otherwise be made is a minor, administration for his use and benefit, limited until he attains the age of eighteen years, shall, unless otherwise directed, and subject to paragraph (2) of this rule, be granted to

[(a) a parent of the minor who has, or is deemed to have, parental responsibility for him in accordance with—

[(i) section 2(1), 2(1A), 2(2), 2(2A), 4 or 4ZA of the Children Act 1989,]

(ii) paragraph 4 or 6 of Schedule 14 to that Act, or

(iii) an adoption order within the meaning of section 12(1) of the Adoption Act 1976 [or section 46(1) of the Adoption and Children Act 2002], or

[(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(a) where the

court has made a [child arrangements order under section 8 of that Act which names that person as a person with whom the minor is to live]; or]

[(ab) a step-parent of the minor who has parental responsibility for him in accordance with section 4A of the Children Act 1989; or]

(b) a guardian of the minor who is appointed, or deemed to have been appointed, in accordance with section 5 of the Children Act 1989 or in accordance with paragraph 12, 13 or 14 of Schedule 14 to that Act]; [or]

[(ba) a special guardian of the minor who is appointed in accordance with section 14A of the Children Act 1989; or

(bb) an adoption agency which has parental responsibility for the minor by virtue of section 25(2) of the Adoption and Children Act 2002; or]

[(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;]

provided that where the minor is sole executor and has no interest in the residuary estate of the deceased, administration for the use and benefit of the minor limited as aforesaid, shall, unless a [district judge or] registrar otherwise directs, be granted to the person entitled to the residuary estate.

[(2) A district judge or registrar may by order appoint a person to obtain administration for the use and benefit of the minor, limited as aforesaid, in default of, or jointly with, or to the exclusion of, any person mentioned in paragraph (1) of this rule; and the person intended shall file an affidavit in support of his application to be appointed.]

(3) Where there is only one person competent and willing to take a grant under the foregoing provisions of this rule, such person may, unless a [district judge or] registrar otherwise directs, nominate any fit and proper person to act jointly with him in taking the grant.

Para (1): sub-paras (a), (b) substituted by SI 1991/1876, r 3.

Para (1): sub-para (a)(i) substituted by SI 2009/1893, rr 2, 3. Date in force: 1 September 2009: see SI 2009/1893, r 1.

Para (1): in sub-para (a)(iii) words "or section 46(1) of the Adoption and Children Act 2002" in square brackets inserted by SI 2005/3504, art 4(a). Date in force: 30 December 2005: see SI 2005/3504, art 1.

Para (1): sub-para (aa) inserted by SI 1998/1903, r 8(1). Date in force: 14 September 1998: see SI 1998/1903, r 1(1).

Para (1): in sub-para (aa) words from "child arrangements order" to "is to live" in square brackets substituted by SI 2014/852, art 3. Date in force: 22 April 2014: see SI 2014/852, art 1.

Para (1): sub-para (ab) inserted by SI 2005/3504, art 4(b). Date in force: 30 December 2005: see SI 2005/3504, art 1.

Para (1): in sub-para (b) word "or" in square brackets inserted by SI 1998/1903, r 8(2). Date in force: 14 September 1998: see SI 1998/1903, r 1(1).

Para (1): sub-paras (ba), (bb) inserted by SI 2005/3504, art 4(c). Date in force: 30 December 2005: see SI 2005/3504, art 1.

Para (1): sub-para (c) inserted by SI 1998/1903, r 8(3). Date in force: 14 September 1998: see SI 1998/1903, r 1(1).

Para (1): words "district judge or" in square brackets inserted by SI 1991/1876, r 7(1).

Para (2): substituted by SI 1991/1876, r 4.

Para (3): words in square brackets inserted by SI 1991/1876, r 7(1).

A2.72

33 Grants where a minor is a co-executor.—

(1) Where a minor is appointed executor jointly with one or more other executors, probate may be granted to the executor or executors not under disability with power reserved to the minor executor, and the minor executor shall be entitled to apply for probate on attaining the age of eighteen years.

(2) Administration for the use and benefit of a minor executor until he attains the age of eighteen years may be granted under rule 32 if, and only if, the executors who are not under disability renounce or, on being cited to accept or refuse a grant, fail to make an effective application therefor.

A2.73

34 Renunciation of the right of a minor to a grant.—

(1) The right of a minor executor to probate on attaining the age of eighteen years may not be renounced by any person on his behalf.

(2) The right of a minor to administration may be renounced only by a person [appointed] under paragraph (2) of rule 32, and authorised by the [district judge or] registrar to renounce on behalf of the minor.

Para (2): first word in square brackets substituted and second words in square brackets inserted by SI 1991/1876, rr 5, 7(1).

A2.74

35 Grants in case of [lack of mental capacity].—

(1) Unless a [district judge or] registrar otherwise directs, no grant shall be made under this rule unless all persons entitled in the same degree as the [person who lacks capacity within the meaning of the Mental Capacity Act 2005] referred to in paragraph (2) below have been cleared off.

(2) Where a [district judge or] registrar is satisfied that a person entitled to a grant [lacks capacity within the meaning of the Mental Capacity Act 2005 to manage] his affairs, administration for his use and benefit, limited until further representation be granted or in such other way as the [district judge or] registrar may direct, may be granted in the following order of priority—

(a) to the person authorised by the Court of Protection to apply for a grant;

(b) where there is no person so authorised, to the lawful attorney of the [person who lacks capacity within the meaning of the Mental Capacity Act 2005] acting under a registered enduring power of attorney [or lasting power of attorney];

(c) where there is no such attorney entitled to act, or if the attorney shall renounce administration for the use and benefit of the [person who lacks capacity within the meaning of the Mental Capacity Act 2005], to the person entitled to the residuary estate of the deceased.

(3) Where a grant is required to be made to not less than two administrators, and there is only one person competent and willing to take a grant under the foregoing provisions of this rule, administration may, unless a [district judge or] registrar otherwise directs, be granted to such person jointly with any other person nominated by him.

(4) Notwithstanding the foregoing provisions of this rule, administration for the use and benefit of the [person who lacks capacity within the meaning of the Mental Capacity Act 2005] may be granted to such [other person] as the [district judge or] registrar may by order direct.

(5) [Unless the applicant is the person authorised in paragraph (2)(a) above,] notice of an intended application under this rule shall be given to the Court of Protection.

Provision heading: words 'lack of mental capacity' in square brackets substituted by SI 2007/1898, art 6, Sch 1, para 13(1), (3) from 1 October 2007: see SI 2007/1898, art 1.

Para (1): words 'district judge or' in square brackets inserted by SI 1991/1876, r 7(1).

Para (1): words 'person who lacks capacity within the meaning of the Mental Capacity Act 2005' in square brackets substituted by SI 2007/1898, art 6, Sch 1, para 13(1), (4) from 1 October 2007: see SI 2007/1898, art 1.

Para (2): words 'district judge or' in square brackets in both places they occur inserted by SI 1991/1876, r 7(1).

Para (2): words 'lacks capacity within the meaning of the Mental Capacity Act 2005 to manage' in square brackets substituted by SI 2007/1898, art 6, Sch 1, para 13(1), (5)(a) from 1 October 2007: see SI 2007/1898, art 1.

Para (2): in sub-paras (b), (c) words 'person who lacks capacity within the meaning of the Mental Capacity Act 2005' in square brackets substituted by virtue of SI 2007/1898, art 6, Sch 1, para 13(1), (5)(b) from 1 October 2007: see SI 2007/1898, art 1.

Para (2): in sub-para (b) words 'or lasting power of attorney' in square brackets inserted by SI 2007/1898, art 6, Sch 1, para 13(1), (5)(c) from 1 October 2007: see SI 2007/1898, art 1.

Para (3): words 'district judge or' in square brackets inserted by SI 1991/1876, r 7(1).

Para (4): words 'person who lacks capacity within the meaning of the Mental Capacity Act 2005' in square brackets substituted by SI 2007/1898, art 6, Sch 1, para 13(1), (6) from 1 October 2007: see SI 2007/1898, art 1.

Para (4): words 'other person' in square brackets substituted by SI 1998/1903, r 9(1) from 14 September 1998: see SI 1998/1903, r 1(1).

Para (4): words 'district judge or' in square brackets inserted by SI 1991/1876, r 7(1).

Para (5): words from 'Unless' to 'paragraph (2)(a) above,' in square brackets inserted by SI 1998/1903, r 9(2) from 14 September 1998: see SI 1998/1903, r 1(1).

A2.75

36 Grants to trust corporations and other corporate bodies.—

(1) An application for a grant to a trust corporation shall be made through one of its officers, and such officer [must state in the application] that the corporation is a trust corporation as defined by these Rules and that it has power to accept a grant.

(2)

(a) Where the trust corporation is the holder of an official position, any officer whose name is included on a list filed with the [senior district judge] of persons authorised to make affidavits and sign documents on behalf of the office holder may act as the officer through whom the holder of that official position applies for the grant.

(b) In all other cases a certified copy of the resolution of the trust corporation authorising the officer to make the application shall be lodged, or [the application must include a statement] that such certified copy has been filed with the [senior district judge], that the officer is therein identified by the position he holds, and that such resolution is still in force.

(3) A trust corporation may apply for administration otherwise than as a beneficiary or the attorney of some person, and on any such application there shall be lodged the consents of all persons entitled to a grant and of all persons interested in the residuary estate of the deceased save that the [district judge or] registrar may dispense with any such consents as aforesaid on such terms, if any, as he may think fit.

(4)

(a) Subject to sub-paragraph (d) below, where a corporate body would, if an individual, be entitled to a grant but is not a trust corporation as defined by these Rules, administration for its use and benefit, limited until further representation be granted, may be made to its nominee or to its lawfully constituted attorney.

(b) A copy of the resolution appointing the nominee or the power of attorney (whichever is appropriate) shall be lodged, and such resolution or power of attorney shall be sealed by the corporate body, or be otherwise authenticated to the district judge's or registrar's satisfaction.

(c) The nominee or attorney [must state in the application] that the corporate body is not a trust corporation as defined by these Rules.

(d) The provisions of paragraph (4)(a) above shall not apply where a corporate body is appointed executor jointly with an individual unless the right of the individual has been cleared off.

Para (1): words "must state in the application" in square brackets substituted by SI 2018/1137, r 12(1), (2). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (2): in sub-para (b) words "the application must include a statement" in square brackets substituted by SI 2018/1137, r 12(1), (3). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (2): words in square brackets substituted by SI 1991/1876, r 7(4).

Paras (3), (4): words in square brackets inserted by SI 1991/1876, r 7(1), (5).

Para (4): in sub-para (c) words "must state in the application" in square brackets substituted by SI 2018/1137, r 12(1), (2). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

A2.76

37 Renunciation of probate and administration.—

(1) Renunciation of probate by an executor shall not operate as renunciation of any right which he may have to a grant of administration in some other capacity unless he expressly renounces such right.

(2) Unless a [district judge or] registrar otherwise directs, no person who has renounced administration in one capacity may obtain a grant thereof in some other capacity.

[(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.]

(3) A renunciation of probate or administration may be retracted at any time with the leave of a [district judge or] registrar; provided that only in exceptional circumstances may leave be given to an executor to retract a renunciation of probate after a grant has been made to some other person entitled in a lower degree.

(4) A direction or order giving leave under this rule may be made either by the registrar of a district probate registry where the renunciation is filed or by [a district judge].

Paras (2), (3): words in square brackets inserted by SI 1991/1876, r 7(1).

Para (2A): inserted by SI 1998/1903, r 10 from 14 September 1998: see SI 1998/1903, r 1(1).

Para (4): words in square brackets substituted by SI 1991/1876, r 7(3).

A2.77

38 Notice to Crown of intended application for grant.—

In any case in which it appears that the Crown is or may be beneficially interested in the estate of a deceased person, notice of intended application for a grant shall be given by the applicant to the Treasury Solicitor, and the [district judge or] registrar may direct that no grant shall issue within 28 days after the notice has been given.

Words in square brackets inserted by SI 1991/1876, r 7(1).

A2.78

39 Resealing under Colonial Probates Acts 1892 and 1927.—

(1) An application under the Colonial Probates Acts 1892 and 1927 for the resealing of probate or administration granted by the court of a country to which those Acts apply may be made by the person to whom the grant was made or by any person authorised in writing to apply on his behalf.

(2) On any such application an Inland Revenue affidavit or account shall be lodged.

(3) Except by leave of a [district judge or] registrar, no grant shall be resealed unless it was made to such a person as is mentioned in sub-paragraph (a) or (b) of paragraph (1) of rule 30 or to a person to whom a grant could be made under sub-paragraph (a) of paragraph (3) of that rule.

(4) No limited or temporary grant shall be resealed except by leave of a [district judge or] registrar.

(5) Every grant lodged for resealing shall include a copy of any will to which the grant relates or shall be accompanied by a copy thereof certified as correct by or under the authority of the court by which the grant was made, and where the copy of the grant required to be deposited under subsection (1) of section 2 of the Colonial Probates Act 1892 does not include a copy of the will, a copy thereof shall be deposited in the registry before the grant is resealed.

(6) The [district judge or] registrar shall send notice of the resealing to the court which made the grant.

(7) Where notice is received in the Principal Registry of the resealing of a grant issued in England and Wales, notice of any amendment or revocation of the grant shall be sent to the court by which it was resealed.

Paras (3), (4), (6): words in square brackets inserted by SI 1991/1876, r 7(1).

A2.79

40 Application for leave to sue on guarantee.—

An application for leave under section 120(3) of the Act or under section 11(5) of the Administration of Estates Act 1971 to sue a surety on a guarantee given for the purposes of either of those sections shall, unless the [district judge or] registrar otherwise directs under rule 61, be made by summons to a [district judge or] registrar and notice of the application shall be served on the administrator, the surety and any co-surety.

Words in square brackets inserted by SI 1991/1876, r 7(1).

A2.80

41 Amendment and revocation of grant.—

(1) Subject to paragraph (2) below, if a [district judge or] registrar is satisfied that a grant should be amended or revoked he may make an order accordingly.

(2) Except on the application or with the consent of the person to whom the grant was made, the power conferred in paragraph (1) above shall be exercised only in exceptional circumstances.

Para (1): words in square brackets inserted by SI 1991/1876, r 7(1).

A2.81

42 Certificate of delivery of Inland Revenue affidavit.—

Where the deceased died before 13th March 1975 the certificate of delivery of an Inland Revenue affidavit required by section 30 of the Customs and Inland Revenue Act 1881 to be borne by every grant shall be in Form 1.

A2.82

43 Standing searches.—

[(1) Any person who wishes to be notified of the issue of a grant may enter a standing search for the grant [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],

a notice in Form 2.]

(2) A person who has entered a standing search will be sent an office copy of any grant which corresponds with the particulars given on the completed Form 2 and which—

(a) issued not more than twelve months before the entry of the standing search; or

(b) issues within a period of six months after the entry of the standing search.

(3)

(a) Where an applicant wishes to extend the said period of six months, he or his solicitor [or probate practitioner] may lodge at, or send by post [or by electronic means (paying the appropriate fee electronically) using an address provided for the purpose,] to, [the registry or sub-registry at which the standing search was entered] written application for extension.

(b) An application for extension as aforesaid must be lodged, or received by post [or electronic means], within the last month of the said period of six months, and the standing search shall thereupon be effective for an additional period of six months from the date on which it was due to expire.

(c) A standing search which has been extended as above may be further extended by the filing of a further application for extension subject to the same conditions as set out in sub-paragraph (b) above.

Para (1): substituted by SI 1991/1876, r 11(1).

Para (1): words from "by— (a) lodging" to "for the purpose" in square brackets substituted by SI 2018/1137, r 13(1), (2). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (3): in sub-para (a) words 'or probate practitioner' in square brackets inserted by SI 1998/1903, r 6 from 14 September 1998: see SI 1998/1903, r 1(1).

Para (3): in sub-para (a) words from "or by electronic" to "for the purpose," in square brackets inserted by SI 2018/1137, r 13(1), (3). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (3): in sub-para (a) words from "the registry" to "search was entered" in square brackets substituted by SI 1991/1876, r 11(2).

Para (3): in sub-para (b) words "or electronic means" in square brackets inserted by SI 2018/1137, r 13(1), (4). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

A2.83

44 Caveats.—

(1) Any person who wishes to show cause against the sealing of a grant may enter a caveat in any registry or sub-registry, and the [district judge or] registrar shall not allow any grant to be sealed (other than a grant ad colligenda bona or a grant under section 117 of the Act) if he has knowledge of an effective caveat; provided that no caveat shall prevent the sealing of a grant on the day on which the caveat is entered.

(2) Any person wishing to enter a caveat (in these Rules called 'the caveator'), or a solicitor [or probate practitioner] on his behalf, may effect entry of a caveat—

(a) by completing Form 3 in the appropriate book at any registry or sub-registry; or

(b) [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,]

a notice in Form 3 to any registry or sub-registry and the proper officer shall provide an acknowledgement of the entry of the caveat.

(3)

(a) Except as otherwise provided by this rule or by rules 45 or 46, a caveat shall be effective for a period of six months from the date of entry thereof, and where a caveator wishes to extend the said period of six months, he or his solicitor [or probate practitioner] [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],

the registry or sub-registry at which the caveat was entered a written application for extension.

(b) An application for extension as aforesaid must be lodged, or received by post [or by electronic means], within the last month of the said period of six months, and the caveat shall thereupon (save as otherwise provided by this rule) be effective for an additional period of six months from the date on which it was due to expire.

(c) A caveat which has been extended as above may be further extended by the filing of a further application for extension subject to the same conditions as set out in sub-paragraph (b) above.

[(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.]

(5) Any person claiming to have an interest in the estate may cause to be issued from the [nominated registry] a warning in Form 4 against the caveat, and the person warning shall state his interest in the estate of the deceased and shall require the caveator to give particulars of any contrary interest in the estate; and the warning or a copy thereof shall be served on the caveator forthwith.

(6) A caveator who has no interest contrary to that of the person warning, but who wishes to show cause against the sealing of a grant to that person, may within [14] days of service of the warning upon him (inclusive of the day of such service), or at any time thereafter if no affidavit has been filed under paragraph (12) below, issue and serve a summons for directions.

(7) On the hearing of any summons for directions under paragraph (6) above the [district judge or] registrar may give a direction for the caveat to cease to have effect.

(8) Any caveat in force when a summons for directions is issued shall remain in force until the summons has been disposed of unless a direction has been given under paragraph (7) above or until it is withdrawn under paragraph (11) below.

(9) The issue of a summons under this rule shall be notified forthwith to the [nominated registry].

(10) A caveator having an interest contrary to that of the person warning may within [14] days of service of the warning upon him (inclusive of the day of such service) or at any time thereafter if no affidavit has been filed under paragraph (12) below, enter

an appearance in the [nominated registry] by filing Form 5; and he shall serve forthwith on the person warning a copy of Form 5 sealed with the seal of the court.

(11) A caveator who has not entered an appearance to a warning may at any time withdraw his caveat by giving notice at the registry or sub-registry at which it was entered, and the caveat shall thereupon cease to have effect; and, where the caveat has been so withdrawn, the caveator shall forthwith give notice of withdrawal to the person warning.

(12) If no appearance has been entered by the caveator or no summons has been issued by him under paragraph (6) of this rule, the person warning may at any time after [14] days of service of the warning upon the caveator (inclusive of the day of such service) file an affidavit in the [nominated registry] as to such service and the caveat shall thereupon cease to have effect provided that there is no pending summons under paragraph (6) of this rule.

(13) Unless a [district judge . . . a registrar] by order made on summons otherwise directs, any caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action.

(14) Except with the leave of a [district judge] [or registrar], no further caveat may be entered by or on behalf of any caveator whose caveat is either in force or has ceased to have effect under paragraphs (7) or (12) of this rule or under rule 45(4) or rule 46(3).

[(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.]

Para (1): words 'district judge or' in square brackets inserted by SI 1991/1876, r 7(1).

Para (2): words 'or probate practitioner' in square brackets inserted by SI 1998/1903, r 6 from 14 September 1998: see SI 1998/1903, r 1(1).

Para (2): in sub-para (b) words from "by— (i) sending" to "for the purpose," in square brackets substituted by SI 2018/1137, r 14(1), (2). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (3): in sub-para (a) words 'or probate practitioner' in square brackets inserted by SI 1998/1903, r 6 from 14 September 1998: see SI 1998/1903, r 1(1).

Para (3): in sub-para (a) words from "may— (i) lodge" to "the purpose, to" in square brackets substituted by SI 2018/1137, r 14(1), (3). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (3): in sub-para (b) words "or by electronic means" in square brackets inserted by SI 2018/1137, r 14(1), (4). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (4): substituted by SI 1998/1903, r 11(1) from 14 September 1998: see SI 1998/1903, r 1(1).

Para (5): words 'nominated registry' in square brackets substituted by SI 1998/1903, r 11(2) from 14 September 1998: see SI 1998/1903, r 1(1).

Para (6): reference to "14" in square brackets substituted by SI 2018/1137, r 14(1), (5). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (7): words 'district judge or' in square brackets inserted by SI 1991/1876, r 7(1).

Para (8): words in square brackets inserted by SI 1991/1876, r 12(1).

Para (9): words 'nominated registry' in square brackets substituted by SI 1998/1903, r 11(2) from 14 September 1998: see SI 1998/1903, r 1(1).

Para (10): reference to "14" in square brackets substituted by SI 2018/1137, r 14(1), (5). Date in force: 27 November 2018: see SI 2018/1137, rule 1(1).

Para (10): words 'nominated registry' in square brackets substituted by SI 1998/1903, r 11(2) from 14 September 1998: see SI 1998/1903, r 1(1).

Para (10): words omitted revoked by SI 1991/1876, r 12(2).

Para (12): reference to "14" in square brackets substituted by SI 2018/1137, r 14(1), (5). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (12): words 'nominated registry' in square brackets substituted by SI 1998/1903, r 11(2) from 14 September 1998: see SI 1998/1903, r 1(1).

Para (13): words in square brackets substituted by SI 1991/1876, rr 7(3), 12(3).

Para (13): words omitted revoked by SI 2018/1137, r 14(1), (6). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (14): words in square brackets substituted by SI 1991/1876, r 7(3).

Para (14) words "or registrar" in square brackets inserted by SI 2018/1137, r 14(1), (7). Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (15): inserted by SI 1998/1903, r 11(3) from 14 September 1998: see SI 1998/1903, r 1(1).

A2.84

45 Probate actions.—

(1) Upon being advised by the court concerned of the commencement of a probate action the [senior district judge] shall give notice of the action to every caveator other than the plaintiff in the action in respect of each caveat that is in force.

(2) In respect of any caveat entered subsequent to the commencement of a probate action the [senior district judge] shall give notice to that caveator of the existence of the action.

(3) Unless a [district judge] [or registrar] by order made on summons otherwise directs, the commencement of a probate action shall operate to prevent the sealing of a grant (other than a grant under section 117 of the Act) until application for a grant is made by the person shown to be entitled thereto by the decision of the court in such action.

(4) Upon such application for a grant, any caveat entered by the plaintiff in the action, and any caveat in respect of which notice of the action has been given, shall cease to have effect.

Paras (1), (2): words in square brackets substituted by SI 1991/1876, r 7(4).

Para (3): words in square brackets substituted by SI 1991/1876, r 7(3).

Para (3): words "or registrar" in square brackets inserted by SI 2018/1137, r 15. Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

A2.85

46 Citations.—

(1) Any citation may issue from the Principal Registry or a district probate registry and shall be settled by a [district judge or] registrar before being issued.

(2) Every averment in a citation, and such other information as the registrar may require, shall be verified by an affidavit sworn by the person issuing the citation (in these Rules called the 'citor'), provided that the [district judge or] registrar may in special circumstances accept an affidavit sworn by the citor's solicitor [or probate practitioner].

(3) The citor shall enter a caveat before issuing a citation and, unless a [district judge] [or registrar] by order made on summons otherwise directs, any caveat in force at the commencement of the citation proceedings shall, unless withdrawn pursuant to paragraph (11) of rule 44, remain in force until application for a grant is made by the person shown to be entitled thereto by the decision of the court in such proceedings, and upon such application any caveat entered by a party who had notice of the proceedings shall cease to have effect.

(4) Every citation shall be served personally on the person cited unless the [district judge or] registrar, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.

(5) Every will referred to in a citation shall be lodged in a registry before the citation is issued, except where the will is not in the citor's possession and the [district judge or] registrar is satisfied that it is impracticable to require it to be lodged.

(6) A person who has been cited to appear may, within eight days of service of the citation upon him (inclusive of the day of such service), or at any time thereafter if no application has been made by the citor under paragraph (5) of rule 47 or paragraph (2) of rule 48, enter an appearance in the registry from which the citation issued by filing Form 5 and shall forthwith thereafter serve on the citor a copy of Form 5 sealed with the seal of the registry.

Para (1): words 'district judge or' in square brackets inserted by SI 1991/1876, r 7(1).

Para (2): words 'district judge or' in square brackets inserted by SI 1991/1876, r 7(1).

Para (2): words 'or probate practitioner' in square brackets inserted by SI 1998/1903, r 6 from 14 September 1998: see SI 1998/1903, r 1(1).

Para (3): words in square brackets substituted by SI 1991/1876, r 7(3).

Para (3): words "or registrar" in square brackets inserted by SI 2018/1137, r 16. Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

Para (4): words 'district judge or' in square brackets inserted by SI 1991/1876, r 7(1).

Para (5): words 'district judge or' in square brackets inserted by SI 1991/1876, r 7(1).

A2.86

47 Citation to accept or refuse or to take a grant.—

(1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the will or the survivor of them or of the executors of the last survivor of deceased executors who have proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of six months from the death of the deceased, provided that no citation to take a grant shall issue while proceedings as to the validity of the will are pending.

(4) A person cited who is willing to accept or take a grant may, after entering an appearance, apply ex parte by affidavit to a [district judge or] registrar for an order for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may—

(a) in the case of a citation under paragraph (1) of this rule, apply to a [district judge or] registrar for an order for a grant to himself;

(b) in the case of a citation under paragraph (2) of this rule, apply to a [district judge or] registrar for an order that a note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly ceased; or

(c) in the case of a citation under paragraph (3) of this rule, apply to a [district judge or] registrar by summons (which shall be served on the person cited) for an order requiring such person to take a grant within a specified time or for a grant to himself or to some other person specified in the summons.

(6) An application under the last foregoing paragraph shall be supported by an affidavit showing that the citation was duly served.

(7) If the person cited has entered an appearance but has not applied for a grant under paragraph (4) of this rule, or has failed to prosecute his application with reasonable diligence, the citor may—

(a) in the case of a citation under paragraph (1) of this rule, apply by summons to a [district judge or] registrar for an order for a grant to himself;

(b) in the case of a citation under paragraph (2) of this rule, apply by summons to a [district judge or] registrar for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in sub-paragraph (b) of paragraph (5) of this rule; or

(c) in the case of a citation under paragraph (3) of this rule, apply by summons to a [district judge or] registrar for an order requiring the person cited to take a grant within a specified time or for a grant to himself or to some other person specified in the summons;

and the summons shall be served on the person cited.

Paras (4), (5), (7): words in square brackets inserted by SI 1991/1876, r 7(1).

A2.87

48 Citation to propound a will.—

(1) A citation to propound a will shall be directed to the executors named in the will and to all persons interested thereunder, and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.

(2) If the time limited for appearance has expired, the citor may—

(a) in the case where no person has entered an appearance, apply to a [district judge or] registrar for an order for a grant as if the will were invalid and such application shall be supported by an affidavit showing that the citation was duly served; or

(b) in the case where no person who has entered an appearance proceeds with reasonable diligence to propound the will, apply to a [district judge or] registrar by summons, which shall be served on every person cited who has entered an appearance, for such an order as is mentioned in paragraph (a) above.

Para (2): words in square brackets inserted by SI 1991/1876, r 7(1).

A2.88

49 Address for service.—

All caveats, citations, warnings and appearances shall contain an address for service in England and Wales.

A2.89

50 Application for order to attend for examination or for subpoena to bring in a will.—

(1) An application under section 122 of the Act for an order requiring a person to attend for examination may, unless a probate action has been commenced, be made to a [district judge or] registrar by summons which shall be served on every such person as aforesaid.

(2) An application under section 123 of the Act for the issue by a [district judge or] registrar of a subpoena to bring in a will shall be supported by an affidavit setting out the grounds of the application, and if any person served with the subpoena denies that the will is in his possession or control he may file an affidavit to that effect in the registry from which the subpoena issued.

Words in square brackets inserted by SI 1991/1876, r 7(1).

A2.90

51 Grants to part of an estate under section 113 of the Act.—
An application for an order for a grant under section 113 of the Act to part of an estate may be made to a [district judge or] registrar, and shall be supported by an affidavit setting out the grounds of the application, and—

(a) stating whether the estate of the deceased is known to be insolvent; and

(b) showing how any person entitled to a grant in respect of the whole estate in priority to the applicant has been cleared off.

Words in square brackets inserted by SI 1991/1876, r 7(1).

A2.91

52 Grants of administration under discretionary powers of court, and grants ad colligenda bona.—
An application for an order for—

(a) a grant of administration under section 116 of the Act; or

(b) a grant of administration ad colligenda bona,

may be made to a [district judge or] registrar and shall be supported by an affidavit setting out the grounds of the application.

Words in square brackets inserted by SI 1991/1876, r 7(1).

A2.92

53 Applications for leave to swear to death.—
An application for leave to swear to the death of a person in whose estate a grant is sought may be made to a [district judge or] registrar, and shall be supported by an affidavit setting out the grounds of the application and containing particulars of any policies of insurance effected on the life of the presumed deceased together with such further evidence as the [district judge or] registrar may require.

Words in square brackets inserted by SI 1991/1876, r 7(1).

A2.93

54 Grants in respect of nuncupative wills and copies of wills.—
(1) Subject to paragraph (2) below, an application for an order admitting to proof a nuncupative will, or a will contained in a copy or reconstruction thereof where the original is not available, shall be made to a [district judge or] registrar.

(2) In any case where a will is not available owing to its being retained in the custody of a foreign court or official, a duly authenticated copy of the will may be admitted to proof without the order referred to in paragraph (1) above.

(3) An application under paragraph (1) above shall be supported by an affidavit setting out the grounds of the application, and by such evidence on affidavit as the applicant can adduce as to—

(a) the will's existence after the death of the testator or, where there is no such evidence, the facts on which the applicant relies to rebut the presumption that the will has been revoked by destruction;

(b) in respect of a nuncupative will, the contents of that will; and

(c) in respect of a reconstruction of a will, the accuracy of that reconstruction.

(4) The [district judge or] registrar may require additional evidence in the circumstances of a particular case as to due execution of the will or as to the accuracy of the copy will, and may direct that notice be given to persons who would be prejudiced by the application.

Paras (1), (4): words in square brackets inserted by SI 1991/1876, r 7(1).

A2.94

55 Application for rectification of a will.—

(1) An application for an order that a will be rectified by virtue of section 20(1) of the Administration of Justice Act 1982 may be made to a [district judge or] registrar, unless a probate action has been commenced.

(2) The application shall be supported by an affidavit, setting out the grounds of the application, together with such evidence as can be adduced as to the testator's intentions and as to whichever of the following matters as are in issue:—

(a) in what respects the testator's intentions were not understood; or

(b) the nature of any alleged clerical error.

(3) Unless otherwise directed, notice of the application shall be given to every person having an interest under the will whose interest might be prejudiced[, or such other person who might be prejudiced], by the rectification applied for and any comments in writing by any such person shall be exhibited to the affidavit in support of the application.

(4) If the [district judge or] registrar is satisfied that, subject to any direction to the contrary, notice has been given to every person mentioned in paragraph (3) above, and that the application is unopposed, he may order that the will be rectified accordingly.

Paras (1), (4): words in square brackets inserted by SI 1991/1876, r 7(1).

Para (3): words ', or such other person who might be prejudiced,' in square brackets inserted by SI 1998/1903, r 12 from 14 September 1998: see SI 1998/1903, r 1(1).

A2.95

56 Notice of election by surviving spouse [or civil partner] to redeem life interest.—

(1) Where a surviving spouse [or civil partner] who is the sole or sole surviving personal representative of the deceased is entitled to a life interest in part of the residuary estate and elects under section 47A of the Administration of Estates Act 1925 to have the life interest redeemed, he may give written notice of the election to the [senior district judge] in pursuance of subsection (7) of that section by filing a notice in Form 6 in the Principal Registry or in the district probate registry from which the grant issued.

(2) Where the grant issued from a district probate registry, the notice shall be filed in duplicate.

(3) A notice filed under this rule shall be noted on the grant and the record and shall be open to inspection.

Provision heading: words 'or civil partner' in square brackets inserted by SI 2005/2114, art 2(6), Sch 6, para 2(1), (4) from 5 December 2005: see SI 2005/2114, art 1.

Para (1): words 'or civil partner' in square brackets inserted by SI 2005/2114, art 2(6), Sch 6, para 2(1), (4) from 5 December 2005: see SI 2005/2114, art 1.

Para (1): words 'senior district judge' in square brackets substituted by SI 1991/1876, r 7(4).

A2.96

[57 Index of grant applications—

(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.]

Substituted by SI 1998/1903, r 13 from 14 September 1998: see SI 1998/1903, r 1(1).

A2.97

58 Inspection of copies of original wills and other documents.—
An original will or other document referred to in section 124 of the Act shall not be open to inspection if, in the opinion of a [district judge or] registrar, such inspection would be undesirable or otherwise inappropriate.

Words in square brackets inserted by SI 1991/1876, r 7(1).

A2.98

59 Issue of copies of original wills and other documents.—
Where copies are required of original wills or other documents deposited under section 124 of the Act, such copies may be facsimile copies sealed with the seal of the court and issued either as office copies or certified under the hand of a [district judge or] registrar to be true copies.

Words in square brackets inserted by SI 1991/1876, r 7(1).

A2.99

60 Taxation of costs.—
[(1) Order 62 of the Rules of the Supreme Court 1965 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 ('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.]

Substituted by SI 1991/1876, r 13.

Substituted by SI 2003/185, rr 4, 5 from: 24 February 2003: see SI 2003/185, r 1; for transitional provisions see r 3 thereof.

A2.100

61 Power to require application to be made by summons.—

(1) Subject to rule 7(2), a [district judge or] a registrar may require any application to be made by summons to a [district judge or] registrar in chambers or a judge in chambers or open court.

(2) An application for an inventory and account shall be made by summons to a [district judge or] registrar.

(3) A summons for hearing by a [district judge or] registrar shall be issued out of the registry in which it is to be heard.

(4) A summons to be heard by a judge shall be issued out of the Principal Registry.

[(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.]

Paras (1)–(3): words in square brackets inserted by SI 1991/1876, rr 7(1), 14.

Paras (5), (6): inserted by SI 2018/1137, r 17. Date in force: 27 November 2018: see SI 2018/1137, r 1(1).

A2.101

62 Transfer of applications.—

A registrar to whom any application is made under these Rules may order the transfer of the application to another [district judge or] registrar having jurisdiction.

Words in square brackets inserted by SI 1991/1876, r 7(1).

A2.102

62A Exercise of a registrar's jurisdiction by another registrar.—

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.]

Inserted by SI 1998/1903, r 14 from 14 September 1998: see SI 1998/1903, r 1(1).

A2.103

63 Power to make orders for costs.—

On any application dealt with by him on summons, the . . . registrar shall have full power to determine by whom and to what extent the costs are to be paid.

Words omitted revoked by SI 1991/1876, r 7(2).

A2.104

64 Exercise of powers of judge during Long Vacation.—
All powers exercisable under these Rules by a judge in chambers may be exercised during the Long Vacation by a [district judge].

Words in square brackets substituted by SI 1991/1876, r 7(3).

A2.105

65 Appeals from [district judges or] registrars.—
(1) An appeal against a decision or requirement of a [district judge or] registrar shall be made by summons to a judge.
(2) If, in the case of an appeal under the last foregoing paragraph, any person besides the appellant appeared or was represented before the [district judge or] registrar from whose decision or requirement the appeal is brought, the summons shall be issued within seven days thereof for hearing on the first available day and shall be served on every such person as aforesaid.
[(3) This rule does not apply to an appeal against a decision in proceedings for the assessment of costs.]

Para (1): words 'district judge or' in square brackets inserted by SI 1991/1876, r 7(1), (6).

Para (2): words 'district judge or' in square brackets inserted by SI 1991/1876, r 7(1), (6).

Para (3): inserted by SI 2003/185, r 6 from 24 February 2003: see SI 2003/185, r 1; for transitional provisions see r 3 thereof.

A2.106

66 Service of summons.—
(1) A judge [or district judge] or, where the application is to be made to a district probate registrar, that registrar, may direct that a summons for the service of which no other provision is made by these Rules shall be served on such person or persons as the [judge, district judge or] registrar] [may direct].
(2) Where by these Rules or by any direction given under the last foregoing paragraph a summons is required to be served on any person, it shall be served not less than two clear days before the day appointed for the hearing, unless a judge or [district judge or] registrar at or before the hearing dispenses with service on such terms, if any, as he may think fit.

Para (1): words 'district judge' in square brackets substituted by SI 1991/1876, r 7(3).

Para (1): words 'judge, district judge or registrar' in square brackets substituted by SI 1998/1903, r 15 from 14 September 1998: see SI 1998/1903, r 1(1).

Para (1): words 'may direct' in square brackets substituted by SI 1991/1876, r 7(7).

Para (2): words 'district judge or' in square brackets inserted by SI 1991/1876, r 7(1).

A2.107

67 Notices, etc.—
Unless a [district judge or] registrar otherwise directs or these Rules otherwise provide, any notice or other document required to be given to or served on any person may be given or served in the manner prescribed by Order 65, rule 5 of the Rules of the Supreme Court 1965.

Words in square brackets inserted by SI 1991/1876, r 7(1).

A2.108

68 Application to pending proceedings.—
Subject in any particular case to any direction given by a judge or [district judge or] registrar, these Rules shall apply to any proceedings which are pending on the date on which they come into force as well as to any proceedings commenced on or after that date.

Words in square brackets inserted by SI 1991/1876, r 7(1).

A2.109

69 Revocation of previous rules.—
(1) Subject to paragraph (2) below, the rules set out in the Second Schedule are hereby revoked.
(2) The rules set out in the Second Schedule shall continue to apply to such extent as may be necessary for giving effect to a direction under rule 68.

SCHEDULE 1
FORMS

Rule 2(2)

FORM 1

CERTIFICATE OF DELIVERY OF INLAND REVENUE AFFIDAVIT

A2.110

Rule 42

And it is hereby certified that an Inland Revenue affidavit has been delivered wherein it is shown that the gross value of the said estate in the United Kingdom (exclusive of what the said deceased may have been possessed of or entitled to as a trustee and not beneficially) amounts to £. and that the net value of the estate amounts to £.

And it is further certified that it appears by a receipt signed by an Inland Revenue officer on the said affidavit that £. on account of estate duty and interest on such duty has been paid.

FORM 2

STANDING SEARCH

Rule 43(1)

In the High Court of Justice Family Division

[The Principal or . . . . . District Probate Registry]

I/We apply for the entry of a standing search so that there shall be sent to me/us an office copy of every grant of representation in England and Wales in the estate of—

Full name of deceased: . . . . . .

Full address: . . . . . .

Alternative or alias names: . . . . . .

Exact date of death: . . . . . .

which either has issued not more than 12 months before the entry of this application or issues within 6 months thereafter.

Signed . . . . . .

Name in block letters. . . . . .

Full address . . . . . .

Reference No. (if any) . . . . . .

Words in square brackets substituted by SI 1991/1876, r 11(3).

FORM 3

CAVEAT

Rule 44(2)

In the High Court of Justice Family Division

The Principal [*or*. . . . . District Probate] Registry.

Let no grant be sealed in the estate of (*full name and address*) deceased, who died on the . . . . . day of . . . . . 19/20. . . . . without notice to (*name of party by whom or on whose behalf the caveat is entered*).

Dated this . . . . . day of . . . . . 20. . . . . .

(*Signed*) (*to be signed by the caveator's solicitor or probate practitioner or by the caveator if acting in person*)

whose address for service is: . . . . . .

Solicitor[/probate practitioner] for the said . . . . . (*If the caveator is acting in person, substitute 'In person'.*)

Words 'or probate practitioner' in square brackets inserted by SI 1998/1903, r 16(a) from 14 September 1998: see SI 1998/1903, r 1(1).

Words '/probate practitioner' in square brackets inserted by SI 1998/1903, r 16(b) from 14 September 1998: see SI 1998/1903, r 1(1).

FORM 4

WARNING TO CAVEATOR

Rule 44(5)

In the High Court of Justice Family Division

[(The nominated registry as defined by rule 44(15))]

To . . . . . of . . . . . a party who has entered a caveat in the estate of . . . . . deceased.

You have [14] days (starting with the day on which this warning was served on you):

(i) to enter an appearance either in person or by your solicitor [or probate practitioner], at the [(name and address of the nominated registry)] setting out what interest you have in the estate of the above-named . . . . . of . . . . . deceased contrary to that of the party at whose instance this warning is issued; or

(ii) if you have no contrary interest but wish to show cause against the sealing of a grant to such party, to issue and serve a summons for [directions by a district judge of the Principal Registry or a registrar of] a district probate registry.

If you fail to do either of these, the court may proceed to issue a grant of probate or administration in the said estate notwithstanding your caveat.

Dated this . . . . . day of . . . . . 20. . . . . .

Issued at the instance of . . . . . .

(*Here set out the name and interest (including the date of the will, if any, under which the interest arises) of the party warning, the name of his solicitor [or probate practitioner] and the address for service. If the party warning is acting in person, this must be stated.*) . . . . . Registrar

Words '(The nominated registry as defined by rule 44(15))' in square brackets substituted by SI 1998/1903, r 17(b) from 14 September 1998: see SI 1998/1903, r 1(1).

Word '14' in square brackets substituted by SI 2018/1137, r 14(1)(5).

Words 'or probate practitioner' in square brackets in both places they occur inserted by SI 1998/1903, r 17(a) from 14 September 1998: see SI 1998/1903, r 1(1).

Words '(name and address of the nominated registry)' in square brackets substituted by SI 1998/1903, r 17(c) from 14 September 1998: see SI 1998/1903, r 1(1).

Words from 'directions by' to 'a registrar of' in square brackets substituted by SI 1991/1876, r 7(8).

FORM 5

APPEARANCE TO WARNING OR CITATION

Rules 44(10), 46(6)

In the High Court of Justice Family Division

The Principal (*or* District Probate) Registry

Caveat No . . . . . dated the . . . . . day of . . . . . 20 . . . . . .

(Citation dated the . . . . . day of . . . . . 20. . . . . .)

Full name and address of deceased: . . . . . .

Full name and address of person warning (*or* citor): . . . . . .

(*Here set out the interest of the person warning, or citor, as shown in warning or citation.*)

Full name and address of caveator (or person cited). . . . . .

(*Here set out the interest of the caveator or person cited, stating the date of the will (if any) under which such interest arises.*)

Enter an appearance for the above-named caveator [or person cited] in this matter.

Dated this . . . . . day of . . . . . 20. . . . . .

(*Signed*) . . . . . .

whose address for service is: . . . . . .

Solicitor[/Probate practitioner] (*or* 'In person') . . . . . .

Words '/probate practitioner' in square brackets inserted by SI 1998/1903, r 18 from 14 September 1998: see SI 1998/1903, r 1(1).

FORM 6

NOTICE OF ELECTION TO REDEEM LIFE INTEREST

Rule 56

In the High Court of Justice Family Division

The Principal (*or*. . . . . District Probate) Registry

In the estate of . . . . . deceased.

Whereas . . . . . of . . . . . died on the . . . . . day of . . . . . 20. . . . . .

wholly/partially intestate leaving his/her lawful wife/husband[/civil partner] and . . . . . lawful issue of the said deceased;

And whereas Probate/Letters of Administration of the estate of the said were granted to me, the said . . . . . [and to . . . . . of . . . . .] at the Probate Registry on the . . . . . day of . . . . . 20. . . . . .;

And whereas (the said . . . . . has ceased to be a personal representative because . . . . .) and I am (now) the sole personal representative;

Now I, the said . . . . . hereby give notice in accordance with section 47A of the Administration of Estates Act 1925 that I elect to redeem the life interest to which I am entitled in the estate of the late . . . . . by retaining £ . . . . . its capital value, and £ . . . . . the costs of the transaction.

Dated this . . . . . day of . . . . . 20. . . . . .

(Signed) . . . . . .

To the [senior district judge] of the Family Division.

Words '/civil partner' in square brackets inserted by SI 2005/2114, art 2(6), Sch 6, para 2(1), (5) from 5 December 2005: see SI 2005/2114, art 1.

Words 'senior district judge' in square brackets substituted by SI 1991/1876, r 7(4).

SCHEDULE 2

REVOCATIONS

A2.111

Rules revoked	References
The Non-Contentious Probate Rules 1954	SI 1954/796
The Non-Contentious Probate (Amendment) Rules 1961	SI 1961/72
The Non-Contentious Probate (Amendment) Rules 1962	SI 1962/2653
The Non-Contentious Probate (Amendment) Rules 1967	SI 1967/748
The Non-Contentious Probate (Amendment) Rules 1968	SI 1968/1675
The Non-Contentious Probate (Amendment) Rules 1969	SI 1969/1689
The Non-Contentious Probate (Amendment) Rules 1971	SI 1971/1977
The Non-Contentious Probate (Amendment) Rules 1974	SI 1974/597
The Non-Contentious Probate (Amendment) Rules 1976	SI 1976/1362
The Non-Contentious Probate (Amendment) Rules 1982	SI 1982/446
The Non-Contentious Probate (Amendment) Rules 1983	SI 1983/623
The Non-Contentious Probate (Amendment) Rules 1985	SI 1985/1232

THE PARENTAL RESPONSIBILITY AGREEMENT REGULATIONS 1991

Note.

These regulations are amended and the Schedule substituted by the Parental Responsibility Agreement (Amendment) Regulations 2005, SI 2005/2808, SI 2009/2026 and the Crime and Courts Act 2013 (Family Court: Consequential Provision) (No.2) Order 2014 SI 2014/879 with effect from 22 April 2014.

INHERITANCE TAX (DELIVERY OF ACCOUNTS) (EXCEPTED ESTATES) REGULATIONS 2004

A2.119

2 Interpretation

In these Regulations—

"the Board" means the [Commissioners for Her Majesty's Revenue and Customs];

"the 1984 Act" means the Inheritance Tax Act 1984;

"an excepted estate" has the meaning given in regulation 4;

["IHT threshold" has the meaning given in regulation 5A;]

'IHT threshold' means the lower limit shown in the Table in Schedule 1 of the 1984 Act applicable to—

(a) *chargeable transfers made in the year before that in which a person's death occurred if—*

(i) *that person died on or after 6th April and before 6th August, and*

(ii) *an application for a grant of representation or, in Scotland, an application for confirmation, is made before 6th August in that year; or*

(b) *chargeable transfers made in the year in which a person's death occurred in any other case,*

and for this purpose 'year' means a period of twelve months ending with 5th April;

'the prescribed period' in relation to any person is the period beginning with that person's death and ending—

(a) *in England, Wales and Northern Ireland, 35 days after the making of the first grant of representation in respect of that person (not being a grant limited in duration, in respect of property or to any special purpose); or*

(b) *in Scotland, 60 days after the date on which confirmation to that person's estate was first issued;*

['section 131 rights' means the rights of issue under section 131(2) of the Civil Partnership Act 2004;]

'spouse[, civil partner] and charity transfer' has the meaning given in regulation 5;

'value' means value for the purpose of tax.

In definition 'the Board' words 'Commissioners for Her Majesty's Revenue and Customs' in square brackets substituted by SI 2006/2141, regs 2, 3 from 1 September 2006: see SI 2006/2141, reg 1(2).

Definition "IHT threshold" substituted by SI 2011/214, reg 2. Date in force: 1 March 2011 (with effect in relation to deaths occurring on or after 6 April 2010): see SI 2011/214, reg 1(2), (3).

Definition 'section 131 rights' inserted by SI 2005/3230, reg 15(1), (2)(b) from 5 December 2005: see SI 2005/3230, reg 1.

In definition 'spouse, civil partner and charity transfer' words ', civil partner' in square brackets inserted by SI 2005/3230, reg 15(1), (2)(a) from 5 December 2005: see SI 2005/3230, reg 1.

CIVIL PARTNERSHIP (JURISDICTION AND RECOGNITION OF JUDGMENTS) REGULATIONS 2005

A2.133

2 Extent

(1) Except as provided by this regulation, these Regulations extend to England and Wales and Northern Ireland.

(2) *Regulations 4 and 11(1) extend* [Regulation 4 extends] to England and Wales only.

(3) *Regulations 5 and 11(2) extend* [Regulation 5 extends] to Northern Ireland only.

Para (2): words "Regulations 4 and 11(1) extend" in italics revoked and subsequent words in square brackets substituted by SI 2019/495, reg 5(1), (2)(a). Date in force: this amendment has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

Para (3): words "Regulations 5 and 11(2) extend" in italics revoked and subsequent words in square brackets substituted by SI 2019/495, reg 5(1), (2)(b). Date in force: this amendment has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

A2.134

3 Application

(1) These Regulations apply to proceedings for the dissolution or annulment of an overseas relationship entitled to be treated as a civil partnership, or the legal separation of the same, as they apply to proceedings for the dissolution or annulment of a civil partnership or the legal separation of civil partners.

(2) *Regulations 7 and 8, in respect of recognition and non-recognition of a judgment, apply to all judgments even if the date of the judgment is earlier than the date on which section 219 of the Civil Partnership Act 2004 and these Regulations come into force.*

Para (2): revoked by SI 2019/495, reg 5(1), (3). Date in force: this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

PART 1
JURISDICTION

A2.135

4 Jurisdiction: England and Wales

The courts in England and Wales shall have jurisdiction in relation to proceedings for the dissolution or annulment of a civil partnership or for the legal separation of civil partners where [on the date of the application]—

(a) both civil partners are habitually resident in England and Wales;

(b) both civil partners were last habitually resident in England and Wales and one of the civil partners continues to reside there;

(c) the respondent is habitually resident in England and Wales;

(d) the *petitioner* [applicant] is habitually resident in England and Wales and has resided there for at least one year immediately *preceding the presentation of the petition*; [before the application was made]; *or*

(e) the *petitioner* [applicant] is domiciled and habitually resident in England and Wales and has resided there for at least six months immediately *preceding the presentation of the petition.* [before the application was made];[;][or]

[(f) both civil partners are domiciled in England and Wales].

Words "on the date of the application" in square brackets inserted by SI 2019/495, reg 5(1), (4)(a). Date in force: this amendment has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

In paras (d), (e) word "petitioner" in italics revoked and subsequent word in square brackets substituted by SI 2019/495, reg 5(1), (4)(b). Date in force: this amendment has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

In paras (d), (e) words "preceding the presentation of the petition" in italics revoked and subsequent words in square brackets substituted by SI 2019/495, reg 5(1), (4)(c). Date in force: this amendment has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

In para (d) word "or" in italics revoked by SI 2019/495, reg 5(1), (4)(d). Date in force: this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

In para (e) word "or" in square brackets inserted by SI 2019/495, reg 5(1), (4)(e). Date in force: this amendment has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

Para (f) inserted by SI 2019/495, reg 5(1), (4)(f). Date in force: this amendment has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

A2.136

5 Jurisdiction: Northern Ireland

The courts in Northern Ireland shall have jurisdiction in relation to proceedings for the dissolution or annulment of a civil partnership or for the legal separation of civil partners where [on the date of the application]—

(a) both civil partners are habitually resident in Northern Ireland;

(b) both civil partners were last habitually resident in Northern Ireland and one of the civil partners continues to reside there;

(c) the respondent is habitually resident in Northern Ireland;

(d) the *petitioner* [applicant] is habitually resident in Northern Ireland and has resided there for at least one year immediately *preceding the presentation of the petition*; [before the application was made]; *or*

(e) the *petitioner* [applicant] is domiciled and habitually resident in Northern Ireland and has resided there for at least six months immediately *preceding the presentation of the petition.* [before the application was made];[;][or]

[(f) both civil partners are domiciled in Northern Ireland].

Words "on the date of the application" in square brackets inserted by SI 2019/495, reg 5(1), (5)(a). Date in force: this amendment has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

In paras (d), (e) word "petitioner" in italics revoked and subsequent word in square brackets substituted by SI 2019/495, reg 5(1), (5)(b). Date in force: this amendment has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

In paras (d), (e) words "preceding the presentation of the petition" in italics revoked and subsequent words in square brackets substituted by SI 2019/495, reg 5(1), (5)(c). Date in force: this amendment has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

In para (d) word "or" in italics revoked by SI 2019/495, reg 5(1), (5)(d). Date in force: this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

In para (e) word "or" in square brackets inserted by SI 2019/495, reg 5(1), (5)(e). Date in force: this amendment has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

Para (f) inserted by SI 2019/495, reg 5(1), (5)(f). Date in force: this amendment has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

PART 2
RECOGNITION AND REFUSAL OF RECOGNITION OF JUDGMENTS

Revoked by SI 2019/495, reg 5(1), (6). Date in force: this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

[A2.137]

6 Definitions for Part 2

(1) In this Part 'judgment' means an order for the dissolution or annulment of a civil partnership or the legal separation of civil partners, pronounced by a court of a Member State, however termed by that State.

(2) A 'court of a Member State' referred to in paragraph (1) means all the authorities, whether judicial or administrative, in Member States with jurisdiction in those matters falling within the scope of these Regulations.

(3) The 'Member States' referred to in paragraph (1) are any of the following States—Belgium, Cyprus, Czech Republic, Denmark, Germany, Greece, Spain, Estonia, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Austria, Poland, Portugal, Slovakia, Slovenia, Finland and Sweden.

Revoked by SI 2019/495, reg 5(1), (6). Date in force: this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

[A2.138]

7 Recognition of a judgment

(1) Where a judgment is (or has been) given in respect of a civil partnership, that judgment shall, without any special formalities, be recognised in England and Wales or Northern Ireland.

(2) Any interested party may, in accordance with the procedure set out in rules, apply for a judgment to be, or not to be, recognised.

(3) Where the recognition of a judgment is raised as an incidental issue in proceedings before the court, that court may determine the issue.

Revoked by SI 2019/495, reg 5(1), (6). Date in force: this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

[A2.139]

8 Refusal of recognition of a judgment

(1) Recognition of the validity of a judgment may be refused in England and Wales or Northern Ireland if the judgment was obtained at a time when it was irreconcilable

with a decision determining the question of the subsistence or validity of the civil partnership—

(a) previously given by a court of civil jurisdiction in that part of the United Kingdom, or

(b) previously given by a court elsewhere and recognised or entitled to be recognised in that part of the United Kingdom.

(2) Recognition of the validity of a judgment may be refused in England and Wales or Northern Ireland if the judgment was obtained at a time when, according to the law of that part of the United Kingdom, there was no subsisting civil partnership.

(3) Recognition of the validity of a judgment may be refused if—

(a) in the case of a judgment obtained by means of proceedings, it was obtained—

(i) without such steps having been taken for giving notice of the proceedings to a civil partner as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken, or

(ii) without a civil partner having been given (for any reason other than lack of notice) such opportunity to take part in the proceedings as, having regard to those matters, he should reasonably have been given, or

(b) in the case of a judgment obtained otherwise than by means of proceedings—

(i) there is no official document certifying the judgment is effective under the law of the country in which it was obtained, or

(ii) where either civil partner was domiciled in another country at the relevant date, there is no official document certifying that the judgment is recognised as valid under the law of that other country, or

(c) in either case, recognition of the judgment would be manifestly contrary to public policy.

(4) In this regulation—

'official', in relation to a document certifying that a judgment is effective, or is recognised as valid, under the law of any country, means issued by a person or body appointed or recognised for the purpose under that law;

'the relevant date' means—

(a) in the case of a judgment obtained by means of proceedings, the date of the commencement of the proceedings;

(b) in the case of a judgment obtained otherwise than by means of proceedings, the date on which it was obtained.

Revoked by SI 2019/495, reg 5(1), (6). Date in force: this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

[A2.140]

9 Jurisdiction and review

The court may not review the jurisdiction of the court which issued the judgment.

Revoked by SI 2019/495, reg 5(1), (6). Date in force: this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

[A2.141]

10

A judgment may not be reviewed as to its substance.

Revoked by SI 2019/495, reg 5(1), (6). Date in force: this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

[A2.142]

11 Differences in applicable law

(1) The recognition of a judgment in England and Wales may not be refused because the law of England and Wales would not allow dissolution, annulment or legal separation on the same facts.

(2) The recognition of a judgment in Northern Ireland may not be refused because the law of Northern Ireland would not allow dissolution, annulment or legal separation on the same facts.

Revoked by SI 2019/495, reg 5(1), (6). Date in force: this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

[A2.143]

12 Stay of proceedings

Where recognition is sought of a judgment given in a Member State and an appeal against that judgment has been lodged in a Member State, the court may stay the proceedings.

Revoked by SI 2019/495, reg 5(1), (6). Date in force: this repeal has effect from exit day (as defined in the European Union (Withdrawal) Act 2018, s 20(1)–(5)): see SI 2019/495, reg 1; for transitional and saving provision see reg 7 thereof.

LASTING POWERS OF ATTORNEY, ENDURING POWERS OF ATTORNEY AND PUBLIC GUARDIAN REGULATIONS 2007

SI 2007/1253

PART 1
PRELIMINARY

A2.145

2 Interpretation

(1) In these Regulations—

"the Act" means the Mental Capacity Act 2005;

"court" means the Court of Protection;

"LPA certificate", in relation to an instrument made with a view to creating a lasting power of attorney, means the certificate which is required to be included in the instrument by virtue of paragraph 2(1)(e) of Schedule 1 to the Act;

"[person to notify]", in relation to an instrument made with a view to creating a lasting power of attorney, means a person who[, under Schedule 1, paragraph 2(1)(c)(i) of the Act,] is named in the instrument as being a person to be notified of any application for the registration of the instrument;

"prescribed information", in relation to any instrument intended to create a lasting power of attorney, means the information contained in the form used for the instrument which appears under the heading ["Section 8—Your legal rights and responsibilities"].

Para (1): in definition "person to notify" words "person to notify" in square brackets substituted by SI 2015/899, regs 2, 4(a)(i). Date in force: 1 July 2015: see SI 2015/899, reg 1(2); for transitional provisions see regs 17–19.

Para (1): in definition "person to notify" words ", under Schedule 1, paragraph 2(1)(c)(i) of the Act," in square brackets inserted by SI 2015/899, regs 2, 4(a)(ii). Date in force: 1 July 2015: see SI 2015/899, reg 1(2); for transitional provisions see regs 17–19.

Para (1): in definition "prescribed information" words ""Section 8—Your legal rights and responsibilities"" in square brackets substituted by SI 2015/899, regs 2, 4(b). Date in force: 1 July 2015: see SI 2015/899, reg 1(2); for transitional provisions see regs 17–19.

PART 2
LASTING POWERS OF ATTORNEY

Instruments intended to create a lasting power of attorney

A2.148

6 Maximum number of [people to notify]

The maximum number of [people to notify] that the donor of a lasting power of attorney may specify in the instrument intended to create the power is 5.

Provision heading: words "people to notify" in square brackets substituted by SI 2015/899, regs 2, 5. Date in force: 1 July 2015: see SI 2015/899, reg 1(2); for transitional provisions see regs 17–19.

Words "person to notify" in square brackets substituted by SI 2015/899, regs 2, 5. Date in force: 1 July 2015: see SI 2015/899, reg 1(2); for transitional provisions see regs 17–19.

A2.149

7 . . .

. . .

Revoked by SI 2015/899, regs 2, 6. Date in force: 1 July 2015: see SI 2015/899, reg 1(2); for transitional provisions see regs 17–19.

A2.150

8 Persons who may provide an LPA certificate

(1) Subject to paragraph (3), the following persons may give an LPA certificate—

(a) a person chosen by the donor as being someone who has known him personally for the period of at least two years which ends immediately before the date on which that person signs the LPA certificate;

(b) a person chosen by the donor who, on account of his professional skills and expertise, reasonably considers that he is competent to make the

judgments necessary to certify the matters set out in paragraph (2)(1)(e) of Schedule 1 to the Act.

(2) The following are examples of persons within paragraph (1)(b)—

(a) a registered health care professional;

(b) a barrister, solicitor or advocate called or admitted in any part of the United Kingdom;

(c) a registered social worker; or

(d) an independent mental capacity advocate.

(3) A person is disqualified from giving an LPA certificate in respect of any instrument intended to create a lasting power of attorney if that person is—

(a) a family member of the donor;

(b) a donee of that power;

(c) a donee of—

(i) any other lasting power of attorney, or

(ii) an enduring power of attorney,

which has been executed by the donor (whether or not it has been revoked);

(d) a family member of a donee within sub-paragraph (b);

(e) a director or employee of a trust corporation acting as a donee within sub-paragraph (b);

(f) a business partner or employee of—

(i) the donor, or

(ii) a donee within sub-paragraph (b);

(g) an owner, director, manager or employee of any care home in which the donor is living when the instrument is executed; or

(h) a family member of a person within sub-paragraph (g).

(4) In this regulation—

["care home" means—

(a) a care home in England within the meaning given by section 3 of the Care Standards Act 2000, and

(b) a place in Wales at which a care home service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016, is provided wholly or mainly to persons aged 18 or over;]

"registered health care professional" means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002; and

"registered social worker" means a person registered as a social worker in a register maintained by—

[(a) the Health and Care Professions Council;]

(b) [Social Care Wales];

(c) the Scottish Social Services Council; or

(d) the Northern Ireland Social Care Council.

Para (4): definition "care home" substituted by SI 2018/48, reg 2, Sch 1, para 18. Date in force: 2 April 2018: see SI 2018/48, reg 1(2).

Para (4): in definition "registered social worker" para (a) substituted by SI 2012/1479, art 11, Schedule, Pt 2, para 81. Date in force: 1 August 2012: see SI 2012/1479, art 1(2).

Para (4): in definition "registered social worker" in para (b) words "Social Care Wales" in square brackets substituted by SI 2017/52, reg 2, Sch 1, para 15(1), (2). Date in force: 3 April 2017: see SI 2017/52, reg 1(2).

A2.151

9 Execution of instrument

(1) An instrument intended to create a lasting power of attorney must be executed in accordance with this regulation.

(2) The donor must read (or have read to him) all the prescribed information.

(3) As soon as reasonably practicable after the steps required by paragraph (2) have been taken, the donor must—

(a) complete the provisions of [Sections 1 to 7] of the instrument that apply to him (or direct another person to do so); and

[(b) subject to paragraph (7), in the presence of a witness—

(i) sign Section 9 of the instrument if the instrument is intended to create a lasting power of attorney for property and financial affairs (Form LP1F); or

(ii) sign Sections 5 and 9 of the instrument if the instrument is intended to create a lasting power of attorney for health and welfare (Form LP1H)].

(4) As soon as reasonably practicable after the steps required by paragraph (3) have been taken—

(a) the person giving an LPA certificate . . .

(b) . . .

must complete the LPA certificate at [Section 10] of the instrument and sign it.

(5) As soon as reasonably practicable after the steps required by paragraph (4) have been taken—

(a) the donee, or

(b) if more than one, each of the donees,

must read (or have read to him) all the prescribed information.

(6) As soon as reasonably practicable after the steps required by paragraph (5) have been taken, the donee or, if more than one, each of them—

(a) must complete the provisions of [Section 11] of the instrument that apply to him (or direct another person to do so); and

(b) subject to paragraph (7), must sign [Section 11] of the instrument in the presence of a witness.

(7) If the instrument is to be signed by any person at the direction of the donor, or at the direction of any donee, the signature must be done in the presence of two witnesses.

(8) For the purposes of this regulation—

(a) the donor may not witness any signature required for the power;

(b) a donee may not witness any signature required for the power apart from that of another donee.

(9) A person witnessing a signature must—

(a) sign the instrument; and

(b) give his full name and address.

(10) Any reference in this regulation to a person signing an instrument (however expressed) includes his signing it by means of a mark made on the instrument at the appropriate place.

Para (3): in sub-para (a) words "Sections 1 to 7" in square brackets substituted by SI 2015/899, regs 2, 7(a). Date in force: 1 July 2015: see SI 2015/899, reg 1(2); for transitional provisions see regs 17–19.

Para (3): sub-para (b) substituted by SI 2015/899, regs 2, 7(b). Date in force: 1 July 2015: see SI 2015/899, reg 1(2); for transitional provisions see regs 17–19.

Para (4): in sub-para (a) word omitted revoked by SI 2015/899, regs 2, 7(c). Date in force: 1 July 2015: see SI 2015/899, reg 1(2); for transitional provisions see regs 17–19.

Para (4): sub-para (b) revoked by SI 2015/899, regs 2, 7(d). Date in force: 1 July 2015: see SI 2015/899, reg 1(2); for transitional provisions see regs 17–19.

Para (4): words "Section 10" in square brackets substituted by SI 2015/899, regs 2, 7(e). Date in force: 1 July 2015: see SI 2015/899, reg 1(2); for transitional provisions see regs 17–19.

Para (6): in sub-paras (a), (b) words "Section 11" in square brackets substituted by SI 2015/899, regs 2, 7(f). Date in force: 1 July 2015: see SI 2015/899, reg 1(2); for transitional provisions see regs 17–19.

Registering the instrument

A2.152

10 Notice to be given by a person about to apply for registration of lasting power of attorney

Schedule 2 to these Regulations sets out the form of notice [(Form LPA3)] which must be given by a donor or donee who is about to make an application for the registration of an instrument intended to create a lasting power of attorney.

Words "(Form LPA3)" in square brackets substituted by SI 2015/899, regs 2, 8. Date in force: 1 July 2015: see SI 2015/899, reg 1(2); for transitional provisions see regs 17–19.

A2.153

11 Application for registration

[(1) An application to the Public Guardian for the registration of an instrument intended to create a lasting power of attorney that is in Form LP1F or LP1H must be made by completion of Sections 12 and 13, the relevant parts of Section 14 and Section 15 of that Form.

(2) An application to the Public Guardian for the registration of an instrument intended to create a lasting power of attorney that is in a pre-July 2015 form must be made by using Form LP2 set out in Schedule 3 to these Regulations.

(3) An application to the Public Guardian for the registration of an instrument intended to create a lasting power of attorney where the application is a repeat application ("a reduced fee repeat application") may only be made if—

(a) the initial application for the registration of a lasting power of attorney is made on or after 1st October 2011;

(b) the initial application was returned to the applicant as invalid;

(c) the reduced fee repeat application is submitted for registration within three months of the date on which the initial application was returned to the applicant as invalid; and

(d) the reduced fee for such applications applies.

(4) Where the initial application for the registration of the lasting power of attorney was made in accordance with paragraph (1) using Form LP1F or LP1H, a reduced fee repeat application must also be made by the completion of Form LP1F or LP1H as appropriate, including completion of the repeat application option in Section 14 of that Form.

(5) Where the initial application for the registration of the lasting power of attorney was made in accordance with paragraph (2) using a pre-July 2015 form, a reduced fee repeat application must be made by the completion of Form LP1F or LP1H as appropriate, including completion of the repeat application option in Section 14 of that Form.

(6) Where the instrument to be registered which is sent with the application is neither—

(a) the original instrument intended to create the power; nor

(b) a certified copy of it,

the Public Guardian must not register the instrument unless the court directs the Public Guardian to do so.

(7) In this regulation—

(a) "pre-July 2015 form" means a valid instrument intended to create a lasting power of attorney that is not in Form LP1F or LP1H but that complies with these Regulations as they were in force immediately before 1st July 2015; and

(b) "certified copy" means a photographic or other facsimile copy which is certified as an accurate copy by—

(i) the donor; or

(ii) a solicitor or notary.]

Substituted by SI 2015/899, regs 2, 9. Date in force: 1 July 2015: see SI 2015/899, reg 1(2); for transitional provisions see regs 17–19.

PART II – CONTENTIOUS BUSINESS

CPR PART 57 – [PROBATE, INHERITANCE, PRESUMPTION OF DEATH AND GUARDIANSHIP OF MISSING PERSONS]

Inserted by SI 2001/1388, r 14, Schedule. Date in force: 15 October 2001 (except in relation to proceedings where a claim form is issued before that date): see SI 2001/1388, rr 1(b), 19.

Words "Probate, Inheritance and Presumption of Death" in square brackets substituted by SI 2014/2044, r 10(a). Date in force: 1 October 2014: see SI 2014/2044, r 2.

Words "Probate, Inheritance and Presumption of Death" in italics revoked and subsequent words in square brackets substituted by SI 2019/1034, rr 2, 3. Date in force: 31 July 2019: see SI 2019/1034, r 1(1).

A2.166

57.1 Scope of this Part and definitions

[(1) This Part contains rules about—

(a) probate claims;

(b) claims for the rectification of wills; . . .

(c) claims and applications to—

(i) substitute another person for a personal representative; or

(ii) remove a personal representative;

(d) claims under the Inheritance (Provision for Family and Dependants) Act 1975][; and

(e) proceedings under the Presumption of Death Act 2013][; and

(f) proceedings under the Guardianship (Missing Persons) Act 2017].

(2) In this Part:

(a) "probate claim" means a claim for—

(i) the grant of probate of the will, or letters of administration of the estate, of a deceased person;

(ii) the revocation of such a grant; or

(iii) a decree pronouncing for or against the validity of an alleged will;

not being a claim which is non-contentious (or common form) probate business;

(Section 128 of the [Senior Courts Act 1981] defines non-contentious (or common form) probate business.)

(b) "relevant office" means—

(i) in the case of High Court proceedings in a Chancery district registry, that registry;

(ii) in the case of any other High Court proceedings, Chancery Chambers at the Royal Courts of Justice, Strand, London, WC2A 2LL; and

[(iii) in the case of County Court proceedings, the office of the County Court hearing centre in question;]

(c) "testamentary document" means a will, a draft of a will, written instructions for a will made by or at the request of, or under the instructions of, the testator, and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed;

(d) "will" includes a codicil.]

Inserted by SI 2001/1388, r 14, Schedule. Date in force: 15 October 2001 (except in relation to proceedings where a claim form is issued before that date): see SI 2001/1388, rr 1(b), 19.

Para (1): in sub-para (b) word omitted revoked by SI 2002/2058, r 23(c)(i). Date in force: 2 December 2002: see SI 2002/2058, r 1(b).

Para (1): sub-para (d) and word "and" immediately preceding it inserted by SI 2002/2058, r 23(c)(ii). Date in force: 2 December 2002: see SI 2002/2058, r 1(b).

Para (1): in sub-para (c)(ii) word omitted revoked by SI 2014/2044, r 10(c)(i). Date in force: 1 October 2014: see SI 2014/2044, r 2.

Para (1): sub-para (e) and word "; and" immediately preceding it inserted by SI 2014/2044, r 10(c)(ii). Date in force: 1 October 2014: see SI 2014/2044, r 2.

Para (1): sub-para (f) and word "; and" immediately preceding it inserted by SI 2019/1034, rr 2, 5(b), (c). Date in force: 31 July 2019: see SI 2019/1034, r 1(1).

Para (2): words "Senior Courts Act 1981" in square brackets substituted by the Constitutional Reform Act 2005, s 59(5), Sch 11, Pt 1, para 1(2). Date in force: 1 October 2009: see SI 2009/1604, art 2(d).

Para (2): sub-para (b)(iii) substituted by virtue of SI 2014/407, r 24(a). Date in force: 22 April 2014: see SI 2014/954, art 2(*a*) and SI 2014/407, r 2(1); for transitional provisions see SI 2014/954, art 3.

I
PROBATE CLAIMS

A2.167

57.2 General

[(1) This Section contains rules about probate claims.

(2) Probate claims in the High Court are assigned to the Chancery Division.

[(3) Probate claims in the county court must only be [started by sending the claim to, or making the claim at]—

(a) a [County Court hearing centre] where there is also a Chancery district registry; or

(b) the [County Court at Central London].].

(4) All probate claims are allocated to the multi-track.

Inserted by SI 2001/1388, r 14, Schedule. Date in force: 15 October 2001 (except in relation to proceedings where a claim form is issued before that date): see SI 2001/1388, rr 1(b), 19.

Para (3): substituted by SI 2003/2113, r 15. Date in force: 6 October 2003: see SI 2003/2113, r 1(c).

Para (3): words "started by sending the claim to, or making the claim at" in square brackets substituted by SI 2014/407, r 24(b)(i). Date in force: 22 April 2014: see SI 2014/954, art 2(a) and SI 2014/407, r 2(1); for transitional provisions see SI 2014/954, art 3.

Para (3): in sub-para (a) words "County Court hearing centre" in square brackets substituted by SI 2014/407, r 24(b)(ii). Date in force: 22 April 2014: see SI 2014/954, art 2(a) and SI 2014/407, r 2(1); for transitional provisions see SI 2014/954, art 3.

Para (3): in sub-para (b) words "County Court at Central London" in square brackets substituted by SI 2014/407, r 24(b)(iii). Date in force: 22 April 2014: see SI 2014/954, art 2(a) and SI 2014/407, r 2(1); for transitional provisions see SI 2014/954, art 3.

A2.168

57.3 How to start a probate claim

A probate claim must be commenced—

(a) in the relevant office; and

(b) using the procedure in Part 7.

Inserted by SI 2001/1388, r 14, Schedule. Date in force: 15 October 2001 (except in relation to proceedings where a claim form is issued before that date): see SI 2001/1388, rr 1(b), 19.

A2.169

57.4 Acknowledgement of service and defence

[(1) A defendant who is served with a claim form must file an acknowledgement of service.

(2) Subject to paragraph (3), the period for filing an acknowledgement of service is—

(a) if the defendant is served with a claim form which states that particulars of claim are to follow, 28 days after service of the particulars of claim; and

(b) in any other case, 28 days after service of the claim form.

(3) If the claim form is served out of the jurisdiction under rule [6.32 or 6.33], the period for filing an acknowledgement of service is 14 days longer than the relevant period specified in rule [6.35] or [Practice Direction 6B].

(4) Rule 15(4) (which provides the period for filing a defence) applies as if the words 'under Part 10' were omitted from rule 15.4(1)(b).]

Inserted by SI 2001/1388, r 14, Schedule. Date in force: 15 October 2001 (except in relation to proceedings where a claim form is issued before that date): see SI 2001/1388, rr 1(b), 19.

Para (3): words "6.32 or 6.33" in square brackets substituted by SI 2008/2178, r 30(a)(i). Date in force: 1 October 2008: see SI 2008/2178, r 1(2).

Para (3): reference to "6.35" in square brackets substituted by SI 2008/2178, r 30(a)(ii). Date in force: 1 October 2008: see SI 2008/2178, r 1(2).

Para (3): words "Practice Direction 6B" in square brackets substituted by SI 2009/3390, r 32(a). Date in force: 6 April 2010: see SI 2009/3390, r 1(2).

A2.170

57.5 Lodging of testamentary documents and filing of evidence about testamentary documents

[(1) Any testamentary document of the deceased person in the possession or control of any party must be lodged with the court.

(2) Unless the court directs otherwise, the testamentary documents must be lodged in the relevant office—

(a) by the claimant when the claim form is issued; and

(b) by a defendant when he acknowledges service.

(3) The claimant and every defendant who acknowledges service of the claim form must in written evidence—

(a) describe any testamentary document of the deceased of which he has any knowledge or, if he does not know of any such testamentary document, state that fact, and

(b) if any testamentary document of which he has knowledge is not in his possession or under his control, give the name and address of the person in whose possession or under whose control it is or, if he does not know the name or address of that person, state that fact.

(A specimen form for the written evidence about testamentary documents is annexed to [Practice Direction 57].)

(4) Unless the court directs otherwise, the written evidence required by paragraph (3) must be filed in the relevant office—

(a) by the claimant, when the claim form is issued; and

(b) by a defendant when he acknowledges service.

(5) Except with the permission of the court, a party shall not be allowed to inspect the testamentary documents or written evidence lodged or filed by any other party until he himself has lodged his testamentary documents and filed his evidence.

(6) The provisions of paragraphs (2) and (4) may be modified by a practice direction under this Part.]

Inserted by SI 2001/1388, r 14, Schedule. Date in force: 15 October 2001 (except in relation to proceedings where a claim form is issued before that date): see SI 2001/1388, rr 1(b), 19.

Parenthesis below para (3): words "Practice Direction 57" in square brackets substituted by SI 2009/3390, r 32(b)(i). Date in force: 6 April 2010: see SI 2009/3390, r 1(2).

A2.171

57.6 Revocation of existing grant

(1) In a probate claim which seeks the revocation of a grant of probate or letters of administration every person who is entitled, or claims to be entitled, to administer the estate under that grant must be made a party to the claim.

(2) If the claimant is the person to whom the grant was made, he must lodge the probate or letters of administration in the relevant office when the claim form is issued.

(3) If a defendant has the probate or letters of administration under his control, he must lodge it in the relevant office when he acknowledges service.

(4) Paragraphs (2) and (3) do not apply where the grant has already been lodged at the court, which in this paragraph includes the Principal Registry of the Family Division or a district probate registry.

Inserted by SI 2001/1388, r 14, Schedule. Date in force: 15 October 2001 (except in relation to proceedings where a claim form is issued before that date): see SI 2001/1388, rr 1(b), 19.

A2.172

57.7 Contents of statements of case

(1) The claim form must contain a statement of the nature of the interest of the claimant and of each defendant in the estate.

(2) If a party disputes another party's interest in the estate he must state this in his statement of case and set out his reasons.

(3) Any party who contends that at the time when a will was executed the testator did not know of and approve its contents must give particulars of the facts and matters relied on.

(4) Any party who wishes to contend that—

(a) a will was not duly executed;

(b) at the time of the execution of a will the testator lacked testamentary capacity; or

(c) the execution of a will was obtained by undue influence or fraud,

must set out the contention specifically and give particulars of the facts and matters relied on.

(5)

(a) A defendant may give notice in his defence that he does not raise any positive case, but insists on the will being proved in solemn form and, for that purpose, will cross-examine the witnesses who attested the will.

(b) If a defendant gives such a notice, the court will not make an order for costs against him unless it considers that there was no reasonable ground for opposing the will.

Inserted by SI 2001/1388, r 14, Schedule. Date in force: 15 October 2001 (except in relation to proceedings where a claim form is issued before that date): see SI 2001/1388, rr 1(b), 19.

Para (4): in sub-para (b) words "lacked testamentary capacity" in square brackets substituted by SI 2007/3543, r 8. Date in force: 6 April 2008: see SI 2007/3543, r 1(b).

A2.173

57.8 Counterclaim

(1) A defendant who contends that he has any claim or is entitled to any remedy relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person must serve a counterclaim making that contention.

(2) If the claimant fails to serve particulars of claim within the time allowed, the defendant may, with the permission of the court, serve a counterclaim and the probate claim shall then proceed as if the counterclaim were the particulars of claim.

Inserted by SI 2001/1388, r 14, Schedule. Date in force: 15 October 2001 (except in relation to proceedings where a claim form is issued before that date): see SI 2001/1388, rr 1(b), 19.

A2.174

57.9 Probate counterclaim in other proceedings

[(1) In this rule "probate counterclaim" means a counterclaim in any claim other than a probate claim by which the defendant claims any such remedy as is mentioned in rule 57.1(2)(a).

(2) Subject to the following paragraphs of this rule, this Part shall apply with the necessary modifications to a probate counterclaim as it applies to a probate claim.

(3) A probate counterclaim must contain a statement of the nature of the interest of each of the parties in the estate of the deceased to which the probate counterclaim relates.

(4) Unless an application notice is issued within 7 days after the service of a probate counterclaim for an order under rule 3.1(2)(e) or 3.4 for the probate counterclaim to be dealt with in separate proceedings or to be struck out, and the application is granted, the court [will] order the transfer of the proceedings to either—

(a) the Chancery Division (if it is not already assigned to that Division) and to either the Royal Courts of Justice or a Chancery district registry (if it is not already proceeding in one of those places); or

[(b) if the County Court has jurisdiction, to a County Court hearing centre where there is also a Chancery District Registry or the County Court at Central London].

(5) If an order is made that a probate counterclaim be dealt with in separate proceedings, the order shall order the transfer of the probate counterclaim as required under paragraph (4).

Inserted by SI 2001/1388, r 14, Schedule. Date in force: 15 October 2001 (except in relation to proceedings where a claim form is issued before that date): see SI 2001/1388, rr 1(b), 19.

Para (4): word "will" in square brackets substituted by SI 2014/407, r 24(c)(i). Date in force: 22 April 2014: see SI 2014/954, art 2(a) and SI 2014/407, r 2(1); for transitional provisions see SI 2014/954, art 3.

Para (4): sub-para (b) substituted by SI 2014/407, r 24(c)(ii). Date in force: 22 April 2014: see SI 2014/954, art 2(a) and SI 2014/407, r 2(1); for transitional provisions see SI 2014/954, art 3.

A2.175

57.10 Failure to acknowledge service or to file a defence

(1) A default judgment cannot be obtained in a probate claim and rule 10.2 and Part 12 do not apply.

(2) If any of several defendants fails to acknowledge service the claimant may—

(a) after the time for acknowledging service has expired; and

(b) upon filing written evidence of service of the claim form and (if no particulars of claim were contained in or served with the claim form) the particulars of claim on that defendant;

proceed with the probate claim as if that defendant had acknowledged service.

(3) If no defendant acknowledges service or files a defence then, unless on the application of the claimant the court orders the claim to be discontinued, the claimant may, after the time for acknowledging service or for filing a defence (as the case may be) has expired, apply to the court for an order that the claim is to proceed to trial.

(4) When making an application under paragraph (3) the claimant must file written evidence of service of the claim form and (if no particulars of claim were contained in or served with the claim form) the particulars of claim on each of the defendants.

(5) Where the court makes an order under paragraph (3), it may direct that the claim be tried on written evidence.

Inserted by SI 2001/1388, r 14, Schedule. Date in force: 15 October 2001 (except in relation to proceedings where a claim form is issued before that date): see SI 2001/1388, rr 1(b), 19.

A2.176

57.11 Discontinuance and dismissal

(1) Part 38 does not apply to probate claims.

(2) At any stage of a probate claim the court, on the application of the claimant or of any defendant who has acknowledged service, may order that—

(a) the claim be discontinued or dismissed on such terms as to costs or otherwise as it thinks just; and

(b) a grant of probate of the will, or letters of administration of the estate, of the deceased person be made to the person entitled to the grant.

Inserted by SI 2001/1388, r 14, Schedule. Date in force: 15 October 2001 (except in relation to proceedings where a claim form is issued before that date): see SI 2001/1388, rr 1(b), 19.

II
RECTIFICATION OF WILLS

A2.177

57.12 Rectification of Wills

[(1) This Section contains rules about claims for the rectification of a will.

(Section 20 of the Administration of Justice Act 1982 provides for rectification of a will. Additional provisions are contained in rule 55 of the Non-Contentious Probate Rules 1987.)

(2) Every personal representative of the estate shall be joined as a party.

(3) [Practice Direction 57] makes provision for lodging the grant of probate or letters of administration with the will annexed in a claim under this Section.

Inserted by SI 2001/1388, r 14, Schedule. Date in force: 15 October 2001 (except in relation to proceedings where a claim form is issued before that date): see SI 2001/1388, rr 1(b), 19.

Para (3): words "Practice Direction 57" in square brackets substituted by SI 2009/3390, r 32(c). Date in force: 6 April 2010: see SI 2009/3390, r 1(2).

III
SUBSTITUTION AND REMOVAL OF PERSONAL REPRESENTATIVES

A2.178

57.13 Substitution and Removal of Personal Representatives

[(1) This Section contains rules about claims and applications for substitution or removal of a personal representative.

(2) Claims under this Section must be brought in the High Court and are assigned to the Chancery Division.

(Section 50 of the Administration of Justice Act 1985 gives the High Court power to appoint a substitute for, or to remove, a personal representative.)

(3) Every personal representative of the estate shall be joined as a party.

(4) [Practice Direction 57] makes provision for lodging the grant of probate or letters of administration in a claim under this Section.

(5) If substitution or removal of a personal representative is sought by application in existing proceedings, this rule shall apply with references to claims being read as if they referred to applications.]

Inserted by SI 2001/1388, r 14, Schedule. Date in force: 15 October 2001 (except in relation to proceedings where a claim form is issued before that date): see SI 2001/1388, rr 1(b), 19.

Para (4): words "Practice Direction 57" in square brackets substituted by SI 2009/3390, r 32(c). Date in force: 6 April 2010: see SI 2009/3390, r 1(2).

IV
CLAIMS UNDER THE INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975

A2.179

57.14 Scope of this Section

This Section contains rules about claims under the Inheritance (Provision for Family and Dependants) Act 1975 ('the Act').

Inserted by SI 2002/2058, r 23(d), Sch 4, Pt II. Date in force: 2 December 2002: see SI 2002/2058, r 1(b).

A2.180

57.15 Proceedings in the High Court

[(1) Proceedings in the High Court under the Act shall be issued in either—

(a) the Chancery Division; or

(b) the Family Division.

(2) The Civil Procedure Rules apply to proceedings under the Act which are brought in the Family Division, except that the provisions of [the Family Procedure Rules 2010] relating to the drawing up and service of orders apply instead of the provisions in Part 40 and [Practice Direction 40B].]

Inserted by SI 2002/2058, r 23(d), Sch 4, Pt II. Date in force: 2 December 2002: see SI 2002/2058, r 1(b).

Para (2): words "the Family Procedure Rules 2010" in square brackets substituted by SI 2011/1045, arts 17, 19. Date in force: 6 April 2011: see SI 2011/1045, art 1; for transitional provision see art 39 thereof.

Para (2): words "Practice Direction 40B" in square brackets substituted by SI 2009/3390, r 32(d). Date in force: 6 April 2010: see SI 2009/3390, r 1(2).

A2.181

57.16 Procedure for claims under section 1 of the Act

[(1) A claim under section 1 of the Act must be made by issuing a claim form in accordance with Part 8.

(2) Rule 8.3 (acknowledgment of service) and rule 8.5 (filing and serving written evidence) apply as modified by paragraphs (3) to (5) of this rule.

(3) The written evidence filed and served by the claimant with the claim form must[, except in the circumstances specified in paragraph (3A),] have exhibited to it an official copy of—

(a) the grant of probate or letters of administration in respect of the deceased's estate; and

(b) every testamentary document in respect of which probate or letters of administration were granted.

[(3A) Where no grant has been obtained, the claimant may make a claim without naming a defendant and may apply for directions as to the representation of the estate. The written evidence must—

(a) explain the reasons why it has not been possible for a grant to be obtained;

(b) be accompanied by the original or a copy (if either is available) of the will or other testamentary document in respect of which probate or letters of administration are to be granted; and

(c) contain the following information, so far as known to the claimant—

(i) brief details of the property comprised in the estate, with an approximate estimate of its capital value and any income that is received from it;

(ii) brief details of the liabilities of the estate;

(iii) the names and addresses of the persons who are in possession of the documents relating to the estate; and

(iv) the names of the beneficiaries and their respective interests in the estate.

(3B) Where a claim is made in accordance with paragraph (3A), the court may give directions as to the parties to the claim and as to the representation of the estate either on the claimant's application or on its own initiative.

(Section 4 of the 1975 Act as amended confirms that nothing prevents the making of an application under the Act before representation with respect to the estate of the deceased person is taken out.)]

(4) [Subject to paragraph (4A), the time] within which a defendant must file and serve—

(a) an acknowledgment of service; and

(b) any written evidence,

is not more than 21 days after service of the claim form on him.

[(4A) If the claim form is served out of the jurisdiction under rule [6.32 or 6.33], the period for filing an acknowledgment of service and any written evidence is 7 days longer than the relevant period specified in rule [6.35] or [Practice Direction 6B].]

(5) A defendant who is a personal representative of the deceased must file and serve written evidence, which must include the information required by [Practice Direction 57].]

Inserted by SI 2002/2058, r 23(d), Sch 4, Pt II. Date in force: 2 December 2002: see SI 2002/2058, r 1(b).

Para (3): words ", except in the circumstances specified in paragraph (3A)," in square brackets inserted by SI 2014/2044, r 10(d)(i). Date in force: 1 October 2014: see SI 2014/2044, r 2.

Paras (3A), (3B): inserted by SI 2014/2044, r 10(d)(ii). Date in force: 1 October 2014: see SI 2014/2044, r 2.

Para (4): words "Subject to paragraph (4A), the time" in square brackets substituted by SI 2004/1306, r 17(a). Date in force: 30 June 2004: see SI 2004/1306, r 1(b).

Para (4A): inserted by SI 2004/1306, r 17(b). Date in force: 30 June 2004: see SI 2004/1306, r 1(b).

Para (4A): words "6.32 or 6.33" in square brackets substituted by SI 2008/2178, r 30(b)(i). Date in force: 1 October 2008: see SI 2008/2178, r 1(2).

Para (4A): reference to "6.35" in square brackets substituted by SI 2008/2178, r 30(b)(ii). Date in force: 1 October 2008: see SI 2008/2178, r 1(2).

Para (4A): words "Practice Direction 6B" in square brackets substituted by SI 2009/3390, r 32(e). Date in force: 6 April 2010: see SI 2009/3390, r 1(2).

Para (5): words "Practice Direction 57" in square brackets substituted by SI 2009/3390, r 32(b)(ii). Date in force: 6 April 2010: see SI 2009/3390, r 1(2).

[SECTION V
PROCEEDINGS UNDER THE PRESUMPTION OF DEATH ACT 2013]

Inserted by SI 2014/2044, r 10(e), Schedule. Date in force: 1 October 2014: see SI 2014/2044, r 2.

A2.182

[Rule 57.17 Scope and interpretation]

[(1) This Section contains rules about proceedings under the Presumption of Death Act 2013.

(2) In this Section, terms used in the Presumption of Death Act 2013 Act have the meaning given by that Act, and—

(a) "the 2013 Act" means the Presumption of Death Act 2013;

(b) "a claim for a declaration of presumed death" means a claim under section 1 of the 2013 Act for a declaration that a missing person is presumed to be dead;

(c) "a claim for a variation order" means a claim for an order under section 5 of the 2013 Act varying or revoking a declaration of presumed death.]

Inserted by SI 2014/2044, r 10(e), Schedule. Date in force: 1 October 2014: see SI 2014/2044, r 2.

A2.183

[Rule 57.18 Proceedings to be in the High Court]

[(1) Proceedings under the 2013 Act must be issued in the High Court in either—

(a) the Chancery Division; or

(b) the Family Division.

(2) The Civil Procedure Rules apply to proceedings under the 2013 Act which are brought in the Family Division, except that the provisions of the Family Procedure Rules 2010 relating to the drawing up and service of orders apply instead of the provisions in Part 40 and Practice Direction 40B.]

Inserted by SI 2014/2044, r 10(e), Schedule. Date in force: 1 October 2014: see SI 2014/2044, r 2.

A2.184

[Rule 57.19 Procedure for claims for a declaration of presumed death or a variation order]

[(1) A claim for a declaration of presumed death or for a variation order must be made by issuing a claim form in accordance with Part 8.

(2) In addition to the matters set out in rule 8.2 (contents of the claim form), the claim form must also include or be accompanied by the information required by Practice Direction 57B.

(3) Rules 8.2A, 8.3, 8.4 and 8.5 apply as modified by paragraphs (4) to (7) of this rule (and references elsewhere in these Rules to a defendant and to an acknowledgment of service are, where relevant, to be read as references to the substitute terms in rules 8.2A, 8.3, 8.4 and 8.5 as so modified).

(4) Rule 8.2A (issue of claim form without naming defendants) applies as if for "without naming a defendant" in paragraph (1) there were substituted "without serving notice on any person".

(5) Rule 8.3 (acknowledgment of service) applies—

(a) as if, instead of referring to a defendant, it referred to a person giving notice of intention to intervene or applying for permission to intervene, as the case may be;

(b) as if, instead of referring to an acknowledgment of service, it referred to a notice of intention to intervene or an application for permission to intervene, as the case may be; and

(c) subject to paragraph (7), with the substitution of 21 days for 14 days as the time within which the notice of intention to intervene or application for permission to intervene must be filed and served.

(6) Rules 8.4 (consequence of not filing an acknowledgment of service) and 8.5 (filing and serving written evidence) apply—

(a) as if, instead of referring to a defendant, they referred to a person giving notice of intention to intervene or applying for permission to intervene, as the case may be; and

(b) as if, instead of referring to an acknowledgment of service, they referred to a notice of intention to intervene or an application for permission to intervene, as the case may be.

(7) If the claim form is served out of the jurisdiction under rule 6.32 or 6.33, the period for filing notice of intention to intervene or an application for permission to intervene, as the case may be, and any written evidence, is 7 days longer than the relevant period for serving an acknowledgement of service specified in rule 6.35 or Practice Direction 6B.]

Inserted by SI 2014/2044, r 10(e), Schedule. Date in force: 1 October 2014: see SI 2014/2044, r 2.

A2.185

[Rule 57.20 Giving notice of claim]

[(1) Where the claim is for a declaration of presumed death, the claimant must give notice of the claim by serving a copy of it on the following persons (where not the claimant)—

(a) the spouse or civil partner of the missing person;

(b) any parent of the missing person;

(c) any child of the missing person;

(d) any sibling of the missing person;

(e) if there are no persons within sub-paragraphs (a) to (d), the nearest relative of the missing person known to the claimant; and

(f) any other person (including in particular any insurance company) appearing to the claimant to have an interest in the claim.

(2) Where the claim is for a variation order, the claimant must give notice of the claim by serving a copy of it on the following persons (where not the claimant)—

(a) the person who was the claimant for the declaration of presumed death or (as the case may be) previous variation order which it is sought to have varied or revoked;

(b) the spouse or civil partner of the missing person;

(c) any parent of the missing person;

(d) any child of the missing person;

(e) any sibling of the missing person;

(f) if there are no persons within sub-paragraphs (b) to (e), the nearest relative of the missing person known to the claimant; and

(g) any other person (including in particular any insurance company) appearing to the claimant to have an interest in the claim.

(3) Notice under paragraph (1)(a) to (f) or paragraph (2)(a) to (g) must be given within 7 days after the claim is issued.]

Inserted by SI 2014/2044, r 10(e), Schedule. Date in force: 1 October 2014: see SI 2014/2044, r 2.

A2.186

[Rule 57.21 Advertisement of claim]

[(1) The claimant (whether the claim is for a declaration of presumed death or for a variation order) must, within 7 days of issue of the claim, ensure that notice of the claim is published—

(a) in a form which meets the requirements set out in Practice Direction 57B; and

(b) in at least one newspaper circulating in the vicinity of the last known address of the missing person.

(2) The claimant must, at least 5 days before the hearing, file a copy of the page of the newspaper bearing the advertisement of notice of the claim required by paragraph (1) and the date on which it was published.]

Inserted by SI 2014/2044, r 10(e), Schedule. Date in force: 1 October 2014: see SI 2014/2044, r 2.

A2.187

[Rule 57.22 Interveners]

[(1) The Attorney General, or a person who is entitled to intervene in proceedings under section 11(1), must first notify the court of the intention to intervene in accordance with the requirements of Practice Direction 57B.

(2) Any other person who wishes to intervene in such proceedings must submit an application for permission to intervene in accordance with the requirements of Practice Direction 57B.

(3) Where the court grants permission to intervene, it may do so on conditions and may give case management directions.

(4) The court may direct that a person who intervenes in proceedings, other than the Attorney General, be joined as a claimant or defendant.]

Inserted by SI 2014/2044, r 10(e), Schedule. Date in force: 1 October 2014: see SI 2014/2044, r 2.

A2.188

[Rule 57.23 Requirement to provide information]

[(1) An application for an order under section 12(1) of the 2013 Act must be supported by evidence and must in particular—

(a) specify or describe the information in respect of which the order is sought;

(b) set out the reasons why the person making the application believes that the person against whom the order is sought is likely to have such information; and

(c) include any further details, where known, of the missing person which are likely to assist in providing the information sought.

(2) The person making the application must serve a copy of the application notice on the person against whom the order is sought, and on every other party to the proceedings (within the meaning of section 20(2) of the 2013 Act), at least 14 days before the date fixed for the hearing of the application.

(3) An application for discharge or variation under section 12(6) of an order made under section 12(1) may be made without notice unless the court directs otherwise.]

Inserted by SI 2014/2044, r 10(e), Schedule. Date in force: 1 October 2014: see SI 2014/2044, r 2.

A2.188A

[Rule 57.24 Requirement to send copy of declaration to the Public Guardian]

[Where a declaration of presumed death made under the 2013 Act satisfies section 3(3)(a) or (b) of that Act, the court must send a copy of the declaration to the Public Guardian.]

Inserted by SI 2019/1034, rr 2, 6. Date in force: 31 July 2019: see SI 2019/1034, r 1(1).

[Section VI
Proceedings Under the Guardianship (Missing Persons) Act 2017]

Inserted by SI 2019/1034, rr 2, 7, Schedule. Date in force: 31 July 2019: see SI 2019/1034, r 1(1).

A2.188B

[Rule 57.25 Scope and interpretation]

[(1) This Section contains rules about proceedings under the Guardianship (Missing Persons) Act 2017.

(2) In this Section, terms used in the Guardianship (Missing Persons) Act 2017 have the meaning given by that Act, and—

(a) "the 2017 Act" means the Guardianship (Missing Persons) Act 2017;

(b) the missing person" means the person who is or has been asserted to be "missing" within the meaning of the 2017 Act;

(c) "a claim for a guardianship order" means an application under section 2 (applying for a guardianship order) of the 2017 Act for a guardianship order;

(d) "an application for a revocation/variation order" means—

(i) an application under section 12 (variation of a guardianship order) of the 2017 Act for an order varying a guardianship order; or

(ii) an application under section 13 (revocation of a guardianship order) of the 2017 Act for an order revoking a guardianship order;

(e) "an application relating to a guardianship order" means any application which relates to the exercise of functions of a guardian but which is not a claim for a guardianship order or an application for a revocation/variation of a guardianship order;

(f) "an intervener" means either a person who falls within section 21(1) of the 2017 Act and who has given notice of intention to intervene, or a person to whom the court has given permission to intervene.]

Inserted by SI 2019/1034, rr 2, 7, Schedule. Date in force: 31 July 2019: see SI 2019/1034, r 1(1).

A2.188C

[Rule 57.26 Proceedings to be in the High Court]

[(1) Proceedings under the 2017 Act must be issued in the High Court in either—

(a) the Chancery Division; or

(b) the Family Division.

(2) The Civil Procedure Rules apply to proceedings under the 2017 Act which are brought in the Family Division, except that in the Family Division the provisions of Part 29 of the Family Procedure Rules 2010 relating to the drawing up and service of orders shall apply instead of the provisions in the Civil Procedure Rules Part 40 and Practice Direction 40B.]

Inserted by SI 2019/1034, rr 2, 7, Schedule. Date in force: 31 July 2019: see SI 2019/1034, r 1(1).

A2.188D

[Rule 57.27 Procedure for making claims for a guardianship order]

[(1) A claim for a guardianship order must be made by issuing a claim form in accordance with Part 8.

(2) Following issue, the court shall fix a date for the first hearing of the claim and which shall, unless the court otherwise orders, be not less than 56 days from the date of issue; but any person may apply for the claim or an application to be heard at an earlier date.

(3) In addition to the matters set out in rule 8.2 (contents of the claim form), the claim form must also include the information required by paragraph 1.1 of Practice Direction 57C and be accompanied by a witness statement containing the information required by paragraph 1.2 and, where appropriate, paragraph 1.3 of Practice Direction 57C.

(4) The claim form must name the missing person as the defendant but—

(a) the claimant need take no steps to serve the claim form upon the missing person unless the court orders otherwise;

(b) the court shall consider at the first hearing what, if any, directions to make regarding service or dispensing with service of the claim form upon the missing person;

(c) Rules 6.9, 6.15, 6.16 and 7.5 (rules as to service of the claim form) shall not apply.

(5) Rules 8.3, 8.4 and 8.5 (rules relating to part 8 claims) shall not apply.

(Rule 57.29 sets out further steps that a claimant must take.)]

Inserted by SI 2019/1034, rr 2, 7, Schedule. Date in force: 31 July 2019: see SI 2019/1034, r 1(1).

A2.188E

[Rule 57.28 Procedure for making applications for revocation/variation of guardianship orders and applications relating to guardianship orders]

[(1) An application for a revocation/variation order and an application relating to a guardianship order must be made in accordance with Part 23 as modified by this rule and by paragraph 2 of Practice Direction 57C.

(2) In addition to the matters set out in rule 23.6 (what an application notice must include), the application notice must also include, or be accompanied by, a witness statement which contains the information required by paragraph 2 of Practice Direction 57C in relation to that type of application.

(3) Following issue, the court shall fix a date for the first hearing of the application which shall, unless the court otherwise orders, be not less than 56 days from the date of issue; but any person may apply for the application to be heard at an earlier date.

(4) The applicant need take no steps to serve the application or any order upon the missing person unless the court orders otherwise.

(5) Rules 23.9 and 23.11 apply as modified by paragraphs (6) and (7).

(6) Rule 23.9(2) (service of application where application made without notice) applies as if it did not refer to the missing person as defendant, but did refer also to any interveners.

(7) Rule 23.11 (power of court to proceed in the absence of a party) applies as if the words "or any intervener" were inserted after both references to "any respondent".

(Rules 57.29 and 57.30 set out further steps that applicants must take.)]

Inserted by SI 2019/1034, rr 2, 7, Schedule. Date in force: 31 July 2019: see SI 2019/1034, r 1(1).

A2.188F

[Rule 57.29 Giving notice and advertisement of claim for a guardianship order or an application for a revocation/variation order]

[(1) The claimant or applicant must, within 14 days of notification of the date of the first hearing of the claim for a guardianship order or of an application for a revocation/variation order—

(a) send notice of the claim or application to those of the following persons whose identity and current residential or e-mail address or nominated address for service are known to the claimant or applicant—

(i) the spouse or civil partner of the missing person;

(ii) any parent of the missing person;

(ii) any child of the missing person;

(iv) any sibling of the missing person;

(v) if there are no persons within paragraphs (i) to (iv), the nearest relative of the missing person known to the claimant or applicant;

(vi) any guardian or any former guardian of the missing person;

(vii) any person who has previously intervened in and/or become a party to these or any proceedings in which a guardianship order was sought in relation to the missing person,

by sending (subject to any redaction ordered by the court, and subject to paragraph (2)) the material set out in paragraph 3.1 of Practice Direction 57C to the relevant addresses; and

(b) advertise notice of the claim or application—

(i) in a form which meets the requirements set out in paragraph 4.1 of Practice Direction 57C;

(ii) in at least one public news media circulating in or relating to the vicinity of the last known usual place of residence of the missing person;

being "Advertisement of the claim/application".

(2) If the person has a nominated address for service known to the claimant or applicant, and provided that such address for service has been nominated expressly for the purpose of 2017 Act proceedings, the material need only be sent to that address; and, if the claimant or applicant has no access to any, or no, e-mail address of their own, they need not send the material to any e-mail address.

(3) The claimant or applicant must file at court no later than 7 days before the first hearing of the claim or application, a witness statement—

(a) confirming compliance with paragraph (1)(a), and attaching Form N215 (Certificate of Service) completed to describe each method of sending to each person, as if references on that form to "service" were to "sending"; and

(b) confirming compliance with paragraph (1)(b), and containing or attaching evidence of Advertisement of the claim/application, including details of how, where and when it was advertised.]

Inserted by SI 2019/1034, rr 2, 7, Schedule. Date in force: 31 July 2019: see SI 2019/1034, r 1(1).

A2.188G

[Rule 57.30 Giving notice and advertisement of applications relating to guardianship orders or the potential exercise of powers under the 2017 Act]

[(1) Unless the court dispenses with the need for notice, notice of an application relating to a guardianship order must be sent to those of the following persons whose identity and current residential or e-mail address or nominated address for service are known to the applicant—

(a) the spouse or civil partner of the missing person;

(b) any parent of the missing person;

(c) any child of the missing person;

(d) any sibling of the missing person;

(e) if there are no persons within sub-paragraphs (a) to (d), the nearest relative of the missing person known to the applicant;

(f) any guardian or any former guardian of the missing person;

(g) any person who has previously intervened in and/or become a party to these or any proceedings in which a guardianship order was sought in relation to the missing person,

by sending (subject to any redaction ordered by the court, and subject to paragraph (2)) the material set out in paragraph 3.1 of Practice Direction 57C to the relevant addresses within 14 days after the court has notified the date for the hearing of the application.

(2) If the person has a nominated address for service known to the applicant, and provided that such address for service has been nominated expressly for the purpose of 2017 Act proceedings, the material need only be sent to that address; and, if the applicant has no access to any, or no, e-mail address of their own, they need not send the material to any e-mail address.

(3) The applicant must file at court no later than 7 days before the first hearing of the application, a witness statement confirming compliance with paragraph (1) above and attaching Form N215 (Certificate of Service) completed to describe each method of sending to each person as if references on that form to "service" were to "sending".

(4) The court may make—

(a) a direction for advertisement of the application; and

(b) any further provision for notification or service of the application.

(5) If the court is considering whether to exercise a power under the 2017 Act without an application having been made, the court may require—

(i) notice of the matter to be given (in such manner the court may direct) to any of the persons listed in paragraph (1), or to any other person; and

(ii) the matter to be advertised in such manner as the court may direct.]

Inserted by SI 2019/1034, rr 2, 7, Schedule. Date in force: 31 July 2019: see SI 2019/1034, r 1(1).

A2.188H

[Rule 57.31 Interveners]

[(1) A person who is entitled under section 21(1) (right to intervene) of the 2017 Act to intervene in a claim for a guardianship order, an application for a revocation/variation order, or an application relating to a guardianship order should, not less than 14 days before the first hearing date of the claim or application, notify the court and the claimant/applicant of any intention to intervene in accordance with the requirements of paragraph 5.1 of Practice Direction 57C.

(2) On receipt of a notice under paragraph (1) the court may give case management directions.

(3) Failure to comply with paragraph (1) shall not prevent the person from intervening (if they are otherwise entitled to do so) but may be taken into account on any question relating to costs.

(4) Any other person who wishes to intervene in such proceedings must, not less than 14 days before the first hearing date of the claim or application, file with the court and serve on the claimant/applicant an application for permission to intervene in accordance with Part 23 and paragraph 5.2 of Practice Direction 57C.

(5) Within 7 days of receiving an application for permission to intervene—

(a)from a person who has not been sent or served with the claim form or the application notice, the claimant/applicant must serve a copy of the claim form or application, the evidence in support and notice of the hearing date, upon the person seeking permission to intervene; and in any case

(b) the claimant or applicant must file with the court and serve upon the person seeking permission to intervene, a statement of whether or not they object and any evidence in support of any objection.

(6) Where the court grants permission to intervene to a person who otherwise has no entitlement to intervene under section 21(1) (right to intervene) of the 2017 Act, it may do so on conditions and may give case management directions.

(7) The court may direct that a person who intervenes in proceedings be added as a claimant (provided that they consent in writing) or defendant to the claim.]

Inserted by SI 2019/1034, rr 2, 7, Schedule. Date in force: 31 July 2019: see SI 2019/1034, r 1(1).

A2.188I

[Rule 57.32 Requirement to send copy of all orders made to the Public Guardian]

[Where the court makes a guardianship order, a revocation/variation order, an order relating to the functions of a guardian, or an order granting or refusing permission to intervene, it shall send a copy of such order to the Public Guardian.]

Inserted by SI 2019/1034, rr 2, 7, Schedule. Date in force: 31 July 2019: see SI 2019/1034, r 1(1).

A2.188J

[Rule 57.33 Death of the missing person]

[(1) If the missing person has died before or dies after the issue of the claim then, subject to any order of the court, the claim shall not abate or be stayed, and rule 19.8 shall not apply.

(2) If the claimant considers that there is real doubt as to whether the missing person is still alive, the claim form may incorporate claims under both the Presumption of Death Act 2013 ("the 2013 Act") and the 2017 Act.

(3) If the court determines at any point in the claim that the missing person has not been known to be alive for a period of seven years whether before or after the issue of the claim, the court may order that the claim should continue as if it had been brought under the 2013 Act.

(4) The court may make an order under or in relation to paragraphs (2) and (3) on such terms and conditions and with such consequential provisions as it considers appropriate.]

Inserted by SI 2019/1034, rr 2, 7, Schedule. Date in force: 31 July 2019: see SI 2019/1034, r 1(1).

PRACTICE DIRECTION 57 – PROBATE

THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 57

I PROBATE CLAIMS

General

A2.189

1.1 This Section of this practice direction applies to contentious probate claims.

1.2 The rules and procedure relating to non-contentious probate proceedings (also known as 'common form') are the Non-Contentious Probate Rules 1987 as amended.

How to start a probate claim

A2.190

2.1 A claim form and all subsequent court documents relating to a probate claim must be marked at the top 'In the estate of [name] deceased (Probate)'.

2.2 The claim form must be issued out of—

(1) Chancery Chambers at the Royal Courts of Justice; or
(2) one of the Chancery district registries; or
(3) if the claim is suitable to be heard in the County Court-
  (a) a County Court hearing centre in a place where there is also a Chancery district registry; or
  (b) the County Court at Central London.

There are Chancery district registries at Birmingham, Bristol, Caernarfon, Cardiff, Leeds, Liverpool, Manchester, Mold, Newcastle upon Tyne and Preston.

(Section 32 of the County Courts Act 1984 identifies which probate claims may be heard in the County Court.)

2.3 When the claim form is issued, the relevant office will send a notice to Leeds

District Probate Registry, Coronet House, Queen Street, Leeds, LS1 2BA, DX 26451 Leeds (Park Square), telephone 0113 243 1505, requesting that all testamentary documents, grants of representation and other relevant documents currently held at any probate registry are sent to the relevant office.

2.4 The commencement of a probate claim will, unless a court otherwise directs, prevent any grant of probate or letters of administration being made until the probate claim has been disposed of.

(Rule 45 of the Non-Contentious Probate Rules 1987 makes provision for notice of the probate claim to be given, and section 117 of the Senior Courts Act 1981 for the grant of letters of administration pending the determination of a probate claim. Paragraph 8 of this practice direction makes provision about an application for such a grant.)

Testamentary documents and evidence about testamentary documents

A2.191

3.1 Unless the court orders otherwise, if a testamentary document is held by the court (whether it was lodged by a party or it was previously held at a probate registry) when the claim has been disposed of the court will send it to the Leeds District Probate Registry.

3.2 The written evidence about testamentary documents required by this Part—

(1) should be in the form annexed to this practice direction; and
(2) must be signed by the party personally and not by his solicitor or other representative (except that if the party is a child or protected party the written evidence must be signed by his litigation friend).

3.3 In a case in which there is urgent need to commence a probate claim (for example, in order to be able to apply immediately for the appointment of an administrator pending the determination of the claim) and it is not possible for the claimant to lodge the testamentary documents or to file the evidence about testamentary documents in the relevant office at the same time as the claim form is to be issued, the court may direct that the claimant shall be allowed to issue the claim form upon his giving an undertaking to the court to lodge the documents and file the evidence within such time as the court shall specify.

Case management

A2.192

4 In giving case management directions in a probate claim the court will give consideration to the questions—

(1) whether any person who may be affected by the claim and who is not joined as a party should be joined as a party or given notice of the claim, whether under rule 19.8A or otherwise; and
(2) whether to make a representation order under rule 19.6 or rule 19.7.

Summary judgment

A2.193

5.1 If an order pronouncing for a will in solemn form is sought on an application for summary judgment, the evidence in support of the application must include written evidence proving due execution of the will.

5.2 If a defendant has given notice in his defence under rule 57.7(5) that he raises no positive case but—

(1) he insists that the will be proved in solemn form; and
(2) for that purpose he will cross-examine the witnesses who attested the will;

any application by the claimant for summary judgment is subject to the right of that

defendant to require those witnesses to attend court for cross-examination.

Settlement of a probate claim

A2.194

6.1 If at any time the parties agree to settle a probate claim, the court may—

(1) order the trial of the claim on written evidence, which will lead to a grant in solemn form;
(2) order that the claim be discontinued or dismissed under rule 57.11, which will lead to a grant in common form; or
(3) pronounce for or against the validity of one or more wills under section 49 of the Administration of Justice Act 1985.

(For a form of order which is also applicable to discontinuance and which may be adapted as appropriate, see Practice Form No. CH38)

(Section 49 of the Administration of Justice Act 1985 permits a probate claim to be compromised without a trial if every 'relevant beneficiary', as defined in that section, has consented to the proposed order. It is only available in the High Court.)

6.2 Applications under section 49 of the Administration of Justice Act 1985 may be heard by a master or district judge and must be supported by written evidence identifying the relevant beneficiaries and exhibiting the written consent of each of them. The written evidence of testamentary documents required by rule 57.5 will still be necessary.

Application for an order to bring in a will, etc.

A2.195

7.1 Any party applying for an order under section 122 of the Senior Courts Act 1981 ('the 1981 Act') must serve the application notice on the person against whom the order is sought.

(Section 122 of the 1981 Act empowers the court to order a person to attend court for examination, and to answer questions and bring in documents, if there are reasonable grounds for believing that such person has knowledge of a testamentary document. Rule 50(1) of the Non-Contentious Probate Rules 1987 makes similar provision where a probate claim has not been commenced.)

7.2 An application for the issue of a witness summons under section 123 of the 1981 Act–

(1) may be made without notice; and
(2) must be supported by written evidence setting out the grounds of the application.

(Section 123 of the 1981 Act empowers the court, where it appears that any person has in his possession, custody or power a testamentary document, to issue a witness summons ordering such person to bring in that document. Rule 50(2) of the Non-Contentious Probate Rules makes similar provision where a probate claim has not been commenced.)

7.3 An application under section 122 or 123 of the 1981 Act should be made to a master or district judge.

7.4 A person against whom a witness summons is issued under section 123 of the 1981 Act who denies that the testamentary document referred to in the witness summons is in his possession or under his control may file written evidence to that effect.

Administration pending the determination of a probate claim

A2.196

8.1 An application under section 117 of the Senior Courts Act 1981 for an order for the grant of administration pending the determination of a probate claim should be made by application notice in the probate claim.

8.2 If an order for a grant of administration is made under section 117 of the 1981 Act—

(1) Rules 69.4 to 69.7 shall apply as if the administrator were a receiver appointed by the court;
(2) if the court allows the administrator remuneration under rule 69.7, it may make an order under section 117(3) of the 1981 Act assigning the remuneration out of the estate of the deceased; and
(3) every application relating to the conduct of the administration shall be made by application notice in the probate claim.

8.3 An order under section 117 may be made by a master or district judge.

8.4 If an order is made under section 117 an application for the grant of letters of administration should be made to the Principal Registry of the Family Division, First Avenue House, 42–49 High Holborn, London WC1V 6NP.

8.5 The appointment of an administrator to whom letters of administration are granted following an order under section 117 will cease automatically when a final order in the probate claim is made but will continue pending any appeal.

II RECTIFICATION OF WILLS

Scope of this section

A2.197

9. This Section of this practice direction applies to claims for the rectification of a will.

Lodging the grant

A2.198

10.1 If the claimant is the person to whom the grant was made in respect of the will of which rectification is sought, he must, unless the court orders otherwise, lodge the probate or letters of administration with the will annexed with the court when the claim form is issued.

10.2 If a defendant has the probate or letters of administration in his possession or under his control, he must, unless the court orders otherwise, lodge it in the relevant office within 14 days after the service of the claim form on him.

Orders

A2.199

11. A copy of every order made for the rectification of a will shall be sent to the Principal Registry of the Family Division for filing, and a memorandum of the order shall be endorsed on, or permanently annexed to, the grant under which the estate is administered.

III SUBSTITUTION AND REMOVAL OF PERSONAL REPRESENTATIVES

Scope of this section

A2.200

12. This Section of this practice direction applies to claims and applications for

substitution or removal of a personal representative. If substitution or removal of a personal representative is sought by application in existing proceedings, this Section shall apply with references to the claim, claim form and claimant being read as if they referred to the application, application notice and applicant respectively.

Starting the claim

A2.201

13.1 The claim form must be accompanied by:

(1) either –
  (a) a sealed or certified copy of the grant of probate or letters of administration, or
  (b) where the claim is to substitute or remove an executor and is made before a grant of probate has been issued, the original or, if the original is not available, a copy of the will; and

(2) written evidence containing the grounds of the claim and the following information so far as it is known to the claimant—
  (a) brief details of the property comprised in the estate, with an approximate estimate of its capital value and any income that is received from it;
  (b) brief details of the liabilities of the estate;
  (c) the names and addresses of the persons who are in possession of the documents relating to the estate;
  (d) the names of the beneficiaries and their respective interests in the estate; and
  (e) the name, address and occupation of any proposed substituted personal representative.

13.2 If the claim is for the appointment of a substituted personal representative, the claim form must be accompanied by—

(1) a signed or (in the case of the Public Trustee or a corporation) sealed consent to act; and

(2) written evidence as to the fitness of the proposed substituted personal representative, if an individual, to act.

Production of the grant

A2.202

14.1 On the hearing of the claim the personal representative must produce to the Court the grant of representation to the deceased's estate.

14.2 If an order is made substituting or removing the personal representative, the grant (together with a sealed copy of the order) must be sent to and remain in the custody of the Principal Registry of the Family Division until a memorandum of the order has been endorsed on or permanently annexed to the grant.

14.3 Where the claim is to substitute or remove an executor and the claim is made before a grant of probate has been issued, paragraphs 14.1 and 14.2 do not apply. Where in such a case an order is made substituting or removing an executor a sealed copy of the order must be sent to the Principal Registry of the Family Division where it will be recorded and retained pending any application for a grant. An order sent to the Principal Registry in accordance with this paragraph must be accompanied by a note of the full name and date of death of the deceased, if it is not apparent on the face of the order.

IV CLAIMS UNDER THE INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975

Acknowledgment of service by personal representative – Rule 57.16(4)

A2.203

15. Where a defendant who is a personal representative wishes to remain neutral in relation to the claim, and agrees to abide by any decision which the court may make, he should state this in Section A of the acknowledgment of service form.

Written evidence of personal representative – Rule 57.16(5)

A2.204

16. The written evidence filed by a defendant who is a personal representative must state to the best of that person's ability—

(1) full details of the value of the deceased's net estate, as defined in section 25(1) of the Act;
(2) the person or classes of persons beneficially interested in the estate, and—
  (a) the names and (unless they are parties to the claim) addresses of all living beneficiaries; and
  (b) the value of their interests in the estate so far as they are known.
(3) whether any living beneficiary (and if so, naming him) is a child or a person who lacks capacity (within the meaning of the Mental Capacity Act 2005); and
(4) any facts which might affect the exercise of the court's powers under the Act.

Separate representation of claimants

A2.205

17. If a claim is made jointly by two or more claimants, and it later appears that any of the claimants have a conflict of interests—

(1) any claimant may choose to be represented at any hearing by separate solicitors or counsel, or may appear in person; and
(2) if the court considers that claimants who are represented by the same solicitors or counsel ought to be separately represented, it may adjourn the application until they are.

Production of the grant

A2.206

18.1 On the hearing of a claim the personal representative must produce to the court the original grant of representation to the deceased's estate.

18.2 If the court makes an order under the Act, the original grant (together with a sealed copy of the order) must be sent to the Principal Registry of the Family Division for a memorandum of the order to be endorsed on or permanently annexed to the grant in accordance with section 19(3) of the Act.

18.3 Every final order embodying terms of compromise made in proceedings under the Act, whether made with or without a hearing, must contain a direction that a memorandum of the order shall be endorsed on or permanently annexed to the probate or letters of administration and a copy of the order shall be sent to the Principal Registry of the Family Division with the relevant grant of probate or letters of administration for endorsement.

ANNEX
A FORM OF WITNESS STATEMENT OR AFFIDAVIT ABOUT TESTAMENTARY DOCUMENTS

(CPR RULE 57.5)

A2.207

(Title of the claim)

I [name and address] the claimant/defendant in this claim state [on oath] that I have no knowledge of any document -

(i) being or purported to be or having the form or effect of a will or codicil of [name of deceased] whose estate is the subject of this claim;
(ii) being or purporting to be a draft or written instructions for any such will or codicil made by or at the request of or under the instructions of the deceased;
(iii) being or purporting to be evidence of the contents or a copy of any such will or codicil which is alleged to have been lost or destroyed,

except . . . [*describe any testamentary document of the deceased, and if any such document is not in your control, give the name and address of the person who you believe has possession or control of it, or state that you do not know the name and address of that person*] . . .

[I believe that the facts stated in this witness statement are true] [*or jurat for affidavit*]

(*NOTE: "testamentary document" is defined in CPR rule 57.1*)

PRACTICE DIRECTION 57B – PROCEEDINGS UNDER THE PRESUMPTION OF DEATH ACT 2013

THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 57

PROCEDURE FOR CLAIMS – RULE 57.19

Claim for declaration of presumed death – claim form

A2.208

1.1 The claim form for a claim for a declaration of presumed death must include or be accompanied by the following (where known)—

(1) Information about the claimant
  (a) the claimant's name and address;
  (b) the relationship of the claimant to the missing person; and
  (c) if the claimant is not the missing person's spouse, civil partner, parent, child or sibling, details of the claimant's interest in the determination of the application;
(2) Information about the missing person
  (a) the missing person's name and surname, and any other names by which the missing person is or has formerly been known;
  (b) the missing person's gender;
  (c) the missing person's maiden surname (if any);
  (d) the missing person's date and place of birth;
  (e) the occupation of the missing person;
  (f) the occupation, name and surname of —
    (i) the missing person's spouse or civil partner (or late spouse or civil partner if the marriage or civil partnership ended on death);
    (ii) where the missing person was under 16 years of age, the missing person's parents;

(g) the missing person's National Insurance number;
(h) the date on which missing person is thought to have died, or on which the missing person was last known have been alive;
(i) on which of the grounds in section 1(4) of the 2013 Act the court is considered to have jurisdiction to entertain the claim;
(j) the usual or last known address of the missing person; and
(k) the name and address of the spouse or civil partner, parents, children or siblings of the missing person (if any, and if not the claimant);

(3) Information about steps taken to trace the missing person
(a) details of any enquiries made or other steps taken to trace the missing person or confirm when the missing person was last known to be alive; and
(b) details of the results of such enquiries or other steps;

(4) Information about the missing person's property
(a) an estimate of the total value of the assets of the missing person;
(b) details of property owned by the missing person; and
(c) details of the interest of any other person in the missing person's property which it is sought to have determined by the court; and

(5) Information about advertisement and recipients of notice of the claim
(a) details of the newspaper in which the claimant proposes to advertise the claim; and
(b) details of the persons to whom the claimant is giving notice of the claim and, where notice is being given to a person under rule 57.20(1)(f), the nature of that person's interest in the claim.

Claim for variation order

A2.209

1.2 The claim form for a variation order must include or be accompanied by the following (where known)—

(1) Information about the claimant
(a) the claimant's name and address;
(b) the relationship of the claimant to the missing person; and
(c) details of the claimant's interest in the determination of the application;

(2) Information about previous claim and missing person's property
(a) details of the declaration of presumed death or (as the case may be) previous variation order which it is sought to have varied or revoked;
(b) details of the circumstances which are claimed to justify a variation order, and evidence of the enquiries made and other steps taken to verify them and their outcomes; and
(c) details of any interest in property acquired as a result of the declaration of presumed death or (as the case may be) previous variation order which it is sought to have varied or revoked; and

(3) Information about advertisement and recipients of notice of the claim
(a) details of the newspaper in which the claimant proposes to advertise the claim; and
(b) details of the persons to whom the claimant is giving notice of the claim and, where notice is being given to a person under rule 57.20(2)(g), the nature of that person's interest in the claim.

Issue of claim form without serving notice on any person

A2.210

1.3 For the purposes of rule 8.2A as modified by rule 57.19, an application for permission to issue a claim form, whether the claim is for a declaration or presumed death or for a variation order, may be made only where the claimant believes there to be no person within paragraph (1)(a) to (f) or paragraph (2)(a) to (g) of rule 57.20. The application must explain why the claimant believes that there is no such person.

Case management – first directions hearing

A2.211

1.4 A claim (whether for a declaration of presumed death or for a variation order) must be listed for case management directions either—

(a) more than 28 days (but where practicable no more than 56 days) after issue; or
(b) where the claim form has been served outside the jurisdiction, more than 7 days (but where practicable no more than 35 days) after the period forfiling provided for by rule 57.19(7), to allow for time for those served with notice of the claim or who respond to the advertisement of the claim to file notice of intention to intervene or an application for permission to intervene as the case may be.

1.5 The court must notify all those who have filed notice of intention to intervene or an application for permission to intervene of the date of the directions hearing.

ADVERTISEMENT OF CLAIM – RULE 57.21

A2.212

2.1 The advertisement of the claim required by section 9(2) of the 2013 Act and rule 57.21(1)(a) must be in the form set out below, or contain the equivalent information about the claim and the possibility of applying, and where and by when to apply, to the Court—

IN THE HIGH COURT OF JUSTICE

[CHANCERY] [FAMILY] DIVISION

Case Number .....

IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF THE PRESUMED DEATH OF (INSERT NAME)

A claim has been issued in the High Court of Justice, for a [declaration] [variation of a declaration] that (insert name), whose last known address was (insert address) is presumed to be dead. Any person having an interest may apply to the Court to intervene in the matter.

If you wish to apply to the Court, you should do so at [Court address] as soon as possible, and if possible within 21 days of the date of this notice. Delay may harm your prospects of being able to intervene.

[If the claimant is legally represented]

(Name)

Claimant's Legal Representative

(Address)

[If the claimant is not legally represented]

(Claimant's address for service)

INTERVENERS – RULE 57.22

A2.213

3.1 The Attorney General, or a person who is entitled to intervene in the proceedings by virtue of section 11(1) (the missing person's spouse, civil partner, parent, child or sibling) should notify the intention to intervene as early as possible by filing, and serving on the claimant, notice in writing, specifying—

(a) the intervener's name and address;
(b) the intervener's relationship to the missing person (where the intervener is not the Attorney General);
(c) the reasons for intervening; and
(d) particulars of any determination or order sought under section 11(4)(b) or (c) of the 2013 Act.

3.2 An application under rule 57.22(2) for permission to intervene must be served on the claimant and must specify—

(a) the applicant's relationship to the missing person or other interest in the proceedings;
(b) the reasons for seeking to intervene; and
(c) particulars of any determination or order sought under section 11(4)(b) or (c) of the 2013 Act.

PRACTICE DIRECTION 57C – PROCEEDINGS UNDER THE GUARDIANSHIP (MISSING PERSONS) ACT 2017

THIS PRACTICE DIRECTION SUPPLEMENTS PART 57

PROCEDURE FOR CLAIMS – RULES 57.25 – 57.33
CLAIM FOR GUARDIANSHIP ORDER – RULE 57.27

A2.214

1.1 The claim form for a claim for a guardianship order must include the following—

(1) information about the claimant—
  (a) the claimant's name and address, and, if different, their address for service;
  (b) the relationship of the claimant to the missing person; and
  (c) if the claimant is not the missing person's spouse, civil partner, parent, child or sibling, or other person within section 19(3) (requirement for applicants to have sufficient interest) of the 2017 Act, details of the claimant's interest in relation to the missing person's property or financial affairs;
(2) the name and last known address of the missing person (who must be named as a defendant), and when and for how long they have been missing;
(3) details of the terms of the guardianship order sought including the name of the proposed guardian;
(4) if applicable, that the claimant seeks a guardianship order on the basis that the urgency condition applies (section 3(3) of the 2017 Act).

1.2 The claimant must also provide the following information, in a witness statement accompanying the claim form, and attaching any relevant evidence—

(1) as far as the claimant knows—
  (a) the missing person's name and surname, and any other names by which the missing person is or have formerly been known;
  (b) the missing person's gender;
  (c) the missing person's maiden surname (if any);
  (d) the missing person's date and place of birth;
  (e) the occupation of the missing person;
  (f) the existence, name and surname, and the current residential or electronic address and any nominated address for service of—
    (i) the missing person's spouse or civil partner,
    (ii) the missing person's parents;
    (iii) the missing person's siblings;
    (iv) the missing person's children;
  (g) the missing person's National Insurance number;
  (h) the missing person's usual place of residence, and when they became absent from it;

(i) the missing person's usual day-to-day activities and when they became absent from them;
(j) whether it is asserted that the missing person is in prison or has been detained, and if so where and from what date;
(k) the date and circumstances in which the missing person is thought to have become missing; and whether there has been any police investigation, and, if so, whether any such report has been or could be obtained;
(l) the missing person's whereabouts, and any evidence or contentions with regard to the matters set out in section 1(2) of the 2017 Act (the missing person's whereabouts – first condition);
(m) any evidence or contentions with regard to the matters set out in section 1(3) of the 2017 Act (the missing person's ability to make relevant decisions – the second condition);
(n) reasons for supposing that the missing person is still alive; and
(o) what, if any, steps are proposed with regard to service of the claim upon or other notification of the claim to be given to the missing person, with reasons for such steps being considered appropriate;

(2) reasons why the claimant considers the court has jurisdiction to hear and determine the claim under section 2(2) (applying for a guardianship order) of the 2017 Act;
(3) reasons why the claimant asserts that they satisfy the requirement to have a sufficient interest in relation to the missing person's property or financial affairs, having regard to section 19 (requirement for applicants to have sufficient interest) of the 2017 Act;
(4) if not the claimant, the name and address of the proposed guardian together with evidence that the person consents to acting as guardian;
(5) details of the missing person's property and financial affairs as are known to the claimant and relevant to the claim for a guardianship order;
(6) reasons why, in all the circumstances, the appointment of a guardian in respect of property or financial affairs of the missing person is in the missing person's best interests (sections 3(2)(c) and 18 of the 2017 Act);
(7) an explanation as to why the proposed guardian meets the requirements to act as guardian set out in section 4 (choice of guardian) of the 2017 Act;
(8) details of any persons referred to in rule 57.29(1)(a) to whom the claimant cannot send notice of the claim and reasons for this;
(9) details of the public news media in which the claimant proposes to advertise the claim (rule 57.29(1)(b)) and reasons why it is appropriate;
(10) details of any registered Lasting Power of Attorney or registered Enduring Power of Attorney, or confirmation that no Lasting Power of Attorney or Enduring Power of Attorney has been registered, by or in relation to the missing person; and
(11) details of any Deputy appointed or confirmation that no Deputy has been appointed on behalf of the missing person under the Mental Capacity Act 2005.

1.3 Where the absence condition is not or may not be met, the witness statement must provide reasons why the claimant considers the urgency condition (section 3(3) of the 2017 Act) is met, and attach any evidence which supports this.

APPLICATIONS

A2.215

2.1 Any application must be made in accordance with CPR Part 23 as modified by rule 57.28 and the following paragraphs.

2.2 An application and the evidence in support must set out in detail—

(1) the applicant's name and address;
(2) the applicant's relationship with the missing person;
(3) why the applicant asserts that they satisfy the requirement to have a sufficient interest in relation to the missing person's property or financial affairs, having regard to section 19(3) (requirement for applicants to have sufficient interest) of the 2017 Act;

(4) the reasons for the application and the details of the determination, order or directions sought; and
(5) the persons to or upon whom the applicant proposes to send or serve the application.

2.3 In addition to the matters referred to in paragraph 2.2 above, an application for a revocation/variation order and an application relating to a guardianship order must be supported by a witness statement stating—

(1) as far as the applicant knows, the existence, name, surname and current residential and electronic address, and any nominated address for service, of—
  (a) the missing person's spouse or civil partner;
  (b) the missing person's parents;
  (c) the missing person's siblings;
  (d) the missing person's children;
  (e) if there are no persons within sub-paragraphs (a) to (d), the nearest relative of the missing person known to the applicant;
  (f) any guardian or any former guardian of the missing person;
  (g) any person who has previously intervened in and/or become a party to these or any proceedings in which a guardianship order was sought in relation to the missing person;
(2) what, if anything, is known of the location of the missing person; and
(3) in the case of an application for a revocation/variation of a guardianship order, details of:
  (a) any persons referred to in rule 57.29(1)(a) to whom the applicant cannot send notice of the application and reasons for this; and
  (b) the public news media in which the applicant proposes to advertise the application (see rule 57.29(1)(b)) and reasons why it is appropriate.

GIVING OF NOTICE – RULE 57.29(1)(A) AND RULE 57.30

A2.216

3.1 The material required to be sent as notice by rules 57.29 or 57.30 must include (subject to any redactions ordered by the court) a copy of the claim form or application notice, a copy of the evidence in support, and a letter stating the date of the first hearing of the claim or application and that—

"Any spouse, civil partner, parent, child or sibling of the missing person is entitled to intervene in the matter. Any other person having an interest may apply to the court for permission to intervene in the matter.

If you wish to give notice of intention to intervene or to apply to the court for permission to intervene, you should do so at [COURT ADDRESS] as soon as possible, and no later than 14 days before the date of the first hearing, and serve a copy of that notice or application on the [CLAIMANT/APPLICANT] at the address given below. Delay may harm your prospects of obtaining permission to intervene if you are not entitled to intervene, and in any event, may be taken into account on any question relating to costs."

ADVERTISEMENT OF CLAIM FOR GUARDIANSHIP ORDER OR AN APPLICATION FOR A REVOCATION/VARIATION ORDER – RULE 57.29(1)(B)

A2.217

4.1 The advertisement of the claim for a guardianship order or an application for a revocation/variation order required by section 20(1) (giving notice of applications) of the 2017 Act and rule 57.29(1)(b) must be in the appropriate form set out below, or contain the equivalent information about the claim or application and the possibility of applying, and where and by when to apply, to the court—

IN THE HIGH COURT OF JUSTICE

IN THE [CHANCERY] [FAMILY] DIVISION

Case Number .....

IN THE MATTER OF AN APPLICATION MADE UNDER THE GUARDIANSHIP (MISSING PERSONS) ACT 2017 [FOR A GUARDIANSHIP ORDER] [TO REVOKE OR VARY A GUARDIANSHIP ORDER] IN RESPECT OF [INSERT MISSING PERSON NAME]

[A claim has been issued in the High Court of Justice, [ ] Division, Claim No. [ ], by [INSERT NAME OF CLAIMANT] for an order that [INSERT NAME OF PROPOSED GUARDIAN] be appointed guardian in respect of [INSERT NAME OF MISSING PERSON ("the missing person")], whose [last usual place of residence] was [INSERT ADDRESS].]

[An application has been issued in the High Court of Justice, [ ] Division, Claim No. [ ], by [INSERT NAME OF APPLICANT] for an order that the Guardianship Order dated [ ] made in respect of [INSERT NAME OF MISSING PERSON ("the missing person")], whose [last usual place of residence] was [INSERT ADDRESS] should be [revoked] [varied].]

The date and venue for the first hearing of the [Claim] [Application] is [ ] at [address].

Any spouse, civil partner, parent, child or sibling of the missing person is entitled to intervene in the matter. Any other person having an interest may apply to the Court for permission to intervene in the matter.

If you wish to give notice of intention to intervene or to apply to the Court for permission to intervene, you should do so at [COURT ADDRESS] as soon as possible, and no later than 14 days before the date of the first hearing, and serve a copy of that notice or application on the [CLAIMANT/APPLICANT] at the address given below. Delay may harm your prospects of obtaining permission to intervene if you are not entitled to intervene, and, in any event, may be taken into account on any question relating to costs.

Claimant/Applicant's name

[If the claimant/applicant is legally represented]

Name of Claimant/Applicant's Legal Representative and their address for service

[If the claimant/applicant is not legally represented]

Claimant/Applicant's address for service

INTERVENERS – RULE 57.31

A2.218

5.1 A person who is entitled and wishes to intervene in a claim for a guardianship order or an application for a revocation/variation order or an application relating to a guardianship order by virtue of section 21(1) (right to intervene) of the 2017 Act (the missing person's spouse, civil partner, parent, child or sibling) should notify their intention to intervene as early as possible, and not later than 14 days before the date of the first hearing, by filing with the court, and serving on the claimant or applicant, notice in writing, specifying—

(1) the intervener's name and address;
(2) the intervener's relationship to the missing person;
(3) the reasons for intervening; and
(4) particulars of any determination, order or directions sought.

5.2 An application under rule 57.31(4) for permission to intervene in the proceedings

must be filed with the court and served on the claimant or applicant as early as possible and, in any event, no later than 14 days before the date of first hearing of the claim or application, and must specify—

(1) the applicant's name and address;
(2) why the applicant asserts that they satisfy the requirement to have a sufficient interest in relation to the missing person's property or financial affairs, having regard to sections 19 and 21(3) (requirement for applicants to have sufficient interest) of the 2017 Act;
(3) the applicant's relationship to the missing person or other interest in the proceedings;
(4) the reasons for applying for permission to intervene; and
(5) particulars of any determination, order or directions sought.

CASE MANAGEMENT OF A CLAIM FOR GUARDIANSHIP ORDER AND APPLICATIONS

A2.219

6.1 The court may make case management directions in respect of a claim for a guardianship order, an application for the revocation/variation of a guardianship order, or relating to a guardianship order, with or without a hearing as it considers appropriate.

6.2 Applications which are not specifically provided for within Section VI of Part 57 should be made in accordance with Part 23.

PRACTICE DIRECTION 8A (ALTERNATIVE PROCEDURE FOR CLAIMS)

A2.220

7.1 Practice Direction 8A (alternative procedure for claims) does not apply to a claim for a guardianship order except for paragraph 5.1 (no defence or reply) and paragraph 8.1 (what court may do on a hearing date).

PRACTICE DIRECTION 23A (APPLICATIONS)

A2.221

8.1 Practice Direction 23A (applications) does not apply to applications for the revocation/variation of a guardianship order or relating to a guardianship order except for paragraphs 1 and 2 (subject to the express provisions of Section VI of Part 57 and this Practice Direction).

PUBLIC GUARDIAN TO BE SUPPLIED WITH COURT DOCUMENTS RELEVANT TO SUPERVISION OF GUARDIANS

A2.222

9.1 Subject to paragraphs 9.2 and 9.5, where the court makes a guardianship order, a revocation/variation order or any order relating to a guardianship order, the Public Guardian is entitled to be supplied by the court with a copy of qualifying documents if the Public Guardian reasonably considers that it is necessary to have regard to them in connection with the discharge of the Public Guardian's functions under section 17 of the 2017 Act in relation to supervision of guardians.

9.2 "Qualifying documents" means the following documents which are filed in court in connection with the proceedings referred to in sub-paragraph 9.1 if not already provided to the Public Guardian—

(a) claim form seeking a guardianship order and any accompanying witness statement;

(b) any application notice seeking a revocation/variation order or an order relating to a guardianship order and any accompanying witness statement;
(c) any notice of intention to intervene or application for permission to intervene.

9.3 The court may direct that the right to be supplied with documents under paragraph 9.1 does not apply in relation to one or more such documents, or descriptions of documents, as the court may specify.

9.4 The court may direct that any document is to be provided to the Public Guardian on a redacted basis.

9.5 A direction under paragraph 9.3 or 9.4 may be given—

(a) either on the court's own initiative or on an application made to it; and
(b) either—
  (i) at the same time as the court makes the order which appoints the guardian, or which varies it; or
  (ii) subsequently.

SECURITY BONDS – GUARDIANSHIP ORDER REQUIRING A GUARDIAN TO GIVE SECURITY FOR DISCHARGE OF FUNCTIONS

A2.223

10.1 Where the court makes a guardianship order which requires the guardian to give security for the discharge of his functions as guardian, the guardian must give the security before discharging any functions under the guardianship order, unless the court permits the security to be given subsequently.

10.2 Paragraphs 10.3 to 10.5 apply where the security is required to be given before the guardian discharges any functions under the guardianship order.

10.3 Subject to paragraph 10.4, the security must be given in accordance with the requirements of regulation 33(2)(a) of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 (which makes provision about the giving of security by means of a bond that is endorsed by an authorised insurance company or an authorised deposit-taker).

10.4 The court may impose other requirements in relation to the giving of the security as it considers appropriate (whether in addition to, or instead of, those specified in paragraph 10.3).

10.5 In specifying the date from which the guardianship order referred to in paragraph 10.1 is to take effect, the court will consider the need to postpone that date for such reasonable period as would enable the Public Guardian to be satisfied that—

(1) if paragraph 10.3 applies, the requirements of regulation 34 of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 have been met in relation to the security; and
(2) any other requirements imposed by the court under paragraph 10.4 have been met.

CODE OF PRACTICE

A2.224

11.1 Under section 22 of the 2017 Act it is provided that the Lord Chancellor shall issue a Code(s) of Practice and which shall include guidance to persons making applications under the 2017 Act. Attention is drawn to section 22(3) which provides that a court must take into account the relevant provisions of such a Code(s) and any failure to comply with such a Code(s) when deciding any question arising in legal proceedings. Accordingly, claimants, applicants and others should consult the Code(s) at all stages of 2017 Act proceedings, and draw the court's attention to their provisions where and when relevant."

[PART 57A
BUSINESS AND PROPERTY COURTS]

Inserted by SI 2018/975, rr 2, 5, Schedule. Date in force: 1 October 2018: see SI 2018/975, r 1(1).

[Contents of this Part]

[The Business and Property Courts	Rule 57A.1
Courts and lists	Rule 57A.2
Application of the Civil Procedure Rules	Rule 57A.3]

Inserted by SI 2018/975, rr 2, 5, Schedule. Date in force: 1 October 2018: see SI 2018/975, r 1(1).

A2.225

[Rule 57A.1 The Business and Property Courts]

[(1) The courts listed in paragraph (2) together constitute the Business and Property Courts.

(2) The courts referred to in paragraph (1) are—

(a) the Chancery Division of the High Court, the Commercial Court, the Technology and Construction Court, the Circuit Commercial Court and the Admiralty Court located in the Royal Courts of Justice, Rolls Building; together with

(b) the Chancery Division of the High Court, the Technology and Construction Court and the Circuit Commercial Courts in the District Registries of the High Court specified in Practice Direction 57AA–Business and Property Courts.]

Inserted by SI 2018/975, rr 2, 5, Schedule. Date in force: 1 October 2018: see SI 2018/975, r 1(1).

A2.226

[Rule 57A.2 Courts and lists]

[The work of the Business and Property Courts is divided and listed into the courts or lists specified in Practice Direction 57AA—Business and Property Courts.]

Inserted by SI 2018/975, rr 2, 5, Schedule. Date in force: 1 October 2018: see SI 2018/975, r 1(1).

A2.227

[Rule 57A.3 Application of the Civil Procedure Rules]

[These Rules and their practice directions apply to claims in the Business and Property Courts unless this Part or a practice direction provides otherwise.]

Inserted by SI 2018/975, rr 2, 5, Schedule. Date in force: 1 October 2018: see SI 2018/975, r 1(1).

PRACTICE DIRECTION 57AA – BUSINESS AND PROPERTY COURTS

SCOPE

A2.228

1.1 The Chancery Division of the High Court, the Commercial Court, the Technology and Construction Court, the Circuit Commercial Court, and the Admiralty Court located in the Royal Courts of Justice, Rolls Building together with the Chancery Division of the High Court, the Technology and Construction Court and the Circuit Commercial Courts in the District Registries of the High Court in Birmingham, Bristol, Leeds, Liverpool, Manchester, Newcastle and Cardiff together constitute the Business and Property Courts.

1.2 The Business and Property Courts located at the Royal Courts of Justice, Rolls Building, are collectively described as the Business and Property Courts of England and Wales. Those Business and Property Courts in the District Registries of the High Court in Birmingham, Bristol, Leeds, Liverpool, Manchester, Newcastle, and Cardiff, are, respectively, described as the Business and Property Courts in Birmingham, the Business and Property Courts in Bristol, the Business and Property Courts in Leeds, the Business and Property Courts in Liverpool, the Business and Property Courts in Manchester, the Business and Property Courts in Newcastle and the Business and Property Courts in Wales. In this Practice Direction the Business and Property Courts in Birmingham, Bristol, Leeds, Liverpool, Manchester, Newcastle and Cardiff are referred to together as the B&PCs District Registries.

1.3 The work of the Business and Property Courts is divided and listed into the following courts or lists: the Admiralty Court, the Business List, the Commercial Court, the Circuit Commercial Courts, the Competition List, the Financial List, the Insolvency and Companies List, the Intellectual Property List, the Property, Trusts and Probate List, the Revenue List, and the Technology and Construction Court.

1.4 The courts or lists of the Business and Property Courts include sub-lists, as follows:

(1) The Pensions sub-list and Financial Services and Regulatory sub-list are sub-lists of the Business List;
(2) The Patents Court and the Intellectual Property Enterprise Court are sub-lists of the Intellectual Property List.

1.5
(1) The Business and Property Courts operate within and are subject to all statutory provisions and rules together with all procedural rules and practice directions applicable to the proceedings concerned.
(2) In particular, the following provisions of the CPR apply—
Part 49 (Companies Court)
Part 57 (Probate, Inheritance and Presumption of Death)
Part 58 (Commercial Court)
Part 59 (Circuit Commercial Courts)
Part 60 (Technology and Construction Court Claims)
Part 61 (Admiralty Claims)
Part 62 (Arbitration Claims)
Part 63 (Intellectual Property Claims)
Part 63A (Financial List)
Part 64 (Estates, Trusts and Charities)
Practice Direction – Insolvency Proceedings
Practice Direction: Directors Disqualification Proceedings
Practice Direction PD51O (Electronic Working)
EU Competition Law Practice Direction

1.6 This Practice Direction applies to cases in the Business and Property Courts or cases which are to be issued in those courts. In the event of inconsistency between this Practice Direction and any other Practice Direction the provisions of this Practice Direction shall prevail.

1.7 Parties will also need to give careful consideration to the Chancery Guide, the

Admiralty and Commercial Courts Guide, the Technology and Construction Court Guide, the Financial List Guide, the Circuit Commercial Court Guide, the Patents Court Guide, and the Intellectual Property Enterprise Court Guide (where applicable).

STARTING PROCEEDINGS

A2.229

2.1 Starting proceedings in the Business and Property Courts is subject to CPR Parts 7 and 8.

2.2

(1) A claimant wishing to issue a claim in the Business and Property Courts chooses which court, list or sub-list from within the Business and Property Courts in which to issue its claim, based (subject to sub-paragraph (2)) on the principal subject matter of the dispute.
(The courts, lists and sub-lists are set out in paragraphs 1.3 and 1.4.)

(2) In cases where different aspects of the dispute indicate that the case be issued in different lists, sub-lists or courts, the claimant must consider whether there are aspects requiring the expertise of a specialist judge and choose the list, sub-list or court in which the relevant specialist judges sit.

2.3

(1) Before a claimant issues a claim in the Business and Property Courts, the claimant must determine the appropriate location in which to issue the claim.

(2) With the exception of claims started under Parts 58, 60, 61 and 62, claims which are intended to be issued in the Business and Property Courts and which have significant links to a particular circuit outside London or anywhere else in the South Eastern Circuit must be issued in the B&PCs District Registry located in the circuit in question. If a claim has significant links with more than one circuit, the claim should be issued in the location with which the claim has the most significant links.

(3) A link to a particular circuit is established where—
- (a) one or more of the parties has its address or registered office in the circuit in question (with extra weight given to the address of any non-represented parties);
- (b) at least one of the witnesses expected to give oral evidence at trial or other hearing is located in the circuit;
- (c) the dispute occurred in a location within the circuit;
- (d) the dispute concerns land, goods or other assets located in the circuit; or
- (e) the parties' legal representatives are based in the circuit.

(4) A claim which raises significant questions of fact or law in common with another claim already proceeding before a B&PCs District Registry may be regarded as having significant links with the circuit in question.

2.4

(1) In a claim issued in London in the following courts, a hearing may, where appropriate, take place in a court in a circuit—
- (a) the Commercial Court;
- (b) the Admiralty Court;
- (c) the Financial List;
- (d) the Technology and Construction Court.

(2) A judge of the Commercial Court may, where appropriate and subject always to available judicial resources, be made available to hear a claim issued in a Circuit Commercial Court.

2.5 While any appropriate claim may be issued in any of the B&PCs District Registries, the following are circumstances in which case management or trial may instead occur in the Business and Property Courts of England and Wales—

(1) Where a claim is issued in the Revenue List in one of the B&PCs District Registries, Her Majesty's Revenue and Customs may nevertheless seek to have

the proceedings case managed and/or tried in the Business and Property Courts of England and Wales, in accordance with CPR 30.3(2)(h) and Annex 1 of Practice Direction 66.

(2) A claim meeting the definition established in paragraph 1.1 of the EU Competition Law Practice Direction may be issued in an appropriate BPCs District Registry, but its case management and/or trial in the district registry in question will be dependent on an appropriate judge being made available in the district registry in question.

(3) A claim in the Intellectual Property List, which includes the Patents Court and the Intellectual Property Enterprise Court ("IPEC") (and includes the IPEC small claims track to which rule 63.27 applies), may be issued in an appropriate BPCs District Registry. However the case management and/or trial of a claim in the Patents Court or the IPEC in the BPCs District Registry in question will be dependent on an appropriate judge being made available in the district registry in question.

TRANSFERS

A2.230

3.1

(1) Subject to CPR 30.2, 30.5 and 59.3, the Business and Property Courts may, having regard to the criteria in 3.1(3), order proceedings in the Business and Property Courts of England and Wales or of a BPCs District Registry, or any part of such proceedings (such as a counterclaim or an application made in the proceedings), to be transferred—

(a) from the Business and Property Courts of England and Wales to the Business and Property Courts in a BPCs District Registry; or

(b) from the Business and Property Courts in a BPCs District Registry to the Business and Property Courts of England and Wales or to the Business and Property Courts in another BPCs District Registry.

(2) An application for an order under paragraph 1(b) must be made to the Business and Property Court from which the transfer is sought, and notified to the intended receiving Business and Property Court at the same time by the applicant, and must be consented to by the receiving Business and Property Court before any order for transfer is made.

(3) When considering whether to make an order under rule 30.2(4) (transfer between the Royal Courts of Justice and the district registries) when the proceedings are in the Business and Property Courts, the court must also have regard to—

(a) significant links between the claim and the circuit in question, considering the factors listed in paragraph 2.3(3) and (4) above;

(b) whether court resources, deployment constraints, or fairness require that the hearings (including the trial) be held in another court than the court into which it was issued;

(c) the wishes of the parties, which bear special weight in the decision but may not be determinative;

(d) the international nature of the case, with the understanding that international cases may be more suitable for trial in centres with international transport links;

(e) the availability of a judge specialising in the type of claim in question to sit in the court to which the claim is being transferred.

3.2 In addition to the provisions set out in CPR 30.3, the Business and Property Courts must have regard, when considering whether to make an order for transfer from the Business and Property Courts to a county court hearing centre:

(a) to the nature of the claim, in accordance with the guidance provided at paragraphs 4.1 to 4.4; and

(b) to the availability of a judge specialising in the corresponding type of claim to sit in an appropriate court in the circuit;

3.3 When considering the availability of a judge under paragraph 3.1(e), the listing

office of the court to which the claim is being transferred will be consulted before the order is made by the court.

SPECIALIST WORK IN THE COUNTY COURT

A2.231

4.1 Subject to any enactment or rule relating to the jurisdiction of the County Court, the County Court at Central London, Birmingham, Bristol, Cardiff, Manchester, Newcastle, Leeds, Liverpool, and Preston are appropriate venues for any cases which are suitable to be heard in the County Court which fall within the definition in paragraph 4.2 as the specialist work of the type undertaken in the Business and Property Courts.

4.2 The specialist work of the type undertaken in the Business and Property Courts includes all the work that falls under the jurisdiction of the courts and lists that make up the Business and Property Courts, except for—

(a) Claims for possession of domestic property and rent and mesne profits, or in respect of domestic mortgages;
(b) Claims for possession of commercial premises or disputes arising out of business tenancies that are routine in nature;
(c) Claims falling under the Trusts of Land and Appointment of Trustees Act 1996, unless combined with other specialist claims;
(d) Hearings of applications to set aside statutory demands, unopposed creditors' winding-up petitions or unopposed bankruptcy petitions;
(e) Building claims, other than adjudication claims, of a value under £75,000;
(f) Invoice and other straightforward business claims of a value under £75,000;
(g) Boundary and easement disputes involving no conveyancing issues;
(h) Claims to enforce a charging order;
(i) Applications under the Access to Neighbouring Land Act 1992;
(j) Proceedings under the Inheritance (Provision for Family and Dependants) Act 1975.

4.3 Claims issued in the County Court which are issued in the County Court at the hearing centres defined in paragraph 4.1 and relate to the specialist work of the type undertaken in the Business and Property Courts will be marked "Business and Property work" by the court upon allocation if they have not already been marked in that way by the claimant, and will be managed and heard only by judges specialising in this work.

4.4 Judges specialising in the County Court Business and Property work must spend a minimum of 20 percent of their time handling Business and Property work, either in the Business and Property Courts or in the County Court.

APPEALS IN BPCS DISTRICT REGISTRIES

A2.232

5.1 Specific appeal slots will be created in listing in the BPCs District Registries to accommodate blocks of applications for permission to appeal and appeals which are to be heard by a Group A judge (as defined in PD52A) in accordance with PD52A.

5.2 So far as possible these slots will be concomitant with the slots identified for cases listed in BPCs District Registries requiring a Group A judge as defined in PD52A to hear them and transferred cases referred to in paragraph 3.

PRACTICE DIRECTION 57AB – SHORTER AND FLEXIBLE TRIALS SCHEMES

This Practice Direction supplements CPR Part 57A

1. GENERAL

A2.233

1.1 This Practice Direction provides for two schemes, the Shorter Trials Scheme and the Flexible Trials Scheme.

1.2 The schemes will—

(a) operate from 1 October 2018;
(b) operate in all the Business and Property Courts including those in the Rolls Building and those situated outside London;
(c) apply to claims issued on or after 1 October 2015.

1.3 Where the provisions of this Practice Direction conflict with other provisions of the rules or other practice Directions, this Practice Direction shall take precedence.

1.4 In calculating the time provided by any order fixing, extending or abridging time under the Shorter Trials Scheme the period from 24 December to 2 January next following (both days inclusive) is excluded.

1.5 Where a case is agreed or ordered to be suitable for the Shorter Trials Scheme, the court expects the parties and their representatives to cooperate with, and assist, the court in ensuring the proceeding is conducted in accordance with the Scheme so that the real issues in dispute are identified as early as possible and are dealt with in the most efficient way possible.

2. THE SHORTER TRIALS SCHEME

Shorter Trials Scheme – general

A2.234

2.1 A claim in the Shorter Trials Scheme may be started in any of the Business and Property Courts.

2.2 The Shorter Trials Scheme will not normally be suitable for—

(a) cases including an allegation of fraud or dishonesty;
(b) cases which are likely to require extensive disclosure and/or reliance upon extensive witness or expert evidence;
(c) cases involving multiple issues and multiple parties, save for Part 20 counter-claims for revocation of an intellectual property right;
(d) cases in the Intellectual Property Enterprise Court;
(e) public procurement cases.

2.3 The length of trials in the Shorter Trials Scheme will be no more than 4 days including reading time (and a case will not be suitable for the Scheme if it appears that it will require a longer trial).

2.4 All Shorter Trials Scheme claims will be allocated to a designated judge at the time of the first case management conference (CMC) or earlier if necessary.

2.5 All proceedings in the Shorter Trials Scheme will normally be heard or determined by the designated judge except that—

(a) another judge may hear urgent or vacation applications if the designated judge is not available;
(b) unless the court otherwise orders, any application relating to the enforcement of a judgment or order for the payment of money will be dealt with by a Master of the Queen's Bench Division or of the Chancery Division or a District Judge;
(c) a case may be case managed and tried by a Master in the Chancery Division, or a District Judge in a Chancery District Registry, with the consent of the parties.

2.6 Provisions in other rules or practice directions which refer to a Master or District Judge are to be read, in relation to claims in the Shorter Trials Scheme, as if they referred to a judge.

Starting proceedings in the Shorter Trials Scheme

2.7 Claims in the Shorter Trials Scheme must be issued in the appropriate registry in the appropriate Business and Property Court.

2.8 As appropriate, the claim form must be marked in the top right hand corner as follows—

(a) "Business and Property Courts of England and Wales, Commercial Court, Shorter Trials Scheme"
(b) "Business and Property Courts in Wales, Shorter Trials Scheme", "Business and Property Courts in Manchester , Companies Court, Shorter Trials Scheme", "Business and Property Courts of England and Wales, Patents Court, Shorter Trials Scheme" as appropriate;
(c) "Business and Property Courts of England and Wales, Technology and Construction Court, Shorter Trials Scheme";
(d) "Business and Property Courts of England and Wales, The London Circuit Commercial Court, Shorter Trials Scheme".

Transferring proceedings to or from the Shorter Trials Scheme

2.9 An application by a defendant, including a Part 20 defendant, for an order transferring proceedings out of the Shorter Trials Scheme should be made promptly and normally not later than the first CMC. An application may be made on paper prior to the first CMC if appropriate.

2.10 If a successful application is made to transfer a case out of the Shorter Trials Scheme, the case will then proceed in the court in which it was issued unless a judge otherwise orders.

2.11 An application to transfer a case into the Shorter Trials Scheme must be heard by a judge, save that in the Chancery Division it may be heard by a Master, or a District Judge in a Chancery District Registry. If a judge or Master orders a case to be transferred into the Shorter Trials Scheme, he may give case management directions.

2.12 An application by any party for an order transferring proceedings into the Shorter Trials Scheme should be made promptly and normally not later than the first CMC.

2.13 The court may, of its own initiative, suggest that a case be transferred into the Shorter Trials Scheme.

2.14 In deciding whether to transfer a case into or out of the Shorter Trials Scheme, without prejudice to the generality of the overriding objective, the court will have regard to the type of case the Scheme is for, the suitability of the case to be a part of the Scheme and the wishes of the parties.

2.15 If a case is transferred into the Shorter Trials Scheme, the court will consider whether it is necessary to require that Statements of Case which have already been served should be amended to put them in the form they would have been in had the case commenced in the scheme. Statements of Case which have already been served will not normally need to be amended.

Proceedings in the Shorter Trials Scheme

2.16 The procedure set out in this paragraph shall be substituted for any applicable pre-action protocols.

2.17 Save where there is good reason not to do so, as in a case of urgency, a letter of claim should be sent giving succinct but sufficient details of the claim to enable the potential defendant to understand and to investigate the allegations.

2.18 The letter of claim shall notify the proposed defendant of the intention to adopt the Shorter Trials Scheme procedure.

2.19 The proposed defendant shall respond within 14 days stating whether it agrees to or opposes that procedure, or whether it has insufficient information to commit itself either way.

2.20 Particulars of claim must be served with the claim form.

2.21 In addition to the requirements of rule 16.4, the particulars of claim should include—

(a) a brief summary of the dispute and identification of the anticipated issues;
(b) a full statement of all relief or remedies claimed;
(c) detailed calculations of any sums claimed.

2.22 The particulars of claim should be no more than 20 pages in length. The court will only exceptionally give permission for a longer statement of case to be served for use in the Shorter Trials Scheme and will do so only where a party shows good reasons.

2.23 The particulars of claim should be accompanied by a bundle of core documents.

2.24 The claim form and particulars of claim shall be served promptly following—

(a) the 14 day period allowed for the defendant's response to the letter of claim; or
(b) the defendant's response, if a longer period for response is agreed between the parties.

2.25 The claimant shall, promptly after serving the claim form and particulars of claim, take steps to fix a CMC for a date approximately (but not less than) twelve weeks after the defendant is due to acknowledge service of the claim form.

2.26 The defendant shall be required to file an acknowledgment of service within the time periods prescribed by the rules.

2.27 If the defendant files an acknowledgment of service stating that he wishes to dispute the court's jurisdiction, the period for serving and filing a defence is 28 days after filing of the acknowledgment of service (unless an application to challenge the jurisdiction is made on or before that date, in which case no defence need be served before the hearing of the application: see rules 11(7) and (9)).

2.28 In cases where the jurisdiction of the court is challenged these provisions will not apply until the question of the court's jurisdiction has been resolved.

2.29 The defence and any counterclaim must be served within 28 days of acknowledgment of service of the claim form. Subject to paragraphs 2.27 and 2.33 of this Practice Direction, CPR r15.4(1) applies to the period of filing the defence.

2.30 The defence should include—

(a) a statement indicating whether it is agreed that the case is appropriate for the Shorter Trials Scheme and, if not, why not;
(b) a summary of the dispute and identification of the anticipated issues (if different to that of the claimant).

2.31 The defence and counterclaim should be no more than 20 pages in length. The court will only exceptionally give permission for a longer statement of case to be served for use in the Shorter Trials Scheme and will do so only where a party shows good reasons.

2.32 The defence should be accompanied by a bundle of any additional core

documents on which the defendant intends to rely.

2.33 Unless such extension would require alteration of the date for the CMC, if it has already been fixed, the defendant and the claimant may agree that the period for serving and filing a defence shall be extended by up to 14 days. However, any such agreement and brief reasons must be evidenced in writing and notified to the court.

2.34 Any reply and defence to counterclaim must be served within 14 days thereafter.

Case Management Conference

2.35 If the suitability of the Shorter Trials Scheme procedure is disputed then that issue will be determined at the first CMC, if not before, and further directions given in the light of that determination.

2.36 The legal representatives for the claimant will be responsible for producing and filing a list of issues, and where appropriate for revising it.

2.37 The claimant's legal representatives shall provide a draft list of issues to the defendant's solicitors in sufficient time to enable the parties to use their best endeavours to discuss and agree the contents thereof prior to filing the CMC bundle at court.

2.38 At the CMC the court will—

(a) review the issues;
(b) approve a list of issues;
(c) consider ADR;
(d) give directions for trial;
(e) (if it has not already been done before the CMC,) fix a trial date (or window), which should be not more than 8 months after the CMC and with a trial length of not more than 4 days (including reading time);
(f) fix a date for a Pre-Trial Review.

Disclosure

2.39 Rules 31.5(2) and 31.7 do not apply.

2.40 If and insofar as any party wishes to seek disclosure from another party of particular documents or classes of documents or of documents relating to a particular issue, they must write to the other party to make such requests not less than 14 days in advance of the CMC and, absent an agreement regarding the extent of the disclosure to be given, raise such requests at the CMC.

2.41 Where there is a dispute as to whether requested disclosure should be provided, in deciding whether it is necessary so to order the court will have regard to how narrow and specific the request is, whether the requested documents are likely to be of significant probative value and the reasonableness and proportionality of any related search required, having regard to the factors set out in rule 31.7(2).

2.42 Unless agreed by the parties or otherwise ordered at the CMC, the following provisions for disclosure will apply—

(a) the parties shall, within 4 weeks of the CMC, make and serve a disclosure list in accordance with rule 31.10 and serve copies of all documents in the list, inspection of which is not objected to;
(b) the documents to be listed in the disclosure list are—
  (i) the documents on which they rely as supporting their case;
  (ii) the documents requested by the other party under paragraph 2.40 above that it agreed to produce or was ordered to produce by the court;
(c) each party must also provide a disclosure statement containing a brief description of the steps the party has taken to locate the document agreed or ordered to be disclosed.

2.43 Applications for specific disclosure and further information made after the CMC are discouraged under the Shorter Trials Scheme and should not be made without good reason.

Witness statements

2.44 Unless otherwise ordered, witness statements will stand as the evidence in chief of the witness at trial. No witness statements should without good reason be more than 25 pages in length.

2.45 The court will consider at the CMC whether to order that witness evidence shall be limited to identified issues or to identified topics.

Experts

2.46 Expert evidence at trial will be given by written reports and oral evidence shall be limited to identified issues, as directed at the CMC or as subsequently agreed by the parties or directed by the court.

Applications

2.47 Part 23 applies with the modifications set out in this paragraph.

2.48 The court will deal with all applications (save for the CMC and pre-trial review) without a hearing in accordance with the following directions—

(a) all applications and documents filed in support must be concise;
(b) the respondent must answer in writing within 7 days of service of the application notice. The response must be concise;
(c) any reply from the applicant must be provided within 2 business days of service of the response and be concise;
(d) if any party contends the application should be dealt with at a hearing, they must give an explanation in writing;
(e) The court will deal with an application without a hearing unless the court considers it necessary to hold a hearing. In appropriate cases that may be a hearing by telephone.

2.49 Save as otherwise provided herein the periods set by this Practice Direction and any other time limits applicable to a case in the Shorter Trials Scheme under any rule, practice direction or order of the court may be extended by agreement by up to 7 days. In all other cases, such time limits many only be extended beyond 7 days by order of the court and for good reason.

2.50 Save in exceptional circumstances, the court will not permit a party to submit material at trial in addition to that permitted at the CMC or by later court order.

Pre-Trial Review

2.51 At the Pre-Trial Review the court will review the case and will fix the timetable for the trial, including time for speeches and for cross-examination.

The Trial

2.52 The judge hearing the trial will be the designated judge unless it is impractical for that judge to do so.

2.53 The court will manage the trial to ensure that, save in exceptional circumstances, the trial estimate is adhered to. Cross-examination will be strictly controlled by the court.

2.54 The trial will be conducted on the basis that it is only necessary for a party to put the principal parts of its case to a witness, unless the court directs otherwise.

2.55 The court will endeavour to hand down judgment within six weeks of the trial or (if later) final written submissions.

Costs

2.56 Rule 3.12 shall not apply to cases in the Shorter Trials Scheme, unless the parties otherwise agree. If at the outset of the proceedings the parties agree that Costs

Management should apply, they should seek an order to that effect at the CMC and apply for directions as to when budgets should be subsequently exchanged, discussed and submitted for the court's approval.

2.57 Within 21 days of the conclusion of the trial, or within such other period as may be ordered by the court, the parties shall each file and simultaneously exchange schedules of their costs incurred in the proceedings.

2.58 Such schedules should contain sufficient detail of the costs incurred in relation to each applicable phase identified by Precedent H to the Costs Budgeting regime to enable the trial judge to be in a position to make a summary assessment thereof following judgment.

2.59 Save in exceptional circumstances—

(a) the court will make a summary assessment of the costs of the party in whose favour any order for costs is made;
(b) rules 44.2(8), 44.7(1)(b) and Part 47 do not apply.

Appeals

2.60 The Court of Appeal will seek to take into account the fact that a case was in the Shorter Trials Scheme and the desire for expedition in deciding when applications for permission to appeal will be considered and when appeals will be listed.

3. THE FLEXIBLE TRIALS SCHEME

Flexible Trials Scheme – general

A2.235

3.1 The Flexible Trials Scheme applies to a claim started in any of the Business and Property Courts.

3.2 The Flexible Trials Scheme enables parties by agreement to adapt trial procedure to suit their particular case. Trial procedure encompasses pre-trial disclosure, witness evidence, expert evidence and submissions at trial.

3.3 The Flexible Trials Scheme is designed to encourage parties to limit disclosure and to confine oral evidence at trial to the minimum necessary for the fair resolution of their disputes. Its aim is to reduce costs, reduce the time required for trial and to enable earlier trial dates to be obtained.

3.4 The Flexible Trials Scheme enables the parties to agree to invite the court to determine identified issues on the basis of written evidence and submissions. In such a case, whilst the court will seek to comply with the parties' request, it may call for oral evidence to be given or oral submissions to be made on any of the identified issues if it considers it necessary to do so. Where an issue is to be determined in writing it is not necessary for a party to put its case on that issue to the other party's witnesses.

3.5 The Flexible Trials Scheme provides a standard trial procedure as set out in paragraph 3.9 below, the Flexible Trials Procedure. This may be varied by agreement between the parties.

ADOPTION OF THE FLEXIBLE TRIALS SCHEME

3.6 If the parties wish to adopt the Flexible Trials Scheme they should agree to do so in advance of the first CMC and inform the court accordingly.

3.7 If the parties wish to adopt a variation of the Flexible Trials Procedure such variations should be agreed in advance of the first CMC and the court informed accordingly.

3.8 Unless there is good reason to order otherwise, where the parties have adopted the

Flexible Trials Scheme the court will give directions in accordance with Flexible Trials Procedure and any agreed variations of it.

FLEXIBLE TRIALS PROCEDURE

3.9 Unless otherwise ordered, the following directions apply where the Flexible Trials Scheme is adopted—

(a) each party will be required to disclose the documents on which he relies and documents which are actually known to fall within rules 31.6(b) or (c) without the need for a search. At the same time the party may request specific disclosure of documents it requires from any other party. If the parties wish to agree that there be wider disclosure in accordance with rule 31.5(7)(a) to (f) they should seek to do so in relation to limited and defined issues;

(b) where there is a dispute as to whether specific disclosure should be provided in deciding whether it is necessary so to order the court will have regard to how narrow and specific the request is, whether the requested documents are likely to be of significant probative value and the reasonableness and proportionality of any related search required, having regard to the factors set out in rule 31.7(2). A party is only required to carry out a reasonable search and to provide a disclosure statement pursuant to rule 31.7 in relation to specific disclosure which it has agreed or been ordered to provide;

(c) witness evidence at trial will be given by written statements and oral evidence shall be limited to identified issues or identified witnesses, as directed at the CMC or as subsequently agreed by the parties or directed by the court;

(d) expert evidence at trial will be given by written reports and oral evidence shall be limited to identified issues, as directed at the CMC or as subsequently agreed by the parties or directed by the court;

(e) submissions at trial will be made in writing with oral submissions and cross examination subject to a time limit, as directed at the CMC or as subsequently agreed by the parties or directed by the court;

(f) where an issue is to be determined at trial on the basis of written evidence it is not necessary for a party to put its case on that issue to the other party's witnesses. Where an issue is to be determined on the basis of oral evidence it is only necessary for a party to put the principal parts of its case to the other party's witnesses, unless the court directs otherwise.'

FEES (NON-CONTENTIOUS BUSINESS)

THE NON-CONTENTIOUS PROBATE FEES ORDER 2004

SI 2004/3120

Note.

1. Shown as amended by the Non-Contentious Probate Fees (Amendment) Orders, SI 2007/2174, SI 2011/588, SI 2013/2302, SI 2014/513, SI 2014/590, SI 2014/876, SI 2016/211, SI 2017/422 and SI 2019/1063. New/inserted text is inside square brackets.

2. The Government previously announced that it would implement proposals for reforming fees payable for applications for grants of probate. The proposals were contained in the draft Non-Contentious Probate Fees Order 2017 which was due to take effect in May 2017. In addition, the proposed reform of fees would have removed probate fees from the scheme for fees remission set out in Schedule 1A of the current Fees Order.

3. After further consideration, the Government decided not to give effect to the proposals contained in the draft Non-Contentious Probate Fees Order 2017 outlined in Note 2 above.

A3.01

1

(1) This Order may be cited as the Non-Contentious Probate Fees Order 2004 and shall come into force on the 4th January 2005.

(2) In this Order—

(a) a fee referred to by number means the fee so numbered in Schedule 1 to this Order;

(b) 'assessed value' means the value of the net real and personal estate (excluding settled land if any) passing under the grant as shown—

(i) in the Inland Revenue affidavit (for a death occurring before 13th March 1975), or

(ii) in the Inland Revenue account (for a death occurring on or after 13th March 1975), or

(iii) in the case in which, in accordance with arrangements made between the President of the Family Division and the Commissioners of the Inland Revenue, or regulations made under section 256(1)(a) of the Inheritance Tax Act 1984 and from time to time in force, no such affidavit or account is required to be delivered, in the oath which is sworn to lead to the grant,

and in the case of an application to reseal means the value, as shown, passing under the grant upon its being resealed;

(c) 'authorised place of deposit' means any place in which, by virtue of a direction given under section 124 of the [Senior Courts Act 1981] original wills and other documents under the control of the High Court

(either in the principal registry or in any district registry) are deposited and preserved;

(d) 'grant' means a grant of probate or letters of administration;

(e) 'district registry' includes the probate registry of Wales, any district probate registry and any sub-registry attached to it;

(f) 'the principal registry' means the Principal Registry of the Family Division and any sub-registry attached to it.

Para (2): in sub-para (c) words 'Senior Courts Act 1981' in square brackets substituted by the Constitutional Reform Act 2005, s 59(5), Sch 11, Pt 1, para 1(2). Date in force: 1 October 2009: see SI 2009/1604, art 2(d).

A3.02

2. Fees to be taken

The fees set out in column 2 of Schedule 1 to this Order shall be taken in the principal registry and in each district registry in respect of the items described in column 1 in accordance with and subject to any directions specified in column 1.

A3.03

3. Exclusion of certain death gratuities

In determining the value of any personal estate for the purposes of this Order there shall be excluded the value of a death gratuity payable under section 17(2) of the Judicial Pensions Act 1981 or section 4(3) of the Judicial Pensions and Retirement Act 1993, or payable to the personal representatives of a deceased civil servant by virtue of a scheme made under section 1 of the Superannuation Act 1972.

A3.04

[4. Remission of fees

Schedule 1A applies for the purpose of ascertaining whether a party is entitled to a remission or part remission of a fee prescribed by this Order.]

Substituted by SI 2007/2174, art 3. Date in force: 1 October 2007: see SI 2007/2174, art 1.

A3.05

5

. . .

Revoked by SI 2013/2302, art 3(1), (3). Date in force: 7 October 2013: see SI 2013/2302, art 1; for transitional provisions see art 13 thereof.

A3.06

6.

(1) Where by any convention entered into by Her Majesty with any foreign power it is provided that no fee shall be required to be paid in respect of any proceedings, the fees specified in this Order shall not be taken in respect of those proceedings.

(2) Where any application for a grant is withdrawn before the issue of a grant, a registrar may reduce or remit a fee.

(3) Fee 7 shall not be taken where a search is made for research or similar purposes by permission of the President of the Family Division for a document over 100 years old filed in the principal registry or a district registry or another authorised place of deposit.

A3.07

7. Special exemption – Armed Forces

Where a fee has been paid or fees have been paid for the application of a grant (other than fee 3.2) and at the time of payment of that fee or those fees –

(a) the application for the grant was in respect of an estate exempt from Inheritance Tax by virtue of section 154 of the Inheritance Tax Act 1984 (exemption for members of the armed forces etc); and

(b) was in respect of a death occurring before 20th March 2003;

the Lord Chancellor shall upon receiving a written application refund the difference between any fee or fees paid and fee 3.2.

A3.08

8. Revocation

The Order specified in Schedule 2 in so far as it was made under section 128 of the Finance Act 1990 shall be revoked.

SCHEDULE 1

FEES TO BE TAKEN

A3.09

[Column 1	Column 2
Number and description of fee	**Amount of fee**
1. Application for a grant On an application for a grant (or for resealing a grant) other than on an application to which fee 3 applies, where the assessed value of the estate exceeds £5,000	[£155]
2. Personal application fee Where the application under fee 1 is made by a personal applicant (not being an application to which fee 3 applies) fee 2 is payable in addition to fee 1, where the assessed value of the estate exceeds £5,000	£60
3. Special applications **3.1** For a duplicate or second or subsequent grant (including one following a revoked grant) in respect of the same deceased person, other than a grant preceded only by a grant limited to settled land, to trust property, or to part of the estate	£20
3.2 On an application for a grant relating to a death occurring on or after 20th March 2003 and in respect of an estate exempt from inheritance tax by virtue of section 154 of the Inheritance Tax Act 1984 (exemption for members of the armed forces etc)	£10
4. Caveats For the entry or the extension of a caveat	£20
5. Search On an application for a standing search to be carried out in an estate, for each period of six months including the issue of a copy grant and will, if any (irrespective of the number of pages)	[£10]

[Column 1	Column 2
Number and description of fee	Amount of fee
6. Deposit of wills On depositing a will for safe custody in the principal registry or a district registry	£20
7. Inspection On inspection of any will or other document retained by the registry (in the presence of an officer of the registry)	£20
8. Copy documents On a request for a copy of any document whether or not provided as a certified copy:	
(a) for each such copy;	[£1.50]
(b) where copies of any document are made available on a computer disk or in other electronic form, for each such copy;	[£1.50]
(c) where a search of the index is required, in addition to fee 8(a) or (b) as appropriate, for each period of 4 years searched after the first 4 years.	£4
9. Oaths Except on a personal application for a grant, for administering an oath,	
9.1 for each deponent to each affidavit	[£11]
9.2 for marking each exhibit	£2
10. Determination of costs For determining costs	The same fees as are payable from time to time for determining costs under the Civil Proceedings Fees Order 2004, (the relevant fees are set out in fee 5 in Schedule 1 to that Order)
11. Settling documents For perusing and settling citations, advertisements, oaths, affidavits, or other documents, for each document settled	£12]

Substituted by SI 2011/588, arts 2, 3, Schedule. Date in force: 4 April 2011: see SI 2011/588, art 1.

Item 1: in column 2 sum "£155" in square brackets substituted by SI 2014/876, art 2(1), (2)(a). Date in force: 22 April 2014: see SI 2014/876, art 1.

Item 5: in column 2 sum "£10" in square brackets substituted by SI 2014/876, art 2(1), (2)(b). Date in force: 22 April 2014: see SI 2014/876, art 1.

Item 8: substituted by SI 2019/1063, art 2(1), (2). Date in force: 22 July 2019: see SI 2019/1063, art 1.

Item 8: in para (a) in column 2 sum "£10" in square brackets substituted by SI 2014/876, art 2(1), (2)(c). Date in force: 22 April 2014: see SI 2014/876, art 1.

Item 8: in para (b) in column 2 sum "50p" in square brackets substituted by SI 2014/876, art 2(1), (2)(d). Date in force: 22 April 2014: see SI 2014/876, art 1.

Item 8: in para (c) in column 2 sum "£10" in square brackets substituted by SI 2014/876, art 2(1), (2)(e). Date in force: 22 April 2014: see SI 2014/876, art 1.

Item 9.1: in column 2 sum "£11" in square brackets substituted by SI 2014/876, art 2(1), (2)(f). Date in force: 22 April 2014: see SI 2014/876, art 1.

[SCHEDULE 1A
REMISSIONS AND PART-REMISSIONS]

[Article 4]

A3.10

1 [Interpretation

(1) In this Schedule—

"child" means a person—

(a) whose main residence is with a party and who is aged—

(i) under 16 years; or

(ii) 16 to 19 years; and is—

(aa) not married or in a civil partnership; and

(bb) enrolled or accepted in full-time education that is not advanced education, or approved training; or

(b) in respect of whom a party or their partner pays child support maintenance or periodic payments in accordance with a maintenance agreement,

and "full-time education", "advanced education" and "approved training" have the meaning given by the Child Benefit (General) Regulations 2006;

"child support maintenance" has the meaning given in section 3(6) of the Child Support Act 1991;

"couple" has the meaning given in section 3(5A) of the Tax Credits Act 2002;

"disposable capital" has the meaning given in paragraph 5;

["excluded benefits" means any of the following—

(a) any of the following benefits payable under the Social Security Contributions and Benefits Act 1992 or the corresponding provisions of the Social Security Contributions and Benefits (Northern Ireland) Act 1992—

(i) *attendance allowance under section 64;* any payment of bereavement support payment under section 30 of the Pensions Act 2014;]

(ii) severe disablement allowance;

(iii) carer's allowance;

(iv) disability living allowance;

(v) constant attendance allowance under section 104 as an increase to a disablement pension;

(vi) any payment made out of the social fund;

(vii) housing benefit;

(viii) widowed parents allowance;

(b) any of the following benefit payable under the Tax Credits Act 2002—

(i) any disabled child element or severely disabled child element of the child tax credit;

(ii) any childcare element of the working tax credit;

(c) any direct payment made under the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009, . . . the Carers and Direct Payments Act (Northern Ireland) 2002, . . . [the Social Care (Self-directed Support) (Scotland) Act 2013] [or under regulations made under sections 50 to 53 of the Social Services and Well-being (Wales) Act 2014];

(d) a back to work bonus payable under section 26 of the Jobseekers Act 1995, or article 28 of the Jobseekers (Northern Ireland) Order 1995;

(e) any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983;

(f) any payments from the Industrial Injuries Disablement Benefit;

(g) any pension paid under the Naval, Military and Air Forces etc (Disablement and Death) Service Pension Order 2006;

(h) any payment made from the Independent Living Funds;

(i) any payment made from the Bereavement Allowance;

(j) any financial support paid under an agreement for the care of a foster child;

(k) any housing credit element of pension credit;

(l) any armed forces independence payment;

(m) any personal independence payment payable under the Welfare Reform Act 2012;

(n) any payment on account of benefit as defined in the Social Security (Payments on Account of Benefit) Regulations 2013;

(o) any of the following amounts, as defined by the Universal Credit Regulations 2013, that make up an award of universal credit—

(i) an additional amount to the child element in respect of a disabled child;

(ii) a housing costs element;

(iii) a childcare costs element;

(iv) a carer element;

(v) a limited capability for work or limited capacity for work and work -related activity element;]

"family help (higher)" has the meaning given in paragraph 15(3) of the Civil Legal Aid (Merits Criteria) Regulations 2013;

"family help (lower)" has the meaning given in paragraph 15(2) of the Civil Legal Aid (Merits Criteria) Regulations 2013;

"gross monthly income" has the meaning given in paragraph 13;

"Independent Living Funds" means the funds listed at regulation 20(2)(b) of the Criminal Legal Aid (Financial Resources) Regulations 2013;

"legal representation" has the meaning given in paragraph 18(2) of the Civil Legal Aid (Merits Criteria) Regulations 2013;

"maintenance agreement" has the meaning given in subsection 9(1) of the Child Support Act 1991;

"partner" means a person with whom the party lives as a couple and includes a person with whom the party is not currently living but from whom the party is not living separate and apart;

"party" means the individual who would, but for this Schedule, be liable to pay a fee under this Order;

"restraint order" means—

(a) an order under section 42(1A) of the Senior Courts Act 1981;

(b) an order under section 33 of the Employment Tribunals Act 1996;

(c) a civil restraint order made under rule 3.11 of the Civil Procedure Rules 1998, or a practice direction made under that rule; or

(d) a civil restraint order under rule 4.8 of the Family Procedure Rules 2010, or the practice direction referred to in that rule.

(2) References to remission of a fee are to be read as including references to a part remission of a fee as appropriate and remit and remitted shall be construed accordingly.

2 Fee remission

If a party satisfies the disposable capital test, the amount of any fee remission is calculated by applying the gross monthly income test.

Disposable capital test

3 Disposable capital test

(1) Subject to paragraph 4, a party satisfies the disposable capital test if—

(a) the fee payable by the party and for which an application for remission is made, falls within a fee band set out in column 1 of Table 1; and

(b) the party's disposable capital is less than the amount in the corresponding row of column 2.

Table 1

Column 1 (fee band)	*Column 2 (disposable capital)*
Up to and including £1,000	£3,000
£1,001 to £1,335	£4,000
£1,336 to £1,665	£5,000
£1,666 to £2,000	£6,000
£2,001 to £2,330	£7,000
£2,331 to £4,000	£8,000
£4,001 to £5,000	£10,000
£5,001 to £6,000	£12,000
£6,001 to £7,000	£14,000
£7,001 or more	£16,000

4

Subject to paragraph 14, if a party or their partner is aged 61 or over, that party satisfies the disposable capital test if that party's disposable capital is less than £16,000.

5 Disposable capital

Subject to paragraph 14, disposable capital is the value of every resource of a capital nature belonging to the party on the date on which the application for remission is made, unless it is treated as income by this Order, or it is disregarded as excluded disposable capital.

6 Disposable capital—non-money resources

The value of a resource of a capital nature that does not consist of money is calculated as the amount which that resource would realise if sold, less—

(a) 10% of the sale value; and

(b) the amount of any borrowing secured against that resource that would be repayable on sale.

7 Disposable capital—resources held outside the United Kingdom

(1) Capital resources in a country outside the United Kingdom count towards disposable capital.

(2) If there is no prohibition in that country against the transfer of a resource into the United Kingdom, the value of that resource is the amount which that resource would realise if sold in that country, in accordance with paragraph 6.

(3) If there is a prohibition in that country against the transfer of a resource into the United Kingdom, the value of that resource is the amount that resource would realise if sold to a buyer in the United Kingdom.

8 Disposable capital—foreign currency resources

Where disposable capital is held in currency other than sterling, the cost of any banking charge or commission that would be payable if that amount were converted into sterling, is deducted from its value.

9 Disposable capital—jointly owned resources

Where any resource of a capital nature is owned jointly or in common, there is a presumption that the resource is owned in equal shares, unless evidence to the contrary is produced.

10 Excluded disposable capital

The following things are excluded disposable capital—

(a) a property which is the main or only dwelling occupied by the party;
(b) the household furniture and effects of the main or only dwelling occupied by the party;
(c) articles of personal clothing;
(d) any vehicle, the sale of which would leave the party, or their partner, without motor transport;
(e) tools and implements of trade, including vehicles used for business purposes;
(f) the capital value of the party's or their partner's business, where the party or their partner is self-employed;
(g) the capital value of any funds or other assets held in trust, where the party or their partner is a beneficiary without entitlement to advances of any trust capital;
(h) a jobseeker's back to work bonus;
(i) a payment made as a result of a determination of unfair dismissal by a court or tribunal, or by way of settlement of a claim for unfair dismissal;
(j) any compensation paid as a result of a determination of medical negligence or in respect of any personal injury by a court, or by way of settlement of a claim for medical negligence or personal injury;
(k) the capital held in any personal or occupational pension scheme;
(l) any cash value payable on surrender of a contract of insurance;
(m) any capital payment made out of the Independent Living Funds;
(n) *any bereavement payment;* any bereavement support payment in respect of the rate set out in regulation 3(2) or (5) of the Bereavement Support Payment Regulations 2017 (rate of bereavement support payment);]
(o) any capital insurance or endowment lump sum payments that have been paid as a result of illness, disability or death;
(p) any student loan or student grant;
(q) any payments under the criminal injuries compensation scheme.

Gross monthly income test

11 Remission of fees—gross monthly income

(1) If a party satisfies the disposable capital test, no fee is payable under this Order if, at the time when the fee would otherwise be payable, the party or their partner has the number of children specified in column 1 of Table 2 and—

(a) if the party is single, their gross monthly income does not exceed the amount set out in the appropriate row of column 2; or

(b) if the party is one of a couple, the gross monthly income of that couple does not exceed the amount set out in the appropriate row of column 3.

Table 2

Column 1 Number of children of party	Column 2 Single	Column 3 Couple
no children	£1,085	£1,245
1 child	£1,330	£1,490
2 children	£1,575	£1,735

(2) If a party or their partner has more than 2 children, the relevant amount of gross monthly income is the appropriate amount specified in Table 2 for 2 children, plus the sum of £245 for each additional child.

(3) For every £10 of gross monthly income received above the appropriate amount in Table 2, including any additional amount added under sub-paragraph (2), the party must pay £5 towards the fee payable, up to the maximum amount of the fee payable.

(4) This paragraph is subject to paragraph 12.

12 Gross monthly income cap

(1) No remission is available if a party or their partner has the number of children specified in column 1 of Table 3 and—

(a) if the party is single, their gross monthly income exceeds the amount set out in the appropriate row of column 2 of Table 3; or

(b) if the party is one of a couple, the gross monthly income of that couple exceeds the amount set out in the appropriate row of column 3 of Table 3.

Table 3

Column 1 Number of children of party	Column 2 Single	Column 3 Couple
no children	£5,085	£5,245
1 child	£5,330	£5,490
2 children	£5,575	£5,735

(2) If a party or their partner has more than 2 children, the relevant amount of gross monthly income is the appropriate amount specified in Table 3 for 2 children, plus the sum of £245 for each additional child.

13 Gross monthly income

(1) Subject to paragraph 14, gross monthly income means the total monthly income, for the month preceding that in which the application for remission is made, from all sources, other than receipt of any of the excluded benefits.

(2) Income from a trade, business or gainful occupation other than an occupation at a wage or salary is calculated as—

(a) the profits which have accrued or will accrue to the party; and

(b) the drawings of the party;

in the month preceding that in which the application for remission is made.

(3) In calculating profits under sub-paragraph (2)(a), all sums necessarily expended to earn those profits are deducted.

General

14 Resources and income treated as the party's resources and income

(1) Subject to sub-paragraph (2), the disposable capital and gross monthly income of a partner of a party is to be treated as disposable capital and gross monthly income of the party.

(2) Where the partner of a party has a contrary interest to the party in the matter to which the fee relates, the disposable capital and gross monthly income of that partner, if any, is not treated as the disposable capital and gross monthly income of the party.

15 Application for remission of a fee

(1) An application for remission of a fee must be made at the time when the fee would otherwise be payable.

(2) Where an application for remission of a fee is made, the party must—

(a) indicate the fee to which the application relates;

(b) declare the amount of their disposable capital; and

(c) provide documentary evidence of their gross monthly income and the number of children relevant for the purposes of paragraphs 11 and 12.

(3) Where an application for remission of a fee is made on or before the date on which a fee is payable, the date for payment of the fee is disapplied.

(4) Where an application for remission is refused, or if part remission of a fee is granted, the amount of the fee which remains unremitted must be paid within the period notified in writing to the party.

16 Remission in exceptional circumstances

A fee specified in this Order may be remitted where the Lord Chancellor is satisfied that there are exceptional circumstances which justify doing so.

17 Refunds

(1) Subject to sub-paragraph (3), where a party pays a fee at a time when that party would have been entitled to a remission if they had provided the documentary evidence required by paragraph 15, the fee, or the amount by which the fee would have been reduced as the case may be, must be refunded if documentary evidence relating to the time when the fee became payable is provided at a later date.

(2) Subject to sub-paragraph (3), where a fee has been paid at a time when the Lord Chancellor, if all the circumstances had been known, would have remitted the fee under paragraph 15, the fee or the amount by which the fee would have been reduced, as the case may be, must be refunded to the party.

(3) No refund shall be made under this paragraph unless the party who paid the fee applies within 3 months of the date on which the fee was paid.

(4) The Lord Chancellor may extend the period of 3 months mentioned in sub-paragraph (3) if the Lord Chancellor considers that there is a good reason for a refund being made after the end of the period of 3 months.

18 Legal Aid

A party is not entitled to a fee remission if, under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, they are in receipt of the following civil legal services—

(a) Legal representation; or

(b) Family help (higher); or

(c) Family help (lower) in respect of applying for a consent order.

19 Vexatious litigants

(1) This paragraph applies where—

(a) a restraint order is in force against a party; and

(b) that party makes an application for permission to—

(i) issue proceedings or take a step in proceedings as required by the restraint order;

(ii) apply for amendment or discharge of the order; or

(iii) appeal the order.

(2) The fee prescribed by this Order for the application is payable in full.

(3) If the party is granted permission, they are to be refunded the difference between—

(a) the fee paid; and

(b) the fee that would have been payable if this Schedule had been applied without reference to this paragraph.

20 Exceptions

No remissions or refunds are available in respect of the fee payable for—

(a) copy or duplicate documents;

(b) searches.]

Substituted by SI 2013/2302, art 3(1), (2), Schedule. Date in force: 7 October 2013: see SI 2013/2302, art 1; for transitional provisions see art 13 thereof.

Para 1: in sub-para (1) definition "excluded benefits" substituted by SI 2014/590, art 6(1), (2). Date in force: 6 April 2014: see SI 2014/590, art 1.

Para 1: in sub-para (1) in definition "excluded benefits" in para (c) first words omitted revoked by SI 2016/211, reg 3, Sch 3, Pt 2, para 189(a). Date in force: 6 April 2016: see SI 2016/211, reg 1(2).

Para 1: in sub-para (1) in definition "excluded benefits" para (a)(i) substituted by SI 2017/422, art 23(a). Date in force: 6 April 2017: see SI 2017/422, art 1(2); for provision as to later commencement in specified cases see arts 2, 3.

Para 1: in sub-para (1) in definition "excluded benefits" in para (c) second word omitted revoked by SI 2016/211, reg 3, Sch 3, Pt 2, para 189(b). Date in force: 6 April 2016: see SI 2016/211, reg 1(2).

Para 1: in sub-para (1) in definition "excluded benefits" para (c) words "the Social Care (Self—directed Support) (Scotland) Act 2013" in square brackets substituted by SI 2014/513, art 2, Schedule, para 9. Date in force: 1 April 2014: see SI 2014/513, art 1(2).

Para (1): in sub-para (1) in definition "excluded benefits" in para (c) words from "or under regulations" to "Social Services and Well-being (Wales) Act 2014" in square brackets inserted by SI 2016/211, reg 3, Sch 3, Pt 2, para 189(c). Date in force: 6 April 2016: see SI 2016/211, reg 1(2).

Para 10: sub-para (n) substituted by SI 2017/422, art 23(b). Date in force: 6 April 2017: see SI 2017/422, art 1(2); for provision as to later commencement in specified cases see arts 2, 3.

SCHEDULE 2

ORDER REVOKED

A3.11

Title	*Reference*
The Non-Contentious Probate Fees (Amendment) Order 2000	SI 2000/642

THE NON-CONTENTIOUS PROBATE (FEES) ORDER 2018

*Made - - - - ****

Coming into force in accordance with article 1

The Lord Chancellor, with the consent of the Treasury, makes the following Order in exercise of the powers conferred by sections 92(1) and (2) and 108(6) of the Courts Act 2003[a] ("the 2003 Act") and section 180(1) of the Anti-social Behaviour, Crime and Policing Act 2014[b] ("the 2014 Act").

The Lord Chancellor has had regard to the matters referred to in section 92(3) of the 2003 Act and in section 180(3) of the 2014 Act and has consulted in accordance with section 92(5) and (6) of the 2003 Act.

A draft of this Order has been laid before Parliament and approved by resolution of each House of Parliament in accordance with section 180(7) of the 2014 Act.

[a] 2003 c. 39; section 92 was amended by paragraph 345 of Schedule 4 and paragraph 4 of Schedule 11 to the Constitutional Reform Act 2005 (c. 4), and paragraph 40(a) of Schedule 9 and paragraph 95 of Schedule 10 to the Crime and Courts Act 2013 (c. 22). Section 108(6) was amended by paragraph 348 of Schedule 4 to the Constitutional Reform Act 2005.

[b] 2014 c. 12.

A3.12

1. Citation and commencement

This Order may be cited as the Non-Contentious Probate (Fees) Order 2018 and comes into force 21 days after the day on which the Order is made.

A3.13

2.— Interpretation: general

(1) In this Order—

"the assessed value of an estate" has the meaning given in article 3;

"authorised place of deposit" means any place where, in accordance with a direction given under section 124 of the Senior Courts Act 1981[c] (place for deposit of original wills and other documents), original wills and other documents under the control of the High Court (either in the Principal Registry or a district registry) are deposited and preserved;

"district registry" means—

(a) the probate registry of Wales and any sub-registry attached to it;

(b) any district probate registry, or

(c) any sub-registry attached to a district probate registry;

"grant" means a grant of probate or letters of administration;

"the Principal Registry" means the Principal Registry of the Family Division and any subregistry attached to it, and

"the registrar" means the district probate registrar of the district probate registry to which an application for a grant is made.

(2) Any reference in this Order to a fee by number is to the fee so numbered in Schedule 1.

[c] 1981 c. 54; section 124 was amended by paragraph 5 of Schedule 2 to the Constitutional Reform Act 2005.

A3.14

3.— Interpretation: assessed value of an estate

(1) For the purposes of this Order, "the assessed value of an estate" means—

(a) in the case of an application for a grant, the value of the net real and personal estate (excluding any settled land and any relevant death gratuity) passing under the grant as shown—

(i) in the Inland Revenue affidavit (for a death occurring before 13th March 1975);

(ii) in the account required to be delivered under section 216 of the Inheritance Tax Act 1984[a] (for a death occurring on or after 13th March 1975), or

(iii) where paragraph (2) applies, in the oath which is sworn to lead to the grant, and

(b) in the case of an application to reseal, the value as shown in the document referred to in sub-paragraph (a)(i) to (iii), passing under the grant upon its being resealed.

(2) This paragraph applies in any case in which, in accordance with arrangements made under section 109 of the Senior Courts Act 1981[b] (refusal of grant where capital transfer tax unpaid) or regulations made under section 256(1)(a) or (aa) of the Inheritance Tax Act 1984[c] (regulations about accounts, etc.), the affidavit or account referred to in sub-paragraph (a)(i) or (ii) is not required to be delivered.

(3) In this article "relevant death gratuity" means a death gratuity payable—

(a) under section 17(2) of the Judicial Pensions Act 1981[d] (lump sum on retirement or death);

(b) under section 4(3) of the Judicial Pensions and Retirement Act 1993[e] (lump sum on the judicial officer's retirement or death), or

(c) to the personal representatives of a deceased civil servant by virtue of a scheme made under section 1 of the Superannuation Act 1972[f] (superannuation schemes as respects civil servants, etc.).

[a] 1984 c. 51; section 216 was amended by paragraph 11 of Schedule 26 to the Finance Act 1985 (c. 54), section 101(1) and (3) of, and paragraph 29 of Schedule 19 to, the Finance Act 1986 (c. 41), paragraph 4 of Schedule 7 to the Finance (No 2) Act 1987 (c. 51), section 105 of the Finance Act 1999 (c. 16), paragraph 7 of Schedule 22 to the Finance Act 2006 (c. 25), paragraphs 54 and 85 to 109 of Schedule 16 to, the Finance Act 2011 (c. 11), and paragraph 5(1) of Schedule 25 to, the Finance Act 2014 (c. 26).

[b] Section 109 was amended by paragraph 20 of Schedule 8 to the Inheritance Tax Act 1984, and section 294(1) of, and paragraph 1 of Part 4 of Schedule 42 to, the Finance Act 2004 (c. 12).

[c] Section 256(1) was amended by section 293(1) and (2) of the Finance Act 2004.

[d] 1981 c. 20; section 17 was amended by paragraph 5 of Schedule 1 to the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and by S.I. 2015/182.

[e] 1993 c. 8; section 4 was amended by S.R. 2015/76 and S.I. 2015/182.

[f] 1972 c. 11; section 1 was amended by section 8 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), paragraph 14 of Schedule 8 to the Scotland Act 1998 (c. 46), section 34 of the Public Bodies Act 2011 (c. 24), paragraph 35 of Schedule 18 to the Financial Services Act 2012 (c. 21), paragraphs 6 and 7 of Schedule 8 and paragraphs 1 and 2 of Schedule 9 to the Public Service Pensions Act 2013 (c. 25), and by S.I. 2000/2040, 2011/3649, 2077/126 and 2013/3115.

A3.15

4. Fees to be taken
The fees prescribed in column 2 of Schedule 1 are to be taken in the Principal Registry and each district registry in respect of the items described in column 1 in accordance with and subject to any directions specified in column 1.

A3.16

5. Exemptions: general
If any convention entered into by Her Majesty with any foreign power provides that no fee isto be required to be paid in respect of any proceedings, the fees prescribed by this Order are not tobe taken in respect of those proceedings.

A3.17

6. Exemption: search made for documents over 100 years old
Fee 6 (inspection) is not to be taken where—

(a) a search is made for research, or a similar purpose, for a document over 100 years old filed in any authorised place of deposit, and

(b) the President of the Family Division gives permission for no fee to be taken.

A3.18

7. Refunds: armed forces
Where a fee has been taken on an application for a grant or resealing of a grant and that application was in respect of—

(a) an estate which, on the date on which that fee was taken, was exempt from inheritance tax by virtue of section 154 of the Inheritance Tax Act 1984[a] (death on active service, etc.), and

(b) a death occurring before 20th March 2003,

the Lord Chancellor must, on receipt of a written application from the person who paid the fee, refund to that person the difference between the fee taken and fee 2.2 (application for grant in respect of death in active service, etc.).

[a] Section 154 was amended by paragraph 99 of Schedule 16 to the Armed Forces Act 2006 (c. 52) and section 75(1) and (3) of the Finance Act 2015 (c. 11).

A3.19

8.— Remissions and refunds: Indian Ocean Tsunami and London Terrorist Bombings
(1) The Lord Chancellor must remit in full any fee prescribed in this Order where it appears to the Lord Chancellor that an application for a grant or resealing of a grant is in respect of—

(a) a death occurring as a result of the earthquake and tsunami in the Indian Ocean on 26th December 2004;

(b) a death occurring as a result of another person's detonation of a bomb in London on 7th July 2005, or

(c) a death occurring as a result of action taken in a police operation following another person's attempted detonation of a bomb in London on 21st July 2005.

(2) Where a fee has been taken under the Non-Contentious Probate Fees Order 2004[b]—

(a) after 26th December 2004 but before 4th March 2005, in respect of a death occurring in the circumstance described in paragraph (1)(a), or

(b) after 7th July 2005 but before 29th December 2005, in respect of a death occurring in the circumstances described in paragraph (1)(b) or (c),

the Lord Chancellor must, on receipt of a written application from the person who paid the fee, refund the fee to that person.

[b] S.I. 2004/3120. Relevant amending instruments are S.I. 2007/2174, 2011/588, 2013/2302, 2014/513, 590 and 876 and 2017/422.

A3.20

9. Refund of fees on withdrawal of application for grant

Where an application for a grant is withdrawn before the issue of the grant, the registrar must refund to the applicant the difference between the fee taken and £50.

A3.21

10. Remission of fees in exceptional circumstances

The Lord Chancellor may remit a fee prescribed in this Order where satisfied that there are exceptional circumstances which justify doing so.

A3.22

11. Revocation

The Orders specified in Schedule 2 are revoked.

A3.23

12. Transitional and saving provision

The Non-Contentious Probate Fees Order 2004 continues to have effect where an application described in column 1 of Schedule 1 has been received by the Principal Registry or a district registry before the coming into force of this Order.

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

We consent

Name

Date

Name
Two of the Lords Commissioners of Her Majesty's Treasury

A3.24

SCHEDULE 1

FEES TO BE TAKEN

Article 4

Column 1 *Name and description of fee*	*Column 2* *Amount of fee*
1 Application for a grant or resealing of a grant	
On an application for a grant or resealing of a grant where the assessed value of the estate:	
(a) exceeds £50,000 but does not exceed £300,000;	£250
(b) exceeds £300,000 but does not exceed £500,000;	£750
(c) exceeds £500,000 but does not exceed £1,000,000;	£2,500
(d) exceeds £1,000,000 but does not exceed £1,600,000;	£4,000
(f) exceeds £1,600,000 but does not exceed £2,000,000;	£5,000
(g) exceeds £2,000,000	£6,000
Fee 1 is not payable on any application on which fee 2.1 or 2.2 is payable	
2 Special applications	
2.1 On an application for a duplicate or second or subsequent grant (including a grant following a revoked grant) in respect of the same estate as the original grant	£20
Fee 2.1 is not payable if the application for the grant was preceded only by a grant limited to settled land, to trust property or to part of the estate	
2.2 On an application for a grant or resealing of a grant in respect of— (a) a death occurring on or after 20th March 2003, and (b) an estate exempt from inheritance tax by virtue of section 154 of the Inheritance Tax Act 1984 (death in active service etc.)	£10
3 Caveats	
On an application for the entry or extension of a caveat	£20
4 Search	
On an application for a standing search to be carried out in an estate, for each period of six months and including the issue of a copy grant and will (if any) (irrespective of the number of pages)	£10

Column 1 *Name and description of fee*	*Column 2* *Amount of fee*
5 Deposit of wills	
On depositing a will for safe custody in the Principal Registry or a district registry	£20
6 Inspection	
On inspection of any will or other document retained by the Principal Registry or a district registry and in the presence of an official of that registry	£20
7 Copy documents	
On a request for a copy of any document:	
(a) for the first copy;	£10
(b) for every subsequent copy if supplied at the same time as the first copy;	£50
(c) where the copy or copies are made available on a computer disk or in any other electronic form, for each such copy	£10
Fees 7(a), (b) and (c) are payable whether or not the copy is provided as a certified copy	
8 Oaths	
For administering an oath:	
(a) for each deponent to each affidavit;	£11
(b) for marking each exhibit	£2
Fees 8(a) and (b) are not payable on an application for a grant which is a personal application	
9 Determination of costs	
For determining costs	The same fees as are payable under the Civil Proceedings Fees Order 2008[a] for determining costs (see Fee 5 (Determination of costs (Senior Court and County Court)) in Schedule 1)
10 Settling documents	
For perusing and settling citations, advertisements, oaths, affidavits or other documents, for each document settled	£12

[a] S.I. 2008/1053. Relevant amending instruments are S.I. 2014/874 and 2016/807.

A3.25

SCHEDULE 2
ORDERS REVOKED

Article 11

Title	*S.I. number*
Non-Contentious Probate Fees Order 2004	S.I. 2004/3120
Non-Contentious Probate Fees (Indian Ocean Tsunami) Order 2005	S.I. 2005/266
Non-Contentious Probate Fees (London Terrorist Bombings) Order 2005	S.I. 2005/3359
Non-Contentious Probate Fees (Amendment) Order 2007	S.I. 2007/2174
Non-Contentious Probate Fees (Amendment) Order 2008	S.I. 2008/2854
Non-Contentious Probate Fees (Amendment) Order 2009	S.I. 2009/1497
Non-Contentious Probate Fees (Amendment) Order 2011	S.I. 2011/588
Non-Contentious Probate Fees (Amendment) Order 2013	S.I. 2013/1408
Non-Contentious Probate Fees (Amendment) Order 2014	S.I. 2014/876

RATES OF INHERITANCE TAX AND CAPITAL TRANSFER TAX

A4.10 For deaths on or after 15 March 1988.

Effective dates	*Taxable threshold*	*Rate of tax*	*Legislation*
15/3/88–5/4/89	£110,000	40%	FA 1988, s 136
6/4/89–5/4/90	£118,000	40%	SI 1989/468
6/4/90–5/4/91	£128,000	40%	SI 1990/680
6/4/91–9/3/92	£140,000	40%	SI 1991/735
10/3/95–5/4/95	£150,000	40%	FA [No2] 1992, s 72
6/4/95–5/4/96	£154,000	40%	SI 1994/3011
6/4/96–5/4/97	£200,000	40%	FA 1996, s 183
6/4/97–5/4/98	£215,000	40%	FA 1997, s 93
6/4/98–5/4/99	£223,000	40%	SI 1998/756
6/4/99–5/4/00	£231,000	40%	SI 1999/596
6/4/00–5/4/01	£234,000	40%	SI 2000/967
6/4/01–5/4/02	£242,000	40%	SI 2001/639
6/4/02–5/4/03	£250,000	40%	FA 2002, s 118
6/4/03–5/4/04	£255,000	40%	SI 2003/841
6/4/04–5/4/05	£263,000	40%	SI 2004/771
6/4/05–5/4/06	£275,000	40%	FA 2005, s 98
6/4/06–5/4/07	£285,000	40%	FA 2005, s 98
6/4/07–5/4/08	£300,000	40%	FA 2005, s 98
6/4/08–5/4/09	£312,000	40%	FA 2006, s 155
6/4/09–5/4/21	£325,000	40%	FA (No2) 2015, s 10 negated the indexation provisions for a further 3 years up to 5 April 2021. FA 2014, Sch 25 negated the indexation provisions for a further 3 years up to 5 April 2018.

Effective dates	*Taxable threshold*	*Rate of tax*	*Legislation*
			FA 2006, s 155, subject to the potential application of IHTA 1984, s 8. FA 2010, s 8 extended the use of the threshold of £325,000 until 5 April 2015 by negating the indexation provisions until that date. FA 2012, s 208 revised the content of s 8(1) of the IHTA 1984 by substituting 'consumer prices index for the month of September in any year' for 'retail prices index for the month of September in any year' with effect from 6 April 2015. Section 8(2) IHTA 1984 was amended to 'consumer prices index' instead of 'retail prices index'. Section 8(3) of the IHTA 1984 was amended to read 'consumer prices index' and means the all items consumer prices index published by the Statistics Board.

Appendix VI

FORMS

Contents

Part I – Forms for use in Non-contentious Probate Matters

Affidavits / witness statement

Appearance

Appointment

Caveat

Citations

Consents

County court form

Disclaimer

Inventory and account

Motion

Nomination

Notices

[Statements of truth]

Order

Powers of Attorney

Pre-lodgement enquiry

Renunciations

Standing search

Subpoenas

Summonses

Warning

Part II – Forms for use in Probate Claims

Acknowledgments of service

Administrator's account

Affidavits and witness statements

Claim form

Guarantee

Notices

Orders

Statements of case

I. Indorsements of interest and brief details of claim

II. Particulars of claim

III. Defences

IV. Replies and defences to counterclaims

Subpoena

* denotes a form included in this Supplement.

No	*Description*	*Para*
Part I – Forms for use in Non-contentious Probate Matters		
1	General heading of affidavit (and other forms)	A6.01
2*	General heading of witness statement	A6.02
3	Affidavit of execution of a will or codicil	A6.03
3A	Will signed in attestation clause or testimonium clause	A6.04
3B	Execution by acknowledgment of signature	A6.05
3C	Imperfect signature, or will signed by mark, or in foreign characters: knowledge of contents	A6.06
3D	Will signed by another person by direction of testator	A6.07
3E	Signature of testator appears below those of the witnesses	A6.08
4	Affidavit in support of due execution (evidence of execution not available)	A6.09
5	Affidavit of handwriting	A6.10
6	Affidavit of plight and condition and finding	A6.11
7	Affidavit of search for will	A6.12
8	Affidavit as to alterations in a will (deponent an attesting witness)	A6.13
9	Affidavit verifying alterations in a will (deposed to by the writer of it)	A6.14

No	*Description*	*Para*
10	Affidavit as to foreign law	A6.15
11	Affidavit of facts: Wills Act 1963	A6.16
12	Affidavit verifying the translation of a will	A6.17
13	Affidavit as to military service	A6.18
14	Affidavit of identity of executor	A6.19
15	Affidavit as to alias (will)	A6.20
16	Affidavit as to alias (administration)	A6.21
17	Affidavit to lead order for grant under s 116 of the Senior Courts Act 1981	A6.22
17A*	Affidavit to lead order for appointing person to obtain administration for the use and benefit of a person who lacks capacity within the meaning of the Mental Capacity Act 2005	A6.22A
18	Affidavit to lead district judge's or registrar's order appointing persons to obtain administration for the use and benefit of a minor	A6.23
19	Affidavit to lead district judge's or registrar's order for appointment of a person for the purpose of renouncing on behalf of a minor	A6.24
20	Affidavit as to the insertion of advertisements for kin	A6.25
21	Affidavit as to the insertion of advertisements for the recovery of a lost will	A6.26
22	Affidavit of medical officer in proof of lack of capacity	A6.27
23	Affidavit to lead amendment of grant	A6.28
24	Affidavit to lead amendment to 'save and except settled land'	A6.29
25	Affidavit to lead order for notation of domicile (estate in Scotland)	A6.30
26	Affidavit to lead order for notation of domicile (estate in Northern Ireland)	A6.31
27	Affidavit to lead citation to accept or refuse probate (NCPR SI 1987/2024 r 47(1))	A6.32
28*	Affidavit to lead citation to accept or refuse administration (NCPR SI 1987/2024 r 47(1))	A6.33
29	Affidavit of creditor to lead citation (no known kin) (NCPR SI 1987/2024 r 47(1))	A6.34
30	Affidavit to lead citation against executor to whom power is reserved to accept or refuse double probate (NCPR SI 1987/2024 r 47(2))	A6.35
31	Affidavit to lead citation requiring an intermeddling executor to take probate (NCPR SI 1987/2024 r 47(3))	A6.36
32	Affidavit to lead citation to propound a will (NCPR SI 1987/2024 r 48)	A6.37
33	Affidavit of party cited – accepting grant	A6.38
34	Affidavit to lead summons to exhibit an inventory and account	A6.39
35	Affidavit to lead subpoena to bring in testamentary document (NCPR SI 1987/2024 r 50(2))	A6.40

No	*Description*	*Para*
36	Affidavit to lead revocation of grant by consent	A6.41
37*	Affidavit of service of citation	A6.42
38	Affidavit of service of warning (NCPR SI 1987/2024 rr 44, 67)	A6.43
39*	Non-Contentious Probate Rules 1987 Form 5: Appearance to warning or citation NCPR SI 1987/2024 rr 44(10), 46(6)	A6.44
40	Appointment of nominee of a county council to take grant	A6.45
41*	Non-contentious Probate Rules 1987 Form 4: Caveat... NCPR SI 1987/2024 r 44(2)	A6.46
42	Citation to accept or refuse probate (NCPR SI 1987/2024 r 47(1))	A6.47
43*	Citation to accept or refuse administration (NCPR SI 1987/2024 r 47(1))	A6.48
44*	Citation by creditor against kin (if any) to accept or refuse administration (NCPR SI 1987/2024 r 47(1))	A6.49
45*	Citation by creditor against a minor to accept or refuse administration (NCPR SI 1987/2024 r 47(1))	A6.50
46*	Citation, by executor of executor, against executor to whom power was reserved, to accept or refuse probate (NCPR SI 1987/2024 r 47(2))	A6.51
47*	Citation to take probate against an executor who has intermeddled (NCPR SI 1987/2024 r 47(3))	A6.52
48*	Citation to propound paper writing (NCPR SI 1987/2024 r 48)	A6.53
49	Abstract of citation for advertisement	A6.54
50	Consent to proof of will	A6.55
51	Consent by assignee to grant to other assignees	A6.56
52*	Consent to trust corporation applying	A6.57
52A*	Disclaimer on intestacy	A6.57A
52B*	Disclaimer of interest under a will	A6.57B
53	Notice to Leeds District Probate Registry to produce documents	A6.58
54	Inventory and account	A6.59
55	Notice of motion (RSC Order 8, r 3)	A6.60
56	Nomination of a second administrator; minority interest (NCPR SI 1987/2024 r 32(3))	A6.61
57	Nomination of a second administrator; lack of mental capacity within the meaning of the Mental Capacity Act 2005 and minority or life interest (NCPR SI 1987/2024 r 35(3))	A6.62
58	Form 7: A6.12 Notice of Election to Redeem Life Interest Rule 56	A6.63
59	Notice of application for probate to executor to whom power is to be reserved	A6.64
60*	Statement of truth for probate (general form)	A6.65
61*	Statement of truth for probate to a trust corporation	A6.66

No	*Description*	*Para*
62*	Statement of truth for probate to the Public Trustee	A6.67
63*	Statement of truth for probate where partners in a firm (probate practitioners) appointed as executors by reference to them being such partners	A6.68
64*	Statement of truth for probate where partners in a successor firm (probate practitioners) appointed as executors	A6.69
65*	Statement of truth for probate where partners in a firm (probate practitioners) appointed as executors and firm has converted to limited liability partnership (llp) or other incorporated practice	A6.70
66*	Statement of truth for probate where directors/members of an incorporated practice/limited liability partnership appointed as executors by reference to them being such directors/members	A6.71
67*	Statement of truth of executor, former probate having been revoked	A6.72
68*	Statement of truth after judgment pronouncing for a will as contained in a draft	A6.73
69*	Statement of truth on proving a lost will as contained in a copy or draft etc	A6.74
70*	Statement of truth for double probate, where not more than four executors were appointed	A6.75
71*	Statement of truth for double probate, where more than four executors were appointed	A6.76
72*	Statement of truth for probate 'save and except'	A6.77
73*	Statement of truth for probate caeterorum	A6.78
74*	Statement of truth for cessate probate to a substituted executor	A6.79
75*	Statement of truth for cessate probate, the executor having attained his majority	A6.80
76*	Statement of truth for cessate probate to executor where attorney has proved	A6.81
77*	Statement of truth of special executors for letters of administration limited to settled land after probate 'save and except', or letters of administration (with will) 'save and except'	A6.82
78*	Statement of truth for administration limited to settled land to the trustees where deceased died intestate	A6.83
79*	Statement of truth for administration limited to settled land to trustees (no former grant) where deceased left a will	A6.84
80*	Statement of truth for letters of administration limited to settled land to personal representatives of the settlor as special executors (after grant 'save and except')	A6.85
81*	Statement of truth for probate save and except settled land (after grant limited to settled land)	A6.86
82*	Statement of truth for administration (with will) (will admissible only as to part of estate)	A6.87

No	*Description*	*Para*
83*	Statement of truth for administration to husband or widow or civil partner* – net estate not exceeding £250,000 (where deceased left issue surviving) or £450,000 (where deceased left no issue or other kin entitled) for death on or after 1 February 2009	A6.88
84*	Statement of truth for administrators where net value of the estate exceeds £250,000 for death on or after 1 February 2009 and there are issue (husband or widow applying with next person entitled under NCPR SI 1987/2024 r 22)	A6.89
85*	Statement of truth for administrators – net estate exceeding £250,000 for death on or after 1 February 2009: widow (or husband) and minor child survive: application by spouse and nominated co-administrator	A6.90
86*	Statement of truth for administrators – net estate exceeding £250,000 for death on or after 1 February 2009: civil partner and minor child survive: application by civil partner who has parental responsibility for minor and nominated co-administrator	A6.91
87*	Statement of truth for administrator – spouse or civil partner applies alone on assignment by children (net estate exceeding £250,000 for death on or after 1 February 2009)	A6.92
88*	Statement of truth for administrator (husband's, or widow's, or civil partner's representative applies, whole estate having passed to surviving spouse or civil partner)	A6.93
89*	Statement of truth for administrator where net estate exceeds in value £250,000 for death on or after 1 February 2009 – issue apply on renunciation of surviving spouse [surviving civil partner]	A6.94
90*	Statement of truth for administrator where the net estate is under £250,000 for death on or after 1 February 2009 – son or daughter applies on renunciation of surviving spouse [or surviving civil partner]	A6.95
91*	Statement of truth for administration to child, or other issue having a beneficial interest – spouse [or civil partner] survived but has since died	A6.96
92*	Statement of truth for administration to child, or other issue having a beneficial interest – spouse [civil partner] survived but has since died without acquiring a beneficial interest	A6.97
93*	Statement of truth for administration to child (on assignment by surviving spouse [civil partner])	A6.98
94*	Statement of truth for administration to child or other issue having a beneficial interest – no surviving spouse [civil partner]	A6.99
95*	Statement of truth for administration to issue having a beneficial interest – no surviving spouse [civil partner] and forfeiture rule precludes a child from acquiring a benefit in the estate (death on or after 1 February 2012)	A6.100

No	*Description*	*Para*
96*	Statement of truth for administration to a person entitled, jointly with attorney of person equally entitled	A6.101
97*	Statement of truth for administration to child or children the only issue, save and except others alienated by adoption order made during the lifetime of intestate	A6.102
98*	Statement of truth for administration to person entitled, issue being alienated by adoption order made during the lifetime of intestate	A6.103
99*	Statement of truth for administration to adopted child	A6.104
100*	Statement of truth for administration to adopter or adopters	A6.105
101*	Statement of truth for administrator: deceased a divorced man or woman	A6.106
102*	Statement of truth for administrator: deceased's civil partnership dissolved	A6.107
103*	Statement of truth for administrator (father or mother takes)	A6.108
104*	Statement of truth for administration to personal representative of father or mother	A6.109
105*	Statement of truth for administration to brother and sister of the whole blood	A6.110
106*	Statement of truth for administration to nephew or niece of the whole blood	A6.111
107*	Statement of truth for administration to brother or sister of the half blood	A6.112
108*	Statement of truth for administration to nephew or niece of the half blood	A6.113
109*	Statement of truth for administration to grandparent	A6.114
110*	Statement of truth for administration to uncle or aunt	A6.115
111*	Statement of truth for administration to cousin german	A6.116
112*	Statement of truth for administration to a trust corporation	A6.117
113*	Statement of truth for administration to a creditor (on the renunciation of the persons entitled)	A6.118
114*	Statement of truth for administration to assignee of persons entitled on intestacy (NCPR SI 1987/2024 r 24)	A6.119
115*	Statement of truth for administration upon disclaimer of person entitled on intestacy to a beneficial interest in the residuary estate death on or after 1 February 2012	A6.120
116*	Statement of truth for administration to attorneys of intestate's husband or widow or civil partner	A6.121
117*	Statement of truth for administration to attorney of intestate's father or mother	A6.122
118*	Statement of truth for administration to attorneys of intestate's child – another child being a minor	A6.123

No	*Description*	*Para*
119*	Statement of truth for administration (leave having been given to swear to the death)	A6.124
120*	Statement of truth for administrator (grantee having become mentally incapable) or (grantee subsequently lacks capacity within the meaning of the Mental Capacity Act 2005 to manage his affairs)	A6.125
121*	Statement of truth for administrator (a former grant having been revoked)	A6.126
122*	Statement of truth for administration to mother of minor and nominated co-administrator	A6.127
123*	Statement of truth for administration to mother of minor and nominated co-administrator (beneficial interest saved by virtue of s 47, Administration of Estates Act as amended by the Estate of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011) (death on or after 1 February 2012)	A6.128
124*	Statement of truth for administration to father of minor and nominated co-administrator	A6.129
125*	Statement of truth for administration to step-parent of minor and nominated co-administrator	A6.130
126*	Statement of truth for administration to guardian of minor and nominated co-administrator	A6.131
127*	Statement of truth for administration to special guardians of minor	A6.132
128*	Statement of truth for persons who have acquired parental responsibility for minors following the making of a residence order	A6.133
129*	Statement of truth for persons appointed to obtain administration for the use of minors	A6.134
130*	Statement of truth for administration to adopters of minor (adopted subsequent to death of parent on or after 1 October 2014)	A6.135
131*	Statement of truth for administration to guardians of a minor as personal representatives of the person entitled	A6.136
132*	Statement of truth for person appointed by the Court of Protection for use of a person who lacks capacity to manage his affairs within the meaning of the Mental Capacity Act 2005	A6.137
133*	Statement of truth for administrator by attorney acting under a registered enduring power of attorney / registered lasting power of attorney	A6.138
134*	Statement of truth for administrators appointed by district judge or registrar for the use of a person who lacks capacity	A6.139
135*	Statement of truth for administrator pending determination of a probate claim	A6.140
136*	Statement of truth for administrator, after citation to accept or refuse a grant	A6.141
137*	Statement of truth for administrator, after citation to propound will (NCPR SI 1987/2024 r 48)	A6.142

No	*Description*	*Para*
138*	Statement of truth for administrator (commorientes) to representative of person deemed to have survived	A6.143
139*	Statement of truth for administration (with will) (commorientes)	A6.144
140*	Statement of truth for cessate administration to person entitled on attaining his majority	A6.145
141*	Statement of truth for cessate administration, the attorney administrator having died	A6.146
142*	Statement of truth for cessate administration, following a grant limited to a claim	A6.147
143*	Statement of truth for administration limited to prosecuting or defending a claim	A6.148
144*	Statement of truth for administration ad colligenda bona	A6.149
145*	Statement of truth for administration under s 116 of the Senior Courts Act 1981	A6.150
146*	Statement of truth for administration under s 113 of the Senior Courts Act 1981	A6.151
147*	Statement of truth for administration – judicially separated spouse (death on or after 1 August 1970)	A6.152
148*	Statement of truth for administration – judicially separated civil partner (death on or after 5 December 2005)	A6.153
149*	Statement of truth for administration (will) to residuary legatee and devisee	A6.154
150*	Statement of truth for administration (will) to residuary legatee and devisee for life and residuary legatee and devisee substituted	A6.155
151*	Statement of truth for administration (will) to residuary legatee and devisee and a specific legatee or devisee, or a creditor	A6.156
152*	Statement of truth for administration (will) to representative of residuary legatee and devisee	A6.157
153*	Statement of truth for administration (will) to substituted residuary legatees	A6.158
154*	Statement of truth for administration (will) to person entitled to estate not disposed of	A6.159
155*	Statement of truth for administration (will) to person entitled to estate not disposed of following disclaimer (death on or after 1 February 2012)	A6.160
156*	Statement of truth for administration (will) to legatee, devisee or creditor	A6.161
157*	Statement of truth for administration (will) to legatee in accordance with NCPR SI 1987/2024 r 20(c)(ii); whole, or substantially whole, of known estate disposed of by enumeration	A6.162
158*	Statement of truth for administration (will) to the Public Trustee	A6.163

No	*Description*	*Para*
159*	Statement of truth for administration (will) to testator's widow and a person entitled to share in estate (there being no executor or residuary legatee or devisee)	A6.164
160*	Statement of truth for administration (will) to a person interested in the event of an accretion (estate below £250,000 (where deceased left issue), or £450,000 (where deceased left no issue)) for death on or after 1 February 2009	A6.165
161*	Statement of truth for administration (will) – gift to child or other issue saved by s 33 of the Wills Act 1837	A6.166
162*	Statement of truth for administration (will): gift to issue saved by s 33A of the Wills Act 1837 (amended by Estate of Deceased Persons (Forfeiture Rule and Law of Succession Act 2011) upon disclaimer (Death on or after 1 February 2012)	A6.167
163*	Statement of truth for administration (will) – gift to child or other issue saved from the effect of the forfeiture rule by s 33A of the Wills Act 1837 (amended by Estate of Deceased Persons (Forfeiture Rule and Law of Succession Act 2011) (Death on or after 1 February 2012)	A6.168
164*	Statement of truth for administration (will) to assignee (NCPR SI 1987/2024 r 24)	A6.169
165*	Statement of truth for administration (will) to the attorney of an executor	A6.170
166*	Statement of truth for administration (will) to nominee of an executor or residuary legatee or devisee (a non-trust corporation)	A6.171
167*	Statement of truth for administration (will) to both parents of a minor jointly	A6.172
168*	Statement of truth for administration (will) to person authorised by Court of Protection where executor is lacks capacity to manage his affairs within the meaning of the Mental Capacity Act 2005	A6.173
169*	Statement of truth for administration (will) to attorney acting under a registered enduring power of attorney or registered lasting power of attorney; for the use executor who lacks capacity within the meaning of the Mental Capacity Act 2005	A6.174
169A*	Statement of truth for administration (will) to person appointed by district judge or registrar; for the use of executor who lacks capacity within the meaning of the Mental Capacity Act 2005	A6.174A
170*	Statement of truth for administration (will) to person entitled to the residuary estate; for the use of executor who lacks capacity within the meaning of the Mental Capacity Act 2005	A6.175
171*	Statement of truth for administration (will) under s 116 of the Senior Courts Act 1981	A6.176

No	*Description*	*Para*
172*	Statement of truth for administration (will) where deceased died domiciled out of England and Wales; attorney of person entrusted with administration by court of domicile	A6.177
173*	Statement of truth for administration (will) where deceased died domiciled out of England and Wales; person beneficially entitled to the estate by the law of the place where the deceased died domiciled	A6.178
174*	Statement of truth for administration or administration (with will) where deceased died domiciled out of England and Wales – discretionary order made under NCPR SI 1987/2024 r 30(1)(c)	A6.179
175*	Statement of truth for administration (will) to legatee in accordance with NCPR SI 1987/2024 r 30(3)(b); whole or substantially whole estate in England and Wales consists of immoveable property	A6.180
176*	Statement of truth – limited administration (with will) – will made under power and not revoked by subsequent marriage (Wills Act 1837, s 18)	A6.181
177*	Statement of truth for cessate administration (will) to residuary legatee [or devisee] on his attaining his majority	A6.182
178*	Statement of truth for administration de bonis non to intestate's child	A6.183
179*	Statement of truth for administration de bonis non to personal representative of spouse [civil partner]	A6.184
180*	Statement of truth for administration de bonis non to personal representative of only person entitled	A6.185
181*	Statement of truth for administration de bonis non to another person sharing on intestacy	A6.186
182*	Statement of truth for administration (will) de bonis non to residuary legatee or devisee	A6.187
183*	Statement of truth for administration (will) de bonis non to representative of residuary legatee and devisee	A6.188
184*	Statement of truth for administration (will) de bonis non to specific legatee or devisee or creditor	A6.189
185*	Statement of truth for administration caeterorum to only person entitled to the estate, after limited administration	A6.190
186*	Order for grant after caveat	A6.191
187	Power of attorney to take administration	A6.192
188	Power of attorney to take administration (will) given by executors	A6.193
189	Power of attorney to take administration (will) given by residuary legatee	A6.194
190*	Power of attorney where further grant to attorney in his representative capacity is required	A6.195
190A*	Pre-lodgement enquiry	A6.195A
191	Renunciation of probate	A6.196

No	*Description*	*Para*
192	Renunciation of administration	A6.197
193	Renunciation by two members of a partnership	A6.198
194	Renunciation of administration (with will annexed)	A6.199
195	Renunciation and consent to grant to a trust corporation	A6.200
196	Renunciation, by person appointed for the purpose, of minor's right to a grant (NCPR SI 1987/2024 r 34(2))	A6.201
197	Retraction of renunciation	A6.202
198	Retraction of renunciation by (two) members of a partnership	A6.203
199	Form 2: A6.02 Standing Search Rule 43(1)	A6.204
200*	Subpoena to bring in a testamentary document	A6.205
201*	Order for examination of person with knowledge of testamentary document	A6.206
202*	Summons (general form) (Family Division)	A6.207
203*	Summons for discontinuance of caveat after appearance to warning (Family Division)	A6.208
204*	Warning to caveat (NCPR SI 1987/2024 r 44(5))	A6.209
Part II – Forms for use in Probate Claims		
CP0A*	Heading for all claims issued in the Business and Property Courts	A6.210
CP0B*	Heading for claims issued outside London in a Chancery District Registry which is not one of the B&PCs District Registries	A6.210A
CP1	Acknowledgement of service (probate claim) (Form N3)	A6.211
CP2	Administrator's cash account	A6.212
CP3	Administrator's inventory	A6.213
CP4	Witness statement or affidavit about testamentary documents (CPR 57.5)	A6.214
CP4A*	Handing out Testamentary Documents for examination (Form CH27)	A6.214A
CP5	Witness statement or affidavit verifying administrator's account	A6.215
CP6	Claim form (probate claim) (Form N2)	A6.216
CP7	Guarantee for the acts and defaults of an administrator pending determination of probate claim	A6.217
CP8*	Notice of claim to non-parties (CPR 19.8A) (based on Form CH7)	A6.218
CP9	Notice which may be given in a defence under CPR 57.7(5)	A6.219
CP10*	Order in probate action involving compromise (Form CH26)	A6.220
CP11	Order appointing administrator pending determination of the claim	A6.221
CP12	Order staying proceedings in 'Tomlin' form	A6.222
CP13	Order for discontinuance of action and grant	A6.223

No	*Description*	*Para*
CP13A*	Revocation/refusal of revocation of grant of probate (Form CH28)	A6.223A
CP13B*	Order pronouncing for some words, against others (Form CH29)	A6.223B
CP14	Executor or residuary legatee propounds will – defendant interested on an intestacy	A6.224
CP15	Residuary legatee propounds will omitting interlineation – defendants interested (1) in the interlineation, and (2) on intestacy	A6.225
CP16	Executor propounds lost will – defendants executors under earlier will	A6.226
CP17	Executors propound will and codicil – defendant a beneficiary under an alleged second codicil	A6.227
CP18	Executor or residuary legatee under an earlier will claims revocation – defendant the executor under a later will	A6.228
CP19	Party entitled on an intestacy claims revocation – defendants executors and beneficiaries under a will	A6.229
CP20	Executor or residuary legatee propounds will and claims revocation of grant of administration – defendant the party who has obtained the grant	A6.230
CP21	Residuary legatee propounds privileged will – defendants entitled on an intestacy	A6.231
CP22	Interest action	A6.232
CP23	Executor propounds will	A6.233
CP24	Executor propounds a lost will	A6.234
CP25	Executrix propounds will destroyed by deceased whilst incapable	A6.235
CP26	Executor propounds will of person domiciled abroad	A6.236
CP27	Executor propounds will under Wills Act 1963 (death on or after 1 January 1964)	A6.237
CP28	Claimant (entitled on an intestacy) claims revocation of probate, and grant of administration	A6.238
CP29	Claimant (executor) claims revocation of probate and grant of probate of earlier will	A6.239
CP30	Executor propounds will which has been revoked, and codicil reviving the same (or as re-executed)	A6.240
CP31	Interest action	A6.241
CP32	Plea – will not duly executed	A6.242
CP33	Plea – testator not of sound mind, memory and understanding	A6.243
CP34	Plea – undue influence	A6.244
CP35	Plea – fraud	A6.245
CP36	Plea – want of knowledge and approval	A6.246
CP37	Plea – pretended will	A6.247
CP38	Plea – testator not of age	A6.248
CP39	Plea – testator prevented by force and threats from making a fresh will	A6.249

No	*Description*	*Para*
CP40	Defendant pleads that will propounded by claimant was revoked by destruction	A6.250
CP41	Defendant pleads against will propounded by claimant and claims probate of earlier will	A6.251
CP42	Defendant pleads against will propounded by claimant and claims an intestacy	A6.252
CP43	Claimant propounds will under Wills Act 1963: defendant pleads that it was not duly executed	A6.253
CP44*	Claimant propounds privileged will: Defendant pleads claimant was not in actual military service and propounds earlier will	A6.254
CP45	Defendant sets up further testamentary document in addition to those propounded by claimant	A6.255
CP46	Interest action	A6.256
CP47	Defendant having pleaded against will and claimed an intestacy – claimant sets up earlier will in the alternative	A6.257
CP48	Defendant having propounded earlier will, claimant pleads that it was revoked by a later will which was in turn revoked by last will	A6.258
CP49	Claimants propound will – defendants propound later will revoking it– claimants reply that later will was executed while deceased was not of sound mind; alternatively that it was in its turn revoked	A6.259
CP50	Claimant propounds will – defendants claim intestacy: claimant in reply claims in the alternative probate of earlier will destroyed by testator (dependent relative revocation)	A6.260
CP51	Witness summons (Form N20) to bring in a testamentary document in a probate action	A6.261

PART I – FORMS FOR USE IN NON-CONTENTIOUS PROBATE MATTERS

Affidavits / witness statement

A6.02

2. General heading of application statement of truth/witness statement

In the High Court of Justice

Family Division

The Principal [*or*. . . . . District Probate] Registry [*or* The Probate Registry of Wales]

In the estate of A B deceased

I, C D, of . . . . . wish to rely on the following evidence in support of this application for [order for . . . . .] [*or as appropriate*]

[facts in support – adapt from precedents below of affidavit and statements of truth etc.]

I believe that the facts stated in this witness statement are true and understand that criminal proceedings for fraud may be brought against me if I am found to have been deliberately untruthful or dishonest.

(Signed)

[Print full name] C D. . . . . .

(Date)

[Note.–

The Non-Contentious Probate (Amendment) Rules 2018 (SI 2018/1137) substitute statements of truth for oaths.]

A6.22A

17A. Affidavit to lead order for appointing person to obtain administration for the use and benefit of a person who lacks capacity within the meaning of the Mental Capacity Act 2005

(*Heading as in Form 1:* A6.01)

I, E F, of. . . . . make oath and say that:

1. A B of. . . . . deceased, died on the. . . . . day of . . . . . 20. . . . . intestate, domiciled in England and Wales, leaving C D her lawful husband, the only person now entitled to her estate.
2. C D by reason of dementia now lacks capacity to manage his property and affairs within the meaning of the Mental Capacity Act 2005.
3. No one has been authorised by the Court of Protection to obtain a grant of representation of the estate of the deceased for the use and benefit of C D.
4. There is no lawful attorney of C D acting under a registered lasting power of attorney [*or* a registered enduring power of attorney].
5. No minority or life interest arises under the intestacy.
6. C D resides at [Moorhouse Residential Home] and is under the care of [Park Medical Practice].
7. I am the [daughter] of the deceased and C D and I am responsible for his needs and finances.
8. The gross value of the estate of the deceased amounts to £ . . . . . and after deduction of debts and incumbrances the net value of the estate is £. . . . . .
9. In the circumstances I apply for an order under rule 35(4) of the Non-Contentious Probate Rules 1987 that letters of administration of the estate of the deceased be granted to me for the use and benefit of C D limited until further representation be granted.

Sworn etc

A6.33

28. Affidavit to lead citation to accept or refuse administration (NCPR SI 1987/2024 r 47(1))

(*Heading as in Form 1:* A6.01)

We, C B of. . . . . tailor and D B of. . . . . carpenter, make oath and say that:

1. A B of. . . . . deceased, died on the. . . . . day of . . . . . 20. . . . . intestate, domiciled in England and Wales, without any other person entitled in priority to share in his estate by virtue of any enactment, leaving E B of. . . . . his lawful widow and relict/*or* D F his lawful civil partner him surviving.
2. E B/D F has not as yet taken upon herself/himself letters of administration of the estate of the deceased.
3. We are two of the children of the deceased entitled to share in the estate of the deceased, and wish to obtain letters of administration of the estate of the deceased.
4. No life or minority interest [*or as the case may be*] arises under the intestacy.
5. To the best of our knowledge, information and belief there was no land vested in the deceased which was settled previously to his death and which remained settled land notwithstanding his death.

Sworn etc

[*See *notes 1–3 to Form 27*: A6.32*above*.]

(Form of citation, *Form 43*: A6.48.)

A6.42

37. Affidavit of service of citation

(*Heading as in Form 1:* A6.01)

I, E F, of. . . . . clerk to. . . . . of. . . . . solicitor, make oath and say that:

1. I did on the. . . . . day of. . . . . 20. . . . . duly serve C D of . . . . . with a true copy of a citation issued out of the Principal Registry of the Family Division [*or* out of the. . . . . District Probate Registry] in the above-named matter, by delivering to and leaving the copy with him at. . . . . and a sealed copy of the citation is now produced to me and marked 'A'.
2. [State the means by which the deponent knew the identity of or identified the person served.]

Sworn etc

[Note.–

In non-contentious probate business an affidavit of personal service of any document should include a statement of the means by which the server knew the identity of the person served (Registrar's Direction (1964) 21 April).]

Appearance

A6.44

39. Non-Contentious Probate Rules 1987 Form 5: Appearance to warning or citation NCPR SI 1987/2024 rr 44(10), 46(6)

In the High Court of Justice

Family Division

The Principal [*or*. . . . . District Probate] Registry

Caveat No. . . . . dated the. . . . . day of. . . . . 20. . . . . .

[Citation dated the day of. . . . . 20. . . . . .]

Full name and address of deceased:. . . . . .

Full name and address of person warning [*or* citor]:

[Here set out the interest of the person warning, or citor, as shown in warning or citation.]

Full name and address of caveator [or person cited].

[Here set out the interest of the caveator or person cited, stating the date of the will [if any] under which such interest arises.]

Enter an appearance for the above-named caveator [*or* person cited] in this matter.

Dated the. . . . . day of. . . . . 20. . . . . .

[Signed]

whose address for service is:

Solicitor (*or* 'In person').

Caveat

A6.46

41. Non-contentious Probate Rules 1987 Form 4: Caveat... NCPR SI 1987/2024 r 44(2)

In the High Court of Justice

Family Division

The Principal [*or*. . . . . District Probate] Registry.

Let no grant be sealed in the estate of [*full name and address*] deceased, who died on the. . . . . day of. . . . . 20. . . . . without notice to [*name of party by whom or on whose behalf the caveat is entered*].

Dated this. . . . . day of. . . . . 20. . . . . .

[Signed] [to be signed by the caveator's probate practitioner or by the caveator if acting in person]

whose address for service is:. . . . . .

Probate Practitioner for the. . . . . [*If the caveator is acting in person, substitute 'In person'.*]

Citations

A6.48

43. Citation to accept or refuse administration (NCPR SI 1987/2024 r 47(1))

(*Heading as in Form 1:* A6.01)

Elizabeth the Second etc (*as in Form 42:* A6.47).

To E B of. . . . . .

Take notice that C B and D B have stated in a joint affidavit, sworn the. . . . . day of. . . . . 20. . . . . that A B of. . . . . died on the. . . . . day of. . . . . 20. . . . . domiciled in England and Wales intestate, leaving you E B his lawful widow and one of the persons entitled to share in his estate and C B and D B his lawful* [*or* natural*] sons and two of the persons entitled to share in the estate of the deceased:

Now this is to command you E B that within eight days after service of this citation on you, inclusive of the day of such service, you do cause an appearance to be

entered in the Principal Registry of the Family Division of the High Court of Justice at First Avenue House, 42–49 High Holborn, London WC1V 6NP [*or* in the . . . . . District Probate Registry at. . . . .] and accept or refuse letters of administration of all the estate which by law devolves to and vests in the personal representative of the deceased, or show cause why they should not be granted to C B and D B. And take further notice that, in default of your so appearing and accepting and extracting the letters of administration, our court will proceed to grant letters of administration of the estate to C B and D B, your absence notwithstanding.

Dated at. . . . . this. . . . . day of. . . . . 20. . . . . .

Extracted by. . . . . .

of. . . . . *(Signed)*

Solicitor. District Judge/Registrar.

[*If the deceased died on or after 4 April 1988 the word 'lawful' or 'natural' can be omitted.]

[Note.–
This form may be adapted for use in cases where specific persons are cited by a creditor.]
(Form of affidavit to lead citation, *Form 28*: A6.33.)

A6.49

44. Citation by creditor against kin (if any) to accept or refuse administration
(NCPR SI 1987/2024 r 47(1))

(*Heading as in Form 1:* A6.01)

Elizabeth the Second etc *(as in Form 42)*: A6.47

To the kin (if any) who are entitled to share and all other persons having or claiming any interest in the estate of A B deceased.

Take notice that C D has stated in an affidavit sworn the. . . . . day of . . . . . 20. . . . . that AB of. . . . . died on the. . . . . day of. . . . . 20. . . . . domiciled in England and Wales intestate, a widower/surviving civil partner without known issue or parent, brother or sister of the whole or half blood or their issue, grandparent, uncle or aunt of the whole or half blood or their issue, or any other person entitled in priority to share in his estate by virtue of any enactment, and that C D is a creditor of the deceased:

Now this is to command you that within one month after service by publication of this citation on you, inclusive of the day of such service, you do cause an appearance to be entered in the Principal Registry of the Family Division of the High Court of Justice at First Avenue House, 42–49 High Holborn, London WC1V 6NP [*or* in the. . . . . District Probate Registry at. . . . .] and accept or refuse letters of administration of all the estate which by law devolves to and vests in the personal representative of the deceased, or show cause why

letters of administration of his estate should not be granted to C D. And take further notice that, in default of your so appearing and accepting and extracting letters of administration as aforesaid, our court will proceed to grant letters of administration of the estate of the deceased to C D, your absence notwithstanding.

Dated at. . . . . this. . . . . day of. . . . . 20. . . . . .

Extracted by. . . . . .

of. . . . . . *(Signed)*

Solicitor. District Judge/Registrar.

[Note.–
If the applicant is the nominee of a county council, he should be so described, and the sealed or certified appointment lodged (see *Form 40*: A6.45).]
(Form of affidavit to lead citation, *Form 29*: A6.34.)

A6.50

45. Citation by creditor against a minor to accept or refuse administration
(NCPR SI 1987/2024 r 47(1))

(*Heading as in Form 1:* A6.01)

Elizabeth the Second etc (*as in Form 42:* A6.47):

To G H of. . . . . and

To C D of. . . . . .

Take notice that E F has stated in an affidavit sworn the. . . . . day of . . . . . 20. . . . . that A B of. . . . . died on the. . . . . day of. . . . . 20. . . . . domiciled in England and Wales intestate, a bachelor without issue or parent or any other person entitled in priority to share in his estate by virtue of any enactment, leaving you G H, his lawful* brother of the whole blood and the only person entitled to his estate, that E F is a creditor of the deceased, that you G H are a minor, and that C D is your lawful father [*or* your guardian or the person with whom you reside *or* under whose care you are [*as the case may be*]]:

Now this is to command you G H that within eight days after service of this citation on you, inclusive of the day of such service, you do cause an appearance to be entered in the Principal Registry of the Family Division of the High Court of Justice at First Avenue House, 42–49 High Holborn, London WC1V 6NP [*or* in the . . . . . District Probate Registry at. . . . .] and accept or refuse letters of administration of all the estate which by law devolves to and vests in the personal representative of the deceased, or show cause why they should not be granted to E F and another. And take further notice that, in default of your so appearing and accepting and extracting the letters of administration, our said court will proceed to grant letters of administration of the estate to E F and another, your absence notwithstanding.

Dated at. . . . . this. . . . . day of. . . . . 20. . . . . .

Extracted by. . . . . .

of. . . . . *(Signed)*

Solicitor. District Judge/Registrar.

[*If the deceased died on or after 4 April 1988 the relationship, except in the case of a spouse, need not be lawful and, with that exception, the word 'lawful' may be omitted.]

A6.51

46. Citation, by executor of executor, against executor to whom power was reserved, to accept or refuse probate (NCPR SI 1987/2024 r 47(2))

(*Heading as in Form 1:* A6.01)

Elizabeth the Second etc (*as in Form 42:* A6.47):

To E F of. . . . . .

Take notice that G H has stated in an affidavit sworn the. . . . . day of . . . . . 20. . . . . that probate of the will of A B of. . . . . deceased, was on the. . . . . day of. . . . . granted by our High Court of Justice at the Principal Registry of the Family Division [*or* at the. . . . . District Probate Registry] to C D one of the executors named therein, power being reserved of making a like grant to you E F the other executor named therein, that C D died on the. . . . . day of. . . . . leaving part of the estate of the deceased unadministered and that on the. . . . . day of . . . . . 20. . . . . probate of the will of C D deceased, was granted by this court at the registry [*or* at the. . . . . District Probate Registry] to G H the sole executor thereof:

Now this is to command you E F that within eight days after service of this citation on you, inclusive of the day of such service, you do cause an appearance to be entered in the Principal Registry of the Family Division of this court at First Avenue House, 42–49 High Holborn, London WC1V 6NP [*or* in the. . . . . District Probate Registry at. . . . .] and accept or refuse probate of the will of A B deceased. And take further notice that, in default of your so appearing and accepting and extracting probate of the will, your rights as such executor will wholly cease, and the representation to the estate of A B deceased will devolve as if you had not been appointed executor.

Dated at. . . . . this. . . . . day of. . . . . 20. . . . . .

Extracted by. . . . . .

of. . . . . *(Signed)*

Solicitor. District Judge/Registrar.

(Form of affidavit to lead citation, *Form 30*: A6.35.)

A6.52

47. Citation to take probate against an executor who has intermeddled (NCPR SI 1987/2024 r 47(3))

(Heading as in Form 1: A6.01)

Elizabeth the Second etc (*as in Form 42:* A6.47):

To E F of. . . . . .

Take notice that C D has stated in an affidavit sworn the. . . . . day of . . . . . 20. . . . . that A B of. . . . . died on the. . . . . day of. . . . . 20. . . . . domiciled in England and Wales, having made and duly executed his last will and testament bearing date the. . . . . day of . . . . . 20. . . . . [now remaining in the Principal Registry of the Family Division of the High Court of Justice *or* in the. . . . . District Probate Registry], that you E F are appointed sole executor in that will, that C D is interested in the estate of the deceased under the will and that you E F have intermeddled in the estate of the deceased:

Now this is to command you E F that within eight days after service of this citation on you, inclusive of the day of such service, you do cause an appearance to be entered in the Principal Registry of the Family Division at First Avenue House, 42–49 High Holborn, London WC1V 6NP [*or* in the. . . . . District Probate Registry at. . . . .] and show cause why you should not be ordered to take probate of the will.

Dated at. . . . . this. . . . . day of. . . . . 20. . . . . .

Extracted by. . . . . .

of. . . . . *(Signed)*

Solicitor. District Judge/Registrar.

(Form of affidavit to lead citation, *Form 31*: A6.36.)

A6.53

48. Citation to propound paper writing (NCPR SI 1987/2024 r 48)

(Heading as in Form 48: A6.53)

Elizabeth the Second etc (*as in Form 42:* A6.47):

To E F of. . . . . .

Take notice that C D has stated in an affidavit sworn the. . . . . day of

. . . . . 20. . . . . that A B of . . . . . died on the. . . . . day of. . . . . 20. . . . . domiciled in England and Wales a widower leaving C D, his lawful* [*or* natural*] son and the only person entitled to his estate and that the deceased left a certain paper writing dated the. . . . . day of. . . . . 20. . . . . purporting to be a will [now remaining in the Principal Registry of the Family Division or in the . . . . . District Probate Registry] whereby he appointed you E F sole executrix and residuary legatee and devisee:

Now this is to command you E F that within eight days after service of this citation on you, inclusive of the day of such service, you do cause an appearance to be entered in the Principal Registry of the Family Division of the High Court of Justice at First Avenue House, 42–49 High Holborn, London WC1V 6NP [*or* in the . . . . . District Probate Registry at. . . . .] and propound the paper writing should you think it for your interest so to do, or show cause why letters of administration of all the estate which by law devolves to and vests in the personal representative of the deceased should not be granted to C D. And take further notice that in default of your so appearing and doing as aforesaid our court will proceed to issue a grant of representation of the said estate as if the purported will were invalid, your absence notwithstanding.

Dated at. . . . . this. . . . . day of. . . . . 20. . . . . .

Extracted by. . . . . .

of. . . . . *(Signed)*

Solicitor. District Judge/Registrar.

[*If the deceased died on or after 4 April 1988 the word 'lawful' or 'natural' can be omitted.]

(Form of affidavit to lead citation, *Form 32*: A6.37.)

52. Consent to trust corporation applying

(*Heading as in Form 1:* A6.01)

1. A B of. . . . . died on the. . . . . 20.domiciled in England and Wales [intestate a widower leaving E F his lawful* [*or* natural*] son the only person entitled to his estate [*or as the case may be*]] [*or* having made and duly executed his last will and testament bearing date the . . . . . day of. . . . . 20. . . . . wherein he named C D sole executor and E F residuary legatee and devisee; the C D has renounced probate of the will];

2. Now I, E F of. . . . . hereby consent to letters of administration [with the will annexed] of the estate of the deceased being granted to X and Company Limited.

3. Dated this. . . . . day of. . . . . 20. . . . . .

Signed by the within-named

E F in the presence of. . . . . *(Signed)* E F

[signature and address of witness]

[Note.–

Executors must renounce probate, and, if entitled to share in the residuary estate, or to a grant in some other capacity, must also renounce letters of administration (with will annexed).

[See also *Form 195*: A6.200 (Renunciation and consent to grant to trust corporation).]

Disclaimer

A6.57A

52A. Deed of disclaimer of interest under intestacy

(*Heading as in Form 1:* A6.01 *optional*)

THIS DEED OF DISCLAIMER is made the. . . . . day of. . . . . 20 . . . . . .

BY A B of . . . . . .

WHEREAS

1. C D ('the Intestate') late of. . . . . died on the. . . . . day of. . . . . 20. . . . . .
2. A B is the spouse/civil partner of the Intestate and is the sole beneficiary/one of statutory beneficiaries entitled to the estate of the Intestate under section 46, Administration of Estates Act 1925.
3. A B has not taken or accepted any share in the estate.
4. A B desires and intends to disclaim all that is his/her interest in the estate of the Intestate.

NOW THIS DEED WITNESSES that A B hereby disclaims all that is his/her interest in and right to and title over the property comprised in the estate of the Intestate or any part of it

AND A B hereby acknowledges that on the execution of this disclaimer he/she will be treated for the purpose of section 46A, Administration of Estates Act 1925 as having died immediately before the Intestate.

AS WITNESS of which A B has set his/her hand the day and date first written

(Signed)

In the presence of

[Name and address of witness]

A6.57B

52B. Deed of disclaimer of interest under a will

(*Heading as in Form 1:* A6.01 *optional*)

THIS DEED OF DISCLAIMER is made on the. . . . . day of. . . . . 20 . . . . . .

By A B of . . . . . .

WHEREAS

1. C D ('the Testator') late of. . . . . died on the. . . . . day of . . . . . 20. . . . . having made a will dated the. . . . . day of . . . . . 20. . . . . (the Will).
2. A B is the sole beneficiary/one of the beneficiaries named in the Will.
3. A B has not accepted any share in the estate.
4. A B desires and intends to disclaim all his/her interest under the Will or otherwise in the estate of the Testator.

NOW THIS DEED WITNESSES that A B hereby disclaims all that may be his/her interest in and right to and title over the property or any part of it given to him/her under the Will

AND A B hereby acknowledges that on the execution of this disclaimer he/she will be treated for the purposes of section 33A, Wills Act 1837 as having died immediately before the testator.

AS WITNESS of which A B has set his/her hand the day and date first written

(Signed)

In the presence of

[Name and address of witness]

Statements of truth

The Non-Contentious Probate Rules 1987 as amended with effect from 27 November 2018 (SI 2018/1137) replaced oaths with statements of truth.

General notes:

(1) Except where otherwise stated, the following forms are applicable in cases where the deceased died on or after 1 January 1926.
Every statement of truth should state the address including, if known, the postcode of the deceased.
In every statement of truth to lead a grant of administration (with or without will annexed), the deponent must state whether there is a life interest or a minority interest (NCPR SI 1987/2024 r 8(4)).
Where there is a life interest or a minority interest, the grant must be made to a trust corporation, with or without an individual, or to not less than two individuals, unless it appears to the court to be expedient in all the circumstances to appoint an individual as sole administrator.
Where the death occurred on or after 1 January 1926, in every statement of truth to lead a grant of probate or administration (with or without will annexed), the deponent must state to the best of his

knowledge, information and belief whether there was land vested in the deceased which was settled previously to his death (and not by his will) and which remained settled land notwithstanding his death (NCPR SI 1987/2024 r 8(3)).

The name, address and occupation of the deponent or status (if a female with no occupation) and, in certain cases, his relationship to the deceased, if any, must be shown (see paras **4.96** ff).

Every statement of truth must state the age and where the deceased died in the United Kingdom and the death was recorded in the Register of Deaths the name and dates of birth and death as recorded in the Register should be given. If the deceased was known by any different names those names should also be included in the statement of truth. In those cases in which the exact age is not known, the applicant should give the best estimate he can (Practice Directions [1981] 2 All ER 832, [1981] 1 WLR 1185, [1999] 1 All ER 832).

(2) Excepted Estates:

(i) Where the deceased died on and after 5 April 2004 and the gross value plus chargeable value of any transfers does not exceed the prevailing IHT threshold the gross value of the estate should be recited as not exceeding the prevailing threshold and the net value should be rounded up to the next whole thousand and expressed as 'not exceeding £. . . . . ' (President's Direction 23 March 2002);

(ii) where the deceased died on or after 5 April 2004 and the gross value plus chargeable value of transfers does not exceed £1,000,000 and the net chargeable estate after deduction of spouse and/or charity exemptions only is less than the prevailing IHT threshold the exact gross and net values of the estate should be included in the statement of truth; and

(iii) where the deceased died before 5 April 2004 the gross value of the estate should continue to be expressed as not exceeding the prevailing limit for the date of death and the net value should be rounded up to the next whole thousand as in (i) above.

(3) In order to reduce the volume of applications which are stopped or rejected the following checks are suggested before probate papers are submitted to the probate registry. The practitioner should check that:

(i) correct personal details are included in the statement of truth: complete names and any aliases of the deceased are accounted for, identity of the applicant is verified if a different name is used in the will, addresses, dates of birth and death and correct gross and net values of the estate as on the IHT form are included and in appropriate cases the 'excepted estate' clause;

(ii) clearing and title is correct;

(iii) holes, tears or mark are accounted for—by affidavit evidence of plight and condition or if acceptable to the registrar by certifying that nothing of a testamentary nature was attached;

(iv) papers appropriate to the application are complete: the statement of truth, original will and codicil(s) together with two A4 clear plain copies of each testamentary paper, original renunciation(s), power(s) of attorney, IHT205/421 and fee.

A6.65

60. Statement of truth for probate (general form)

(*Heading as in Form 2:* A6.02)

I, C D [*or* we C D and E F] of. . . . . make the following statement in support of this application for probate:

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . , died on the. . . . . day of. . . . . 20 . . . . . aged. . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the . . . . . day of. . . . . 20. . . . . [with a codicil dated the . . . . . day of. . . . . 20. . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. To the best of my [our] knowledge, information and belief, there was [no] land vested in the deceased which was settled previously to his death, and not by his will, and which remained settled land notwithstanding his death*;

3. I am [We are] the son[s] of the deceased and the sole executor [*or* two of the executors] [*or* the surviving executors] named in the will;

[4. Notice of this application has been given to the executor(s) to whom power is to be reserved, save. . . . . **;]

5. I [We] will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of probate;

6. To the best of my [our] knowledge, information and belief the gross estate passing under the grant [does not exceed/amounts to] £. . . . . and that the net estate [does not exceed/amounts to] £. . . . . [and that this is not a case in which an Inheritance Tax account is required to be delivered].

I [We] believe that the facts stated in this witness statement are true and understand that criminal proceedings for fraud may be brought against me [us] if I am [we are] found to have been deliberately untruthful or dishonest.

(Signed)

[Print full name] . . . . . .

(Date)

[* If there is settled land, a general executor may take a grant 'save and except settled land' on stating simply that there was such settled land, but the value of the settled land must not be included in the statement of truth. In such a case the word 'estate' should be followed by the words 'save and except settled land' in each

place where it occurs. For form of statement of truth for probate save and except settled land where there has been a previous grant limited to settled land, see No. 79 (A6.84).

** Where there are several executors and they do not all prove, power is reserved to the non-proving executors. See paras 4.54 ff as to the requirements for giving notice to the other executor(s) or dispensing with giving such notice and the relevant statement in the statement of truth.

The alternatives so marked should be deleted as appropriate. In those cases in which an Inheritance Tax account is not required to be delivered (see Chapter 8, and the Inheritance Tax (Delivery of Accounts) (Excepted Estate) Regulations), it will be sufficient to state in the statement of truth the threshold figures into which the estate falls (see paras 4.207 and 4.208).]

A6.66

61. Statement of truth for probate to a trust corporation

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . [bank official] in the employ of X Bank Limited ('the Bank'), whose registered office is situated at. . . . . in the . . . . . of. . . . . make the following statement in support of this application for probate:

1. A B of. . . . . deceased who was born on the. . . . . day of . . . . . 19. . . . . , died on the. . . . . day of. . . . . 20 . . . . . aged. . . . . years, domiciled in England and Wales, having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the. . . . . day of . . . . . 20. . . . .] now produced to the Court and in his will appointed the Bank sole executor; and the name of the deceased shown on the Death Certificate is A B;

2. The Bank has by a resolution dated the. . . . . day of. . . . . 20., a certified copy of which is lodged herewith, appointed me [*or* a certified copy of which has been filed with the Senior District Judge, in which I am identified by the position I hold and which is still in force, appointed me] for the purpose of applying for probate of the will [*or* for grants of probate] on its behalf;

3. The Bank is a trust corporation as defined by rule 2(1) of the Non-Contentious Probate Rules 1987 and has power to accept the grant now applied for;

4. The Bank is the sole executor named in the will;

5. To the best of my knowledge, information and belief there was [no] land vested in the deceased which was settled previously to his death, and not by his will, and which remained settled land notwithstanding his death;

6. The Bank will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of probate;

[etc – *continue as in Form 60*: A6.65].

[Note.–

Where the corporation has been appointed as executor on terms and conditions specifically referred to as being in existence at the date of the will or its republication, as the case may be, the statement of truth should contain a statement to the effect that nothing in those terms or conditions limits the corporation's powers to take a full grant: *Practice Direction* [1981] 2 All ER 1104.]

A6.67

62. Statement of truth for probate to the Public Trustee

(*Heading as in Form 2:* A6.02)

I, A B, of the Office of the Official Solicitor and Public Trustee, Victory House, 30–34 Kingsway, London WC2B 6EX,. . . . . on behalf of C D the Public Trustee, make the following statement in support of this application for probate:

1. A B of. . . . . formerly of. . . . . deceased, who was born on the. . . . . day of. . . . . 19. . . . . , died on the . . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . .[with a codicil dated the. . . . . day of. . . . . 20. . . . .] now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

[2. *add statement as to settled land*];

3. C D is the Public Trustee constituted by the Public Trustee Act 1906, and the Public Trustee is the sole executor named in the will;

4. He will:

   (i) collect, get in and administer [etc – *continue as in Form 60*: A6.65].

A6.68

63. Statement of truth for probate where partners in a firm (probate practitioners) appointed as executors by reference to them being such partners

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . probate practitioner, make the following statement in support of this application for probate:

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . , died on the. . . . . day of. . . . . 20 . . . . . aged. . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the. . . . . day of . . . . . 20. . . . .] now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. To the best of my knowledge, information and belief there was [no] land vested in the deceased which was settled previously to his death, and not by his will, and which remained settled land notwithstanding his death;

3. The deceased named as executors, in the will, the partners at the date of his death in the firm of Y Z of. . . . . ;

4. At the date of death of the deceased I was one of the profit sharing/equity partners in the firm and as such I am one of the executors named in the will;

5. E F the only other partner at the date of death of the deceased in the firm is to have power reserved to him [*or* has renounced probate *or* has since died];

6. I will:

   (i) collect, get in and administer [etc – *continue as in Form 60*: A6.65].

A6.69

64. Statement of truth for probate where partners in a successor firm (probate practitioners) appointed as executors

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . probate practitioner, make the following statement in support of this application for probate:

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . , died on the. . . . . day of. . . . . 20 . . . . . .aged. . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . .[with a codicil dated the. . . . . day of . . . . . 20. . . . .] now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. To the best of my knowledge, information and belief there was [no] land vested in the deceased which was settled previously to his death, and not by his will, and which remained settled land notwithstanding his death;

3. The deceased named as executors, in the will, the partners at the date of his death in the firm of Y Z of. . . . . or the firm which at that date had succeeded to and carried on its practice;

4. At the date of death of the deceased the firm W X of. . . . . had succeeded to and was carrying on the practice of Y Z of. . . . . ;

5. At the date of death of the deceased I was one of the profit sharing/equity partners in the firm of W X and as such I am one of the executors named in the will;

6. E F the only other partner at the date of death of the deceased in the firm of W X is to have power reserved to him [*or* has renounced probate *or* has since died];

7. I will:

   (i) collect, get in and administer [etc – *continue as in Form 60*: A6.65].

A6.70

65. Statement of truth for probate where partners in a firm (probate practitioners) appointed as executors and firm has converted to limited liability partnership (llp) or other incorporated practice

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . probate practitioner, make the following statement in support of this application for probate:

1. A B of. . . . . deceased, who was born on the day of. . . . . 19. . . . . , died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the. . . . . day of . . . . . 20. . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. To the best of my knowledge, information and belief there was [no] land vested in the deceased which was settled previously to his death, and not by his will, and which remained settled land notwithstanding his death;

3. The deceased named as executors, in the will, the partners at the date of his death in the firm of Y Z of. . . . . (or the firm which at that date had succeeded to and carried on its practice);

4. At the date of death of the deceased the firm Y Z had converted to (a limited liability practice) *or* (limited company) (*or* W X llp of. . . . . had succeeded to and was carrying on the practice of Y Z of. . . . .);

5. At the date of death of the deceased I was one of the profit sharing members in Y Z llp (*or* W X llp and as such I am one of the executors named in the will;

6. E F the only other member at the date of death of the deceased in the firm of Y Z llp (*or* W X llp) is to have power reserved to him [*or* has renounced probate or has since died];

7. I will:

   (i) collect, get in and administer [etc – *continue as in Form 60*: A6.65].

A6.71

66. Statement of truth for probate where directors/members of an incorporated practice/limited liability partnership appointed as executors by reference to them being such directors/members

(*Heading as in Form No 2:* A6.02)

I, C D, of. . . . . probate practitioner, make the following statement in support of this application for probate:

1. A B of. . . . . deceased, who was born on the . . . . . day of . . . . . 19. . . . . , died on the . . . . . day of . . . . . 20. . . . . aged . . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the . . . . . day of. . . . . 20. . . . . [with a codicil dated the . . . . . day of. . . . . 20. . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. To the best of my knowledge, information and belief there was [no] land vested in the deceased which was settled previously to his death, and not by his will, and which remained settled land notwithstanding his death;

3. The deceased named as executors, in the will, the directors and members at the date of his death in the Y Z Limited/ the members at the death of his death of Y Z llp;

4. At the date of death of the deceased I was one of the directors/members in Y Z Limited/Y Z llp and as such I am one of the executors named in the will;

5. E F and G H the only other directors/members at the date of death of the deceased in the practice are to have power reserved to them [*or* has renounced probate or has since died];

6. I will:

   (i) collect, get in and administer [etc – *continue as in Form No 60*: A6.65].

A6.72

67. Statement of truth of executor, former probate having been revoked

(*Heading as in Form No 2* A6.02)

I, C D, of. . . . . make the following statement in support of this application for probate:

1. A B of. . . . . deceased, was born on the . . . . . day of . . . . . 19. . . . . .and died on the . . . . . day of. . . . . 20. . . . . aged. . . . . years domiciled in England and Wales, having made and duly executed his last will and testament, bearing date the. . . . . day of. . . . . 20. . . . . [with a codicil dated the. . . . . day of. . . . . 20. . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. [*add statement as to settled land*].

3. Probate of an earlier will of the testator, dated the. . . . . day of . . . . . 20. . . . . was on the. . . . . day of. . . . . 20 . . . . . granted at the Principal [*or*. . . . . District Probate] Registry of the Family Division to E F, the sole executor therein named.

4. The probate has since been voluntarily brought in by E F, and revoked.

5. I believe the paper writing now produced to and marked by me to contain the true and original last will and testament of the deceased.

6. I am the sole executor named in the will.

7. I will:

   (i) collect, get in and administer [etc – *continue as in Form 60*: A6.65].

A6.73

68. Statement of truth after judgment pronouncing for a will as contained in a draft

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for probate:

1. A B of. . . . . deceased, was born on the. . . . . day . . . . . of. . . . . 19. . . . . and died on the. . . . . day of

. . . . . 20. . . . . aged . . . . . years, domiciled in England and Wales; and the name of the deceased shown on the Death Certificate is A B;

2. [*add statement as to settled land*];

3. The deceased made and duly executed her last will and testament, bearing date the. . . . . day of. . . . . 20. . . . . and thereof appointed me the sole executor;

4. On the. . . . . day of. . . . . 20 the Honourable Sir . . . . . , one of the Justices of the Chancery Division, in a probate claim entitled 'S and others against T and another', pronounced for the force and validity of the will [as contained in a draft of it,] and ordered that the will be admitted to proof [as contained in the draft limited until the original will or a more authentic copy thereof be proved];

5. I believe the paper writing now produced to the Court to contain the true last will and testament [it being the draft mentioned above] of the deceased;

6. I am the sole executor named in the said will, and that I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased [limited until the original will or a more authentic copy thereof be proved];

   (ii) when required to do so by the Court exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of probate;

[etc – *continue as in Form 60*: A6.65].

A6.74

69. Statement of truth on proving a lost will as contained in a copy or draft etc

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for probate:

1. A B of. . . . . who was born on the. . . . . day of. . . . . 19. . . . . , died on the. . . . . day of. . . . . 20. . . . . , aged.years, domiciled in England and Wales having made and duly executed his last will and testament dated the . . . . . day of. . . . . 20. . . . . [with a codicil dated the . . . . . day of. . . . . 20. . . . .] [*a draft, copy, reconstruction of*] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. [*add statement as to settled land*];

3. On. . . . . day of. . . . . 20. . . . . it was ordered by Mr District Judge [*or* Mr. . . . . Registrar] of this Division that the last will and testament of the deceased be admitted to proof as contained in the [*draft, copy, reconstruction*] limited until the original will or more authentic copy be proved; or [*if the reconstruction is presented following destruction of the original will*] limited until an authentic copy is proved.

4. I am the sole executor named in the will;

5. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased, limited until the original will or a more authentic/an authentic copy thereof be proved [*or as the case may be, according to the limitation imposed by the order*];

   (ii) when required to do so by the Court exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of probate;

[etc – *continue as in Form* 60: A6.65].

A6.75

70. Statement of truth for double probate, where not more than four executors were appointed

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for probate:

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . , died on the. . . . . day of . . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the . . . . . day of. . . . . 20. . . . .] an official copy of which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. [*add statement as to settled land*];

3. On the. . . . . day of. . . . . 20. . . . . probate of the will was granted at the. . . . . Probate Registry to E F, one of the executors named in the said will, power being reserved to the other executor;

4. I am the other executor named in the will;

5. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of double probate;

[etc – *continue as in Form* 60: A6.65, *but with reference to the value of the unadministered estate*].

A6.76

71. Statement of truth for double probate, where more than four executors were appointed

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for probate:

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . and who died on the. . . . . day of . . . . . 20. . . . . aged. . . . . .years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the . . . . . day of. . . . . 20. . . . .] an official copy of which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. [*add statement as to settled land*];

3. On the. . . . . day of. . . . . 20. . . . . probate of the will was granted at the. . . . . Probate Registry to E F, G H, I J and K L, four of the executors named therein, power being reserved to the other executor;

4. E F died on the. . . . . day of. . . . . 20. . . . . ;

5. I am another executor named in the will;

6. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of double probate;

[etc – *continue as in Form 60:* A6.65, *but with reference to the value of the unadministered estate*].

A6.77

72. Statement of truth for probate 'save and except'

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for probate:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . .aged. . . . . .years, domiciled in England and Wales; and the name of the deceased shown on the Death Certificate is A B;

2. [*add statement as to settled land*];

3. The deceased made and duly executed his last will and testament, bearing date the. . . . . day of. . . . . 20. . . . . and therein named me, his son, executor, save and except as regards the business of bookseller carried on by him at. . . . . ;

4. I believe the paper writing now produced to the Court to contain the true and original last will and testament of the deceased;

5. I am the executor therein named, save and except as mentioned above;

6. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased, save and except so far as relates to the business of bookseller;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate, save and except as stated, and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of probate;

[etc – *as in Form 60*: A6.65, *save and except as mentioned*].

A6.78

73. Statement of truth for probate caeterorum

(*Heading as in Form 2*:A6.02)

I, C D, of. . . . . make the following statement in support of this application for probate:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales; and the name of the deceased shown on the Death Certificate is A B;

2. The deceased made and duly executed his last will and testament bearing date the. . . . . day of. . . . . 20. . . . . and therein named E F executor in respect of his literary papers and documents, and me executor as to the rest of his estate;

3. On the. . . . . day of. . . . . 20. . . . . probate of the will, limited to the literary papers and documents of the testator, was granted at the. . . . . Probate Registry to E F;

4. [*add statement as to settled land*];

5. I believe the paper writing now produced to the Court to contain [an official copy of] the true and original last will and testament of the deceased;

6. I am the executor therein named in the will as to the rest of his estate;

7. I will:

   (i) collect, get in and administer according to law the rest of the real and personal estate of the deceased;

(ii) when required to do so by the Court, exhibit in the Court a full inventory of the rest of the estate and render an account thereof to the Court; and

(iii) when required to do so by the High Court, deliver up to that Court the grant of probate;

[etc – *as in Form 60*: A6.65, *with reference to the value of the rest of the estate*].

A6.79

74. Statement of truth for cessate probate to a substituted executor

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for probate:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, having made and duly executed his last will and testament; and the name of the deceased shown on the Death Certificate is A B;

2. On the. . . . . day of. . . . . 20. . . . . probate of the will was granted at the Principal [*or*. . . . . District] Probate Registry to E F, the executrix for life named in the will;

3. E F died on the. . . . . day of. . . . . 20. . . . . whereby the probate has ceased and expired;

4. [*add statement as to settled land*];

5. I believe the paper writing now produced to the Court to contain [an official copy of] the true and original last will and testament of the deceased;

6. I am the executor substituted in the will;

7. I will: [*continue as in Form 60*: A6.65].

A6.80

75. Statement of truth for cessate probate, the executor having attained his majority

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for probate:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . .aged. . . . . years, domiciled in England and Wales, having made and duly executed his last will and testament; and the name of the deceased shown on the Death Certificate is A B;

2. I am the sole executor named in the will;

3. On the. . . . . day of. . . . . 20. . . . . letters of administration (with the will annexed) of the estate of the deceased were granted at the Principal [*or*. . . . . District Probate] Registry to my mother E F,

and to G H, the person nominated by her as co-administrator, for my use and benefit and until I should attain the age of eighteen years;

4. On the. . . . . day of. . . . . 20. . . . . I attained the age of eighteen years, whereby the letters of administration (with will annexed) have ceased and expired;

5. [*add statement as to settled land*];

6. I believe the paper writing dated the. . . . . day of. . . . . 20 . . . . . now produced to the Court to contain [an official copy of] the true and original last will and testament of the deceased;

7. I will: [*continue as in Form 60*: A6.65].

A6.81

76. Statement of truth for cessate probate to executor where attorney has proved

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for probate:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, having made and duly executed his last will and testament; and the name of the deceased shown on the Death Certificate is A B;

2. I am the sole executor named in the will;

3. On the. . . . . day of. . . . . 20. . . . . letters of administration (with the will annexed) of the estate of the deceased were granted at the Principal [*or*. . . . . District Probate] Registry to E F, my lawful attorney, for my use and benefit, and until I should obtain probate of the will [*or* until further representation be granted];

4. [*add statement as to settled land*];

5. I believe the paper writing dated the. . . . . day of. . . . . 20 . . . . . now produced to the Court by me to contain [an official copy of] the true and original last will and testament of the deceased;

6. I will: [*continue as in Form 60*: A6.65].

A6.82

77. Statement of truth of special executors for letters of administration limited to settled land after probate 'save and except', or letters of administration (with will) 'save and except'

(*Heading as in Form 2:* A6.02)

We, C D of. . . . . and E F of. . . . . make the following statement in support of this application for letters of administration/letters of administration (with will) save and except settled land:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day

of. . . . . 19. . . . . /20. . . . . aged.years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the. . . . . day of. . . . . 20. . . . . , *or as the case may be*]; and the name of the deceased shown on the Death Certificate is A B;

2. Probate of the will [and codicil] [*or* letters of administration (with will [and codicil]) of the estate of the deceased] save and except settled land was [were] granted at the Principal [*or*. . . . . District Probate] Registry on the. . . . . day of. . . . . 19. . . . . /20. . . . . to G H and K L, the executors [*or* the residuary legatees and devisees] named in the will;

3. There was land vested in the deceased which was settled previously to his death (and not by his will) and which remained settled land notwithstanding his death, namely, under an indenture of settlement dated the. . . . . day of. . . . . 19. . . . . /20. . . . . [*or* under the will of . . . . . deceased, which was proved at the Principal [*or* . . . . . District Probate] Registry on the. . . . . day of . . . . . 19. . . . . /20. . . . .];

4. We were the trustees at the date of death of A B, deceased, of the settled land, and that as such we are the special executors as to the settled land;

5. We will:

   (i) collect, get in and administer according to law the estate of the deceased, limited to the settled land;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate, limited as stated, and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of administration;

[etc – *as in Form 60*: A6.65, *limited to the settled land*].

A6.83

78. Statement of truth for administration limited to settled land to the trustees where deceased died intestate

(*Heading as in Form 2:* A6.02)

We, C D of. . . . . and E F of. . . . . make the following statement in support of this application for letters of administration limited to settled land:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, intestate, a widower, domiciled in England and Wales; and the name of the deceased shown on the Death Certificate is A B;

2. On the. . . . . day of. . . . . 20. . . . . letters of administration of the estate of the deceased save and except settled land were granted at the Principal [*or*. . . . . District Probate] Registry to G B, the son and only person entitled to the estate of the deceased;

3. There was land vested in the deceased which was settled previously to his death and which remained settled land notwithstanding his death, namely, under an indenture of settlement dated the. . . . . day of. . . . . 20. . . . . [*or* under the will of. . . . . deceased, which was proved at the Principal [*or*. . . . . District Probate] Registry on the. . . . . day of. . . . . 20. . . . .];

4. We are the trustees of the settled land;

5. We will:

   (i) collect, get in and administer according to law the estate of the deceased limited to the settled land;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate, limited as aforesaid, and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65, *limited to the settled land*].

A6.84

79. Statement of truth for administration limited to settled land to trustees (no former grant) where deceased left a will

(*Heading as in Form 2:* A6.02)

We, C D of. . . . . and E F of. . . . . make the following statement in support of this application for letters of administration limited to settled land:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . which has not yet been proved; and the name of the deceased shown on the Death Certificate is A B;

2. There was land vested in the deceased which was settled previously to his death (and not by his will) and which remained settled land notwithstanding his death, namely, under the will of M N deceased, which was proved at the Principal [*or*. . . . . District Probate] Registry on the. . . . . day of. . . . . 19. . . . . /20. . . . . ; [*or* under an indenture of settlement dated the. . . . . day of. . . . . 19. . . . . /20 . . . . .];

3. [*Clear off trustees at the date of death of the deceased, e.g.* At the date of death of the deceased there were no trustees of the settled land; *or* G H, the surviving trustee at the date of death of the deceased of the settled land and as such the executor as to the settled land has since died without having taken upon himself a grant of representation limited to the settled land, *or* has renounced administration limited to the settled land.]

4. We are the present trustees of the settled land.

5. We will:

(i) collect, get in and administer according to law the estate of the deceased limited to the settled land;

(ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate, limited as aforesaid, and render an account thereof to the Court; and

(iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65, *limited to the said settled land*].

Sworn etc

A6.85

80. Statement of truth for letters of administration limited to settled land to personal representatives of the settlor as special executors (after grant 'save and except')

(*Heading as in Form 2:* A6.02)

We, C D of. . . . . and E F of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 19. . . . . /20. . . . . aged. . . . . years, domiciled in England and Wales, having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the. . . . . day of. . . . . 20. . . . . , *or as the case may be*]; and the name of the deceased shown on the Death Certificate is A B;

2. Letters of administration (with will [and codicil]) of the estate of the deceased save and except settled land were granted on the. . . . . day of. . . . . 19. . . . . /20. . . . . at the Principal [*or* . . . . . District Probate] Registry, to G H and K L, the residuary legatees and devisees named in the will;

3. There was land vested in the deceased which was settled previously to his death (and not by his will) and which remained settled land notwithstanding his death, namely, under the will of M N, deceased, which was proved at the Principal [*or*. . . . . District Probate] Registry on the. . . . . day of. . . . . 19. . . . . /20. . . . . ;

4. There were no trustees of the settled land at the date of death of the deceased save and except ourselves, and none have since been appointed [*or as the case may be*];

5. We are the executors of the will of M N, deceased, and, having been such at the date of death of A B, deceased, we are, by virtue of section 30(3) of the Settled Land Act 1925, the executors as to the settled land;

6. We will:

(i) collect, get in and administer according to law the estate of the deceased limited to the settled land;

(ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate, limited as aforesaid, and render an account thereof to the Court; and

(iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65, *limited to the said settled land*].

Sworn etc

A6.86

81. Statement of truth for probate save and except settled land (after grant limited to settled land)

(*Heading as in Form 2:* A6.02)

We, C D of. . . . . and E F of. . . . . make the following statement in support of this application for probate:

1. We believe the paper writing now produced to the Court to contain [an official copy of] the true and original last will and testament of A B of . . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . and who died on the. . . . . day of . . . . . 19. . . . . /20. . . . . aged. . . . . years, domiciled in England and Wales; and the name of the deceased shown on the Death Certificate is A B;

2. There was land vested in the deceased which was settled previously to his death (and not by his will) and which remained settled land notwithstanding his death;

3. On the. . . . . day of. . . . . 19. . . . . /20. . . . . probate of the will [*or* letters of administration (with will) of the estate of the deceased] limited to settled land was [were] granted at the Principal [*or* . . . . . District Probate] Registry to G H, the executor as to the settled land [*or as the case may be*];

4. We are the executors named in the will;

5. We will:

(i) collect, get in and administer according to law the real and personal estate of the deceased save and except settled land;

(ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate save and except settled land and render an account thereof to the Court; and

(iii) when required to do so by the High Court, deliver up to that Court the grant of probate;

[etc – *as in Form 60*: A6.65, *save and except the settled land*].

A6.87

82. Statement of truth for administration (with will) (will admissible only as to part of estate)

(*Heading as in Form 2:* A6.02)

I, C D of. . . . . make the following statement in support of this application for letters of administration (with will):

1. I believe the paper writing now produced to the Court by me to contain [an official copy of] the true and original last will and testament of A B dated the. . . . . day of. . . . . 20. . . . . , of. . . . . deceased, who was born on the. . . . . day of. . . . . 19. . . . . and who died on the. . . . . day of . . . . . /20. . . . . aged. . . . . years, domiciled in . . . . . ; and the name of the deceased shown on the Death Certificate is A B;

2. The will is not valid by the law of the place where the deceased died domiciled [and is not admissible to proof in England and Wales [in its entirety] by virtue of the Wills Act 1963] [*or* is admissible to proof in England and Wales [by virtue of the Wills Act 1963] so far only as it disposes of immovable property [*or* so far only as it exercises the power of appointment possessed by the deceased under [*give particulars of the instrument*];

3. [*Statement as to minority and life interests and settled land.*]

4. I am [*applicant's title to grant*];

5. I will:

   (i) collect, get in and administer according to law the estate of the deceased, limited to [the immovable estate disposed of by the will] [*or* the immovable estate of the deceased in England and Wales] [*or* limited to such estate as the deceased had a right or power to appoint or dispose of, and did in the will appoint or dispose of], but no further or otherwise;

   (ii) when required to do so by the Court exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court deliver up to that Court the grant of letters of administration;

[etc – as *in Form 60*: A6.65 *limited as aforesaid*].

[Note.–

The Wills Act 1963 applies in the case of testators dying on or after 1 January 1964.

Whatever the date of death, if the whole, or substantially the whole, estate of the deceased in England and Wales consists of immovable property, a grant in respect of the whole estate may be made in accordance with the law which would have been applicable if the deceased had died domiciled in England and Wales (NCPR SI 1987/2024 r 30(3)(b)).

As to title to grant where the deceased died domiciled out of England and Wales, see Chapter 12.]

A6.88

83. Statement of truth for administration to husband or widow or civil partner* – net estate not exceeding £250,000 (where deceased left issue surviving) or £450,000 (where deceased left no issue or other kin entitled) for death on or after 1 February 2009 [*or the appropriate lesser sums depending on date of death – see para* 6.99]

(*Heading as in Form 2:* A6.02)

I, C B, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 19. . . . . /20. . . . . , aged. . . . . years, domiciled in England and Wales intestate; and the name of the deceased shown on the Death Certificate is A B;

2. No minority or life interest arises under the intestacy;

3. To the best of my knowledge, information, and belief there was no land vested in the deceased which was settled previously to his death and which remained settled land notwithstanding his death;

4. I am the lawful husband [*or* the lawful widow or lawful civil partner] and the only person now entitled to the estate of the deceased;

5. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*:A6.65].

* death on or after 5 December 2005,

[Note.–

For the wording to be added when the gross estate exceeds £250,000 or £450,000, or as the case may be, but the net estate, after making the permissible deductions, is below whichever amount is appropriate, see paras **6.107** ff.

Where the deceased left a spouse or civil partner but no issue and the net estate exceeds £250,000 but does not exceed £450,000 or as the case may be the words 'without issue or any other person entitled in priority to share in the estate by virtue of any enactment' should be included in para 1 after 'intestate', so as to establish that the applicant is the 'only person now entitled to the estate' (see fn 2 to para **6.99**).]

A6.89

84. Statement of truth for administrators where net value of the estate exceeds £250,000 for death on or after 1 February 2009 and there are issue (husband or widow applying with next person entitled under NCPR SI 1987/2024 r 22) [*for the appropriate lesser sums depending on date of death see para* 6.99]

(*Heading as in Form 2:* A6.02)

We, C B, of. . . . . and E B, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 19. . . . . /20. . . . . aged. . . . . years, domiciled in England and Wales intestate; and the name of the deceased shown on the Death Certificate is A B;

2. No minority [but a] [or] life interest* arises under the intestacy;

3. To the best of our knowledge, information and belief, there was no land vested in the deceased which was settled previously to [his] death and which remained settled land notwithstanding [his] death;

4. I C B am the lawful husband [*or* the lawful widow *as the case may be*] of deceased, and I E B am the lawful** [or natural*] son and one of the persons entitled to share in the estate of the deceased;

5. We will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60:*A6.65].

[* If the deceased died on or after 1 October 2014, a life interest does not arise and the requirement for a second applicant is optional.

** If the deceased died on or after 4 April 1988 it is not necessary for the relationship of anyone, except a spouse, to be lawful. Accordingly, with that exception, the word 'lawful' or 'natural' may be omitted.]

[Note.–

Where the person next entitled to the first applicant has renounced and the second person applying is next in order under NCPR SI 1987/2024 r 22, an order under rule 25 for joinder of the second grantee is necessary.]

A6.90

85. Statement of truth for administrators– net estate exceeding £250,000 for death on or after 1 February 2009: widow (or husband) and minor child survive: application by spouse and nominated co-administrator [*for the appropriate lesser sums depending on date of death see para* 6.99]

(*Heading as in Form 2:* A6.02)

We, C D, of. . . . . and E F, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years domiciled in England and Wales intestate, leaving C D, his lawful widow [or her lawful husband] and G H, his [her] son, together the only persons entitled to share in his [her] estate; and the name of the deceased shown on the Death Certificate is A B;

2. G H is now a minor of the age of. . . . . years;

3. There is no guardian, special guardian, adoption agency, local authority or any other person with parental responsibility for the minor;

4. C D is the mother of the minor [*or* is the father of the minor with parental responsibility for him under s 2(1) of the Children Act 1989 *or* is the father of the minor and has acquired parental responsibility for him under s 4 of the Children Act 1989 under an order [*or* under a duly recorded parental responsibility agreement)];

5. A minority and a life interest arise under the intestacy;

6. To the best of our knowledge, information and belief there was no land vested in the deceased which was settled previously to his [her] death and which remained settled land notwithstanding his [her] death;

7. I, E F am the person nominated by C D as co-administrator of the estate of the deceased;

8. We will:

   (i) collect, get in and administer [etc – *complete as in Form 83*: A6.88].

   [When the father is relying on s 4 of the Children Act 1989 a sealed copy of the order or of the recorded parental responsibility agreement, as the case may be, must be produced with the application.]

A6.91

86. Statement of truth for administrators—net estate exceeding £250,000 for death on or after 1 February 2009: civil partner and minor child survive: application by civil partner who has parental responsibility for minor and nominated co-administrator

(*Heading as in Form 2:* A6.02)

We, C D, of. . . . . and E F, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of deceased, was born on the . . . . . day of . . . . . 19. . . . . and died on the . . . . . day of . . . . . 20. . . . . aged years domiciled in England and Wales intestate, leaving C D, his [her] lawful civil partner and G H, his [her] son, together the only persons entitled to share in his [her] estate; and the name of the deceased shown on the Death Certificate is A B;

2. G H is now a minor of the age of years;

3. There is no parent, guardian, special guardian, adoption agency local authority or any other person with parental responsibility for the minor;

4. C D is the step-parent of the minor and has acquired parental responsibility for him under s 4A of the Children Act 1989 under an order [*or* under a duly recorded parental responsibility agreement];

5. A minority and a life interest arise under the intestacy;

6. To the best of our knowledge, information and belief there was no land vested in the deceased which was settled previously to his [her] death and which remained settled land notwithstanding his [her] death;

7. I, E F, am the person nominated by C D as co-administrator of the estate of the deceased;

8. We will:

   (i) collect, get in and administer [etc – *complete as in Form 83*:A6.88].

[When the father or step-parent is relying on s 4 or 4A of the Children Act 1989 a sealed copy of the order or of the recorded parental responsibility agreement, as the case may be, must be produced with the application.]

A6.92

87. Statement of truth for administrator – spouse or civil partner applies alone on assignment by children (net estate exceeding £250,000 for death on or after 1 February 2009) [*for the appropriate lesser sums depending on date of death see para* 6.99]

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B o. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, leaving me C D, his lawful widow [*or* her lawful husband] [*or* lawful civil partner] and E F and G H his [her] son and daughter [*or as the case may be*], together the only persons entitled to share in his [her] estate; and the name of the deceased shown on the Death Certificate is A B;

2. E F and G H have by deed of assignment dated the. . . . . day of 20 . . . . . assigned to me, C D, all their right and title to and interest in the estate of the intestate;

3. No minority interest and [now*] no life interest arises under the intestacy;

4. [*add statement as to settled land*];

5. I will:

(i) collect, get in and administer [etc – *complete as in Form 83*: A6.88].

* death before 1 October 2014.

A6.93

88. Statement of truth for administrator (husband's, or widow's, or civil partner's representative applies, whole estate having passed to surviving spouse or civil partner)

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . .years, domiciled in England and Wales intestate, leaving E B, her lawful husband [*or* his lawful widow] [*or* his [her] lawful civil partner] and the only person entitled to her [his] estate, who has since died without having taken letters of administration of the estate of the intestate; and the name of the deceased shown on the Death Certificate is A B;

2. I am the sole executor of the will [*or* administrator of the estate] of E B, deceased, probate thereof [*or* letters of administration [with will] thereof] having been granted to me at the. . . . . Registry on the . . . . . day of. . . . . 19. . . . . /20. . . . . ;

3. No minority and no life interest arises under the intestacy;

4. [*add statement as to settled land*];

5. I will:

(i) collect, get in and administer [etc – *complete as in Form 83*: A6.88].

A6.94

89. Statement of truth for administrator where net estate exceeds in value £250,000 for death on or after 1 February 2009 – issue apply on renunciation of surviving spouse [surviving civil partner*] [for the appropriate lesser sums depending on date of death see para 6.99]

(*Heading as in Form 2*: A6.02)

We, C B of. . . . . and D B of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . .and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years domiciled in England and Wales intestate, leaving E B, her lawful husband [*or* his lawful widow [*or* his [her] lawful civil partner] [*as the case may be*]], who has renounced letters of administration of the estate of the deceased; and the name of the deceased shown on the Death Certificate is A B;

2. A minority and a life interest arise [*or* No minority or life interest arises] under the intestacy;

3. To the best of our knowledge, information, and belief, there was no land vested in the deceased which was settled previously to her [his] death and which remained settled land notwithstanding her [his] death;

4. We are the son and grandson respectively [*or as the case may be*] and two of the persons entitled to share in the estate of the deceased (D B being the son of F B the son of the deceased who died in the lifetime of the deceased);

5. We will:

   (i) collect, get in and administer [etc – *complete as in Form 83*: A6.88].

* Death on or after 5 December 2005.

A6.95

90. Statement of truth for administrator where the net estate is under £250,000 for death on or after 1 February 2009 – son or daughter applies on renunciation of surviving spouse [*or surviving civil partner] [*for the appropriate lesser sums depending on date of death see para* 6.99]**

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate leaving C B, his lawful widow [or her lawful husband] [*or* civil partner*] and the only person now entitled to his [her] estate who has renounced letters of administration thereof; and the name of the deceased shown on the Death Certificate is A B;

2. [*statement as to minority or life interests*]

3. [*statement as to settled land*]

4. I am a son [daughter] of the deceased and a person who may have a beneficial interest in his [her] estate in the event of an accretion thereto;

5. I will:

   (i) collect, get in and administer [etc – *complete as in Form 83*:A6.88].

* Death on or after 5 December 2005.

[Note.–
A creditor is equally entitled to this grant, and the form can be adapted for his use.]

A6.96

91. Statement of truth for administration to child, or other issue having a beneficial interest – spouse [or civil partner*] survived but has since died

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate leaving E F, his lawful widow [*or* her lawful husband] [*or* his [her] lawful civil partner*] who has since died without having taken upon herself [himself] letters of administration of his [her] estate; and the name of the deceased shown on the Death Certificate is A B;

2. No minority and [now**] no life interest arises under the intestacy;

3. To the best of my knowledge, information, and belief there was no land vested in the deceased which was settled previously to his [her] death and which remained settled land notwithstanding his [her] death;

4. I am the son and one of the persons entitled to share in the estate of the deceased;

5. I will:

   (i) collect, get in and administer [etc – *complete as in Form 83*:A6.88].

* Death on or after 5 December 2005.

** Death before 1 October 2014.

A6.97

92. Statement of truth for administration to child, or other issue having a beneficial interest – spouse [civil partner*] survived but has since died without acquiring a beneficial interest

(*Death on or after 1 January 1996*)

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . .aged. . . . . years, domiciled in England and Wales intestate leaving E F, his lawful widow [or her lawful husband] [or civil partner*] who has since died without having survived 28 days and she/he is, by virtue of section 46(2A) of the Administration of Estates Act 1925, deemed not to have survived the deceased; and the name of the deceased shown on the Death Certificate is A B;

2. No minority and [now**] no life interest arises under the intestacy;

3. To the best of my knowledge, information, and belief there was no land vested in the deceased which was settled previously to his [her] death and which remained settled land notwithstanding his [her] death;

4. I am the son and one of the persons entitled to share in the estate of the deceased;

5. I will:

   (i) collect, get in and administer [etc – *complete as in Form 83*:A6.88].

* Death on or after 5 December 2005.

** Death before 1 October 2014.

A6.98

93. Statement of truth for administration to child (on assignment by surviving spouse [civil partner*])

(*Heading as in Form 2:* A6.02)

I, E F, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . .aged. . . . . years, domiciled in England and Wales, intestate, leaving C D, his lawful widow [*or* her lawful husband] [*or* his [her] lawful civil partner] and me, E F and G H his [her] son and daughter [*or as the case may be*] together the only persons entitled to share in his [her] estate; and the name of the deceased shown on the Death Certificate is A B;

2. C D has by deed of assignment dated the. . . . . day of. . . . . 20. . . . . .assigned to E F and G H all her [his] right and title to and interest in the estate of the intestate, and has renounced letters of administration of the estate of the intestate;

3. No life interest [now**] arises, and no minority interest arises under the intestacy;

4. [*add statement as to settled land*];

5. G H has consented in writing to me, E F obtaining a grant of letters of administration of the estate of the deceased.

6. I will:

   (i) collect, get in and administer [etc – *complete as in Form 83*:A6.88].

* Death on or after 5 December 2005.

** Death before 1 October 2014.

A6.99

94. Statement of truth for administration to child or other issue having a beneficial interest– no surviving spouse [civil partner*]

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 19. . . . . /20. . . . . aged.years, domiciled in England and Wales, intestate, a widow [*or* a widower] [*or* a surviving civil partner*] [*or* a single man] [or a single woman] [*or* a bachelor] [*or* a spinster]; and the name of the deceased shown on the Death Certificate is A B;

2. No life or minority interest arises under the intestacy;

3. [*add statement as to settled land*];

4. I am the son [*or* daughter] and the only person entitled to the estate [*or* one of the persons entitled to share in the estate] of the intestate;

   [*Or* I am the grandson [*or* granddaughter] (being the son [*or* daughter] of E F, the son [*or* daughter] of the intestate who died in the lifetime of the intestate) [*or* the son [*or* daughter] of E F, the son [*or* daughter] of the intestate who died in the lifetime of the intestate] and the only person entitled to the estate [*or* one of the persons entitled to share in the estate] of the intestate;]

5. I will:

   (i) collect, get in and administer [etc – *complete as Form 83*:A6.88].

* Death on or after 5 December 2005.

[Note.–

For additional wording which must be included in the statement of truth when the deceased was a divorced man or woman or person whose civil partnership was dissolved, see Form 101: **A6.106** and Form 102: **A6.107** respectively and para **6.131**.]

A6.100

95. Statement of truth for administration to issue having a beneficial interest – no surviving spouse [civil partner*] and forfeiture rule precludes a child from acquiring a benefit in the estate (death on or after 1 February 2012)

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . .and died on the. . . . . day of. . . . . 20. . . . . .aged. . . . . years, domiciled in England and Wales, intestate, a widow [*or* a widower] [*or* a surviving civil partner*] [*or* a single man] [*or* a single woman] [*or* a bachelor] [*or* a spinster]; and the name of the deceased shown on the Death Certificate is A B;

2. No life or minority interest arises under the intestacy;

3. [*add statement as to settled land*];

4. On the . . . . . day of . . . . . 20. . . . . at the . . . . . Crown Court E F a son [*or* daughter] of the deceased was convicted of the [murder] [manslaughter] of the deceased and by virtue of the Forfeiture Act 1982 he [she] is thereby precluded from acquiring a benefit in his estate; further by virtue of s 46A of the Administration of Estates Act 1925 amended by the Estate of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011 E F is treated as having died immediately before the deceased;

5 The conviction remains in force, there is no appeal pending against the conviction and [*in the case of manslaughter*] no application was made within three months from the date of conviction to modify the effect of the forfeiture rule

   I am the grandson [*or* granddaughter] (being the son [*or* daughter] of E F and the only person entitled to the estate [*or* one of the persons entitled to share in the estate] of the intestate;

6. I will:

(i) collect, get in and administer [etc – *complete as Form 83*:A6.88].

* Death on or after 5 December 2005.

[For additional wording which must be included in the statement of truth when the deceased was a divorced man or woman or person whose civil partnership was dissolved, see Form 101: A6.106 and Form 102: A6.107 respectively and para 6.131.]

Note: In a example outlined in this precedent any other surviving child of the intestate is equally entitled to apply for letters of administration with or without the grandchild.

A6.101

96. Statement of truth for administration to a person entitled, jointly with attorney of person equally entitled

(*Heading as in Form 2:* A6.02)

We, C D of. . . . . and E F of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, intestate a widow [surviving civil partner*] [*or as the case may be*]. leaving C D and GH, respectively her [his] son and daughter, and two of the persons entitled to share in her/his estate; and the name of the deceased shown on the Death Certificate is A B;

2. A minority but no life interest arises under the intestacy;

3. [*add statement as to settled land*];

4. C D is the son of the intestate, and that E F is the lawful attorney of the said G H;

5. We will:

(i) collect, get in and administer according to law the real and personal estate of the intestate, limited until further representation be granted;

(ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

(iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*:A6.65].

And I, C D, further say that I hereby consent to the grant of administration being limited as set out above.

Sworn etc

* Deaths on or after 5 December 2005.

A6.102

97. Statement of truth for administration to child or children the only issue, save and except others alienated by adoption order made during the lifetime of intestate

(*Death on or after 1 January 1950*)

(*Heading as in Form 2:* A6.02)

I, C B, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, intestate a widow[er][*or* surviving civil partner*] leaving me C B her [his] son [daughter] the only person entitled to her [his] estate; and the name of the deceased shown on the Death Certificate is A B;

2. By virtue of an adoption order made under the authority of the Adoption Act 1958 [*or as the case may be*] made during the lifetime of the deceased, which order is still subsisting, D B the son [daughter] of the deceased was duly adopted and the estate of the deceased devolves in all respects as if D B were the lawful child of the adopter [*or* adopters] and not the child of the deceased;

3. No life or minority interest arises under the intestacy;

4. [*add statement as to settled land*];

5. I am the lawful* [*or* natural*] son [daughter] and the only person entitled to the estate of the deceased;

6. I will:

   (i) collect, get in and administer [etc – *complete as in Form 83*: A6.88].

* Death on or after 5 December 2005.

[Note.–

The adoption order should not be exhibited to the statement of truth, and the child should be referred to by the name by which he was known prior to the adoption (Registrar's Circular, 2 March 1966).]

A6.103

98. Statement of truth for administration to person entitled, issue being alienated by adoption order made during the lifetime of intestate

(*Death on or after 1 January 1950*)

(*Heading as in Form 2:* A6.02)

I, E F, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day

of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate a widow[er][surviving civil partner*] without issue entitled to her [his] estate or parent or any other person entitled in priority to share in the estate by virtue of any enactment; and the name of the deceased shown on the Death Certificate is A B;

2. By virtue of an adoption order made under the authority of the Adoption Act 1958 [*or as the case may be*] during the lifetime of the deceased, which order is still subsisting, C D, the son [*or* daughter] and only issue of the deceased was duly adopted and the estate of the deceased devolves in all respects as if C D were the lawful child of the adopter [*or* adopters] and not the child of the deceased;

3. [*Clear off any intervening classes.*]

4. No life or minority interest arises under the intestacy.

5. [*add statement as to settled land*];

6. I am the brother of the whole blood and only person entitled to [*or* one of the persons entitled to share in] the estate of the deceased;

7. I will:

   (i) collect, get in and administer [etc – *complete as in Form 83*: A6.88].

* Deaths on or after 5 December 2006

[Note.–

The adoption order should not be exhibited to the statement of truth, and the child should be referred to by the name by which he was known prior to the adoption (Registrar's Circular, 2 March 1966).]

A6.104

99. Statement of truth for administration to adopted child

(*Death on or after 1 January 1950*)

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . was born on the. . . . . day of. . . . . 19 . . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate a widow [*or* a widower, *or* a spinster, or a surviving civil partner or a bachelor]; and the name of the deceased shown on the Death Certificate is A B;

2. By an order dated the. . . . . day of. . . . . 20. . . . . .made by the. . . . . Court at. . . . . under authority of the Adoption Act 1958 [*or as the case may be*] I was duly adopted by the intestate [and E F, his deceased wife, *or* her deceased husband *or* his [her] deceased lawful civil partner]] and that the said order is still subsisting;

3. [*Statement as to minority and life interest.*]

4. [*Statement as to settled land.*]

5. I am the lawful adopted son [*or* daughter], and the only person entitled to the estate [*or* one of the persons entitled to share in the estate] of the intestate.

6. I will:

(i) collect, get in and administer [etc – *complete as in Form 83*: A6.88].

A6.105

100. Statement of truth for administration to adopter or adopters

(Death on or after 1 January 1950)

(*Heading as in Form 2:* A6.02)

I, C D [*or* we C D and E F] of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . was born on the. . . . . day of. . . . . 19 . . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . .years, domiciled in England and Wales, intestate, a bachelor [spinster] [widower] [widow] [surviving civil partner] without issue or any other person entitled in priority to share in the estate by virtue of any enactment; and the name of the deceased shown on the Death Certificate is A B;

2. By an order dated the. . . . . day of. . . . . 20. . . . . made by the. . . . . Court at. . . . . under authority of the Adoption Act 1958 [*or as the case may be*] the intestate was duly adopted by me [us], and that the order is still subsisting;

3. [*Statement as to minority and life interest.*]

4. [*Statement as to settled land.*]

5. I am [we are] [one of] the lawful adopter[s] and one of the persons [*or* the only person[s]] entitled to [share in] the estate of the intestate;

6. I [We] will:

(i) collect, get in and administer [etc – *complete as in Form 83*: A6.88].

A6.106

101. Statement of truth for administrator: deceased a divorced man or woman

(*Heading as in Form 2:* A6.02)

I, D B, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a single man [*or* a single woman] [*insert any further clearings*, e.g. 'without issue or parent' *etc as the case may require*]; and the name of the deceased shown on the Death Certificate is A B;

2. The marriage of A B with E B was, on the. . . . . day of. . . . . 20. . . . . .dissolved by final decree of the High Court of Justice [*or* of the. . . . . County Court] in [England and Wales]** and that A B did not subsequently remarry or form a civil partnership;

3. [*Add statement as to minority or life interest.*]

4. [*Statement as to settled land.*]

5. I am the daughter and only person entitled to the estate of the deceased;

6. I will:

   (i) collect, get in and administer [etc– *complete as in Form 83*: A6.88].

[**As to the practice and wording of statement of truth in cases where the marriage was dissolved by a court other than in England or Wales see paras 6.152 ff.]

A6.107

102. Statement of truth for administrator: deceased's civil partnership dissolved

(*Heading as in Form 2:* A6.02)

I, D B, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19.. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a single man [*or* a single woman] [*insert any further clearings*, e.g. 'without issue or parent' *etc as the case may require*]; and the name of the deceased shown on the Death Certificate is A B;

2. The civil partnership of A B with E B was, on the. . . . . day of . . . . . 20. . . . . dissolved by final order of the High Court of Justice [*or* of the. . . . . County Court] in England and Wales and that A B did not subsequently remarry or form a civil partnership;

3. [*add statement as to minority or life interest.*]

4. [*Statement as to settled land.*]

5. I am the daughter and only person entitled to the estate of the deceased;

6. I will:

   (i) collect, get in and administer [etc – *complete as in Form 83*: A6.88].

[As to the practice and wording of statement of truth in cases where the civil partnership was dissolved by a court other than in England or Wales see paras 6.152 ff.]

A6.108

103. Statement of truth for administrator (father or mother takes)

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England

and Wales intestate, a bachelor [spinster] [widower] [widow] [surviving civil partner] without issue or any other person entitled in priority to share in the estate by virtue of any enactment; and the name of the deceased shown on the Death Certificate is A B;

2. [*add statement as to life or minority interest*];

3. [*add statement as to settled land*];

4. I am the father [*or* mother] and only person entitled to [*or* one of the persons entitled to share in] the estate of the deceased;

5. I will:

(i) collect, get in and administer [etc– *complete as in Form 83*: A6.88].

[Note.–

(1) As to the evidence required on an application by the natural father where the deceased died before 4 April 1988, see para **6.304**.

(2) For additional wording which must be included in the statement of truth when the deceased was a divorced man or woman or person whose civil partnership was dissolved, see Forms 101 and 102: **A6.106–A6.107** and para **6.131**.]

A6.109

104. Statement of truth for administration to personal representative of father or mother

(*Heading as in Form 2*: A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a bachelor [spinster] [widower] [widow] [surviving civil partner] [single person] without issue or any other person entitled in priority to share in the estate by virtue of any enactment, leaving E F, his [*or* her] father [*or* mother] and the only person entitled to his [*or* her] estate, who has since died without having taken upon himself [*or* herself] letters of administration of his [*or* her] estate; and the name of the deceased shown on the Death Certificate is A B;

2. [*add statement as to minority or life interest*];

3. [*add statement as to settled land*];

4. I am the sole executor [*or* one of the executors] of the will [*or* the administrator of the estate] of E F, deceased, probate of the will [*or* letters of administration of the estate] having been granted to me at the Principal [*or*. . . . . District Probate] Registry on the. . . . . day of . . . . . 20. . . . . ;

5. I will:

(i) collect, get in and administer [etc – *complete as in Form 83*: A6.88].

[Note.–

(1) If both parents survived the deceased but have since died, application may be made by the personal representative of either parent.]

(2) For additional wording which must be included in the statement of truth when the deceased was a divorced man or woman or person whose civil partnership was dissolved, see Forms 101 and 102: **A6.106–A6.107** and para **6.131**.]

A6.110

105. Statement of truth for administration to brother and sister of the whole blood

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a bachelor [spinster] [widower] [widow] [surviving civil partner] [single person] without issue or parent or any other person entitled in priority to share in the estate by virtue of any enactment; and the name of the deceased shown on the Death Certificate is A B;

2. [*add statement as to minority or life interest*];

3. [*add statement as to settled land*];

4. I am the brother [*or* sister] of the whole blood, and the only person entitled to the estate [*or* one of the persons entitled to share in the estate] of the intestate;

5. I will:

   (i) collect, get in and administer [etc – *complete as in Form 83*: A6.88].

[**Note.**–

For additional wording which must be included in the statement of truth when the deceased was a divorced man or woman or person whose civil partnership was dissolved, see Forms 101 and 102: **A6.106–A6.107** and para **6.131**.]

A6.111

106. Statement of truth for administration to nephew or niece of the whole blood

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a bachelor [spinster] [widower] [widow] [surviving civil partner] [single person] without issue or parent or any other person entitled in priority to share in the estate by virtue of any enactment; and the name of the deceased shown on the Death Certificate is A B;

2. I am the nephew [*or* niece] of the whole blood and the only person entitled to the estate [*or* one of the persons entitled to share in the estate] of the intestate, being the son [*or* daughter] of E F, the brother [*or* sister] of the whole blood of the intestate, who died before the intestate;

3. [*add statement as to minority or life interest*];

4. [*add statement as to settled land*];

5. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *complete as in Form 60:* A6.65].

[Note.–

For additional wording which must be included in the statement of truth when the deceased was a divorced man or woman or person whose civil partnership was dissolved, see Forms 101 and 102: **A6.106–A6.107** and para **6.131**.]

A6.112

107. Statement of truth for administration to brother or sister of the half blood

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate a bachelor [spinster] [widower] [widow] [surviving civil partner] [single person] without issue, parent, brother or sister of the whole blood or their issue or any other person entitled in priority to share in the estate by virtue of any enactment; and the name of the deceased shown on the Death Certificate is A B;

2. [*add statement as to minority or life interest*];

3. [*add statement as to settled land*];

4. I am the brother [*or* sister] of the half blood and the only person entitled to the estate [*or* one of the persons entitled to share in the estate] of the intestate;

5. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *complete as in Form 60*: A6.65].

[Note.–

For additional wording which must be included in the statement of truth when the deceased was a divorced man or woman or person whose civil partnership was dissolved, see Forms 101 and 102: A6.106–A6.107 and para 6.131.]

A6.113

108. Statement of truth for administration to nephew or niece of the half blood

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . .aged. . . . . years, domiciled in England and Wales intestate, a bachelor [spinster] [widower] [widow] [surviving civil partner] [single person] without issue, parent, brother or sister of the whole blood or their issue or any other person entitled in priority to share in the estate by virtue of any enactment; and the name of the deceased shown on the Death Certificate is A B;

2. [*add statement as to minority or life interest*];

3. [*add statement as to settled land*];

4. I am the nephew [*or* niece] of the half blood and the only person entitled to the estate [*or* one of the persons entitled to share in the estate] of the intestate, being the son [*or* daughter] of I K, the brother of the half blood of the intestate who died before the intestate;

5. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *complete as in Form 60*: A6.65].

[Note.–

For additional wording which must be included in the statement of truth when the deceased was a divorced man or woman or person whose civil partnership was dissolved, see Forms 101 and 102: A6.106–A6.107 and para 6.131.]

A6.114

109. Statement of truth for administration to grandparent

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 19. . . . . /20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a bachelor [spinster] [widower] [widow] [surviving civil partner] [single person] without issue, parent, brother or sister of the whole or half blood or their issue or any other person entitled in priority to share in the estate by virtue of any enactment; and the name of the deceased shown on the Death Certificate is A B;

2. [*add statement as to minority or life interest*];

3. [*add statement as to settled land*];

4. I am the grandparent, and the only person entitled to the estate [*or* one of the persons entitled to share in the estate] of the intestate;

5. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *complete as in Form 60*: A6.65].

[Note.–

For additional wording which must be included in the statement of truth when the deceased was a divorced man or woman or person whose civil partnership was dissolved, see Forms 101 and 102: A6.106–A6.107 and para 6.131.]

A6.115

110. Statement of truth for administration to uncle or aunt

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 19. . . . . /20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a bachelor [spinster] [widower] [widow] [surviving civil partner] [single person] without issue, parent, brother or sister of the whole or half blood or their issue, grandparent or any other person entitled in priority to share in the estate by virtue of any enactment; and the name of the deceased shown on the Death Certificate is A B;

2. [*add statement as to minority or life interest*];

3. [*add statement as to settled land*];

4. I am the uncle [*or* aunt] of the whole blood, and the only person entitled to the estate [*or* one of the persons entitled to share in the estate] of the intestate;

5. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *complete as in Form 60*: **A6.65**].

[Note.–

(1) For additional wording which must be included in the statement of truth when the deceased was a divorced man or woman or person whose civil partnership was dissolved, see Forms 101 and 102: **A6.106–A6.107** and para **6.131**.]

(2) On an application by an uncle or aunt of the half blood, it must also be shown that the intestate died without uncle or aunt of the whole blood or their issue.]

A6.116

111. Statement of truth for administration to cousin german

(*Heading as in Form 2:* **A6.02**)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a bachelor [spinster] [widower] [widow] [surviving civil partner] [single person] without issue, parent, brother or sister of the whole or half blood or their issue, grandparent or any other person entitled in priority to share in the estate by virtue of any enactment; and the name of the deceased shown on the Death Certificate is A B;

2. [*add statement as to minority or life interest*];

3. [*add statement as to settled land*];

4. I am the cousin german of the whole blood and the only person entitled to the estate [*or* one of the persons entitled to share in the estate] of the intestate, being the son [*or* daughter] of E F, the lawful* uncle [*or* aunt] of the whole blood of the intestate who died in the lifetime of the intestate;

5. I will:

   (i) collect, get in and administer [etc – *complete as in Form 83*: **A6.88**].

[Note.–

(1) For additional wording which must be included in the statement of truth when the deceased was a divorced man or woman or person whose civil partnership was dissolved, see Forms 101 and 102: **A6.106–A6.107** and para **6.131**.]

(2) On an application by a cousin german of the half blood, it must also be shown that the intestate died without uncle or aunt of the whole blood or their issue.]

* If the deceased died on or after 4 April 1988 it is not necessary for the relationship of anyone, except a spouse, to be lawful. Accordingly, with that exception, the word 'lawful' or 'natural' may be omitted.

A6.117

112. Statement of truth for administration to a trust corporation

(*Heading as in Form 2:* A6.02)

I, I K, of. . . . . [trustee manager] of Z Bank Limited, whose registered office is situated at. . . . . ('the Bank') make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate [leaving C D his lawful widow [*or* his/her lawful civil partner], the only person now entitled to his estate] [*or* a widower without issue or parent or any other person entitled in priority to share in the estate by virtue of any enactment *or* [*as the case may be*] leaving C D, E F, and G H, his lawful* brother and sisters of the whole blood the only persons entitled to share in his estate], who has [have] consented to letters of administration of the estate of the intestate being granted to the Bank; and the name of the deceased shown on the Death Certificate is A B;

2. The Bank is a trust corporation as defined by rule 2(1) of the Non-Contentious Probate Rules 1987, and has power to accept the grant now applied for;

3. The Bank has by a resolution dated the. . . . . day of. . . . . 20 . . . . . , a certified copy of which is lodged herewith, appointed me [*or* a certified copy of which has been filed with the Senior District Judge, in which I am identified by the position I hold and which resolution is still in force, appointed me] for the purpose of applying for letters of administration of the estate of the intestate [*or* for the purpose of applying for grants of letters of administration on its behalf];

4. No minority or life interest arises under the intestacy;

5. [*add statement as to settled land*];

6. The Bank will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65].

* If the deceased died on or after 4 April 1988 it is not necessary for the relationship of anyone, except a spouse, to be lawful. Accordingly, with that exception, the word 'lawful' or 'natural' may be omitted

A6.118

113. Statement of truth for administration to a creditor (on the renunciation of the persons entitled)

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . .years, domiciled in England and Wales intestate, a bachelor [spinster] [widower] [widow] [surviving civil partner] [single person] without issue or parent or any other person entitled in priority to share in the estate by virtue of any enactment leaving E F and G H, his brother and sister of the whole blood respectively and the only persons entitled to share in his estate, who have renounced letters of administration of his estate; and the name of the deceased shown on the Death Certificate is A B;

2. [*add statement as to minority or life interest*];

3. [*add statement as to settled land*];

4. I am a creditor of the deceased;

5. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *complete as in Form 60:* A6.65].

[Note.–

For additional wording which must be included in the statement of truth when the deceased was a divorced man or woman or person whose civil partnership was dissolved, see Forms 101 and 102: A6.106–A6.107 and para 6.131.]

A6.119

114. Statement of truth for administration to assignee of persons entitled on intestacy (NCPR SI 1987/2024 r 24)

(*Heading as in Form 2:* A6.02)

I, G H, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate a bachelor [spinster] [widower] [widow] [surviving civil

partner] [single person] without issue or parent [*clear other prior classes as appropriate*] or any other person entitled in priority to share in the estate by virtue of any enactment, leaving C D [and E F] her sister[s] of the whole blood [*or as the case may be*] and the only person[s] entitled to [share in] her estate; and the name of the deceased shown on the Death Certificate is A B;

2. By deed of assignment dated the. . . . . day of. . . . . 20 . . . . . C D [and E F] has [have] assigned to me [and to I J and K L] all her [their] whole right and title to and interest in the estate of the intestate;

3. No minority or life interest arises under the intestacy;

4. [*add statement as to settled land*];

5. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *complete as in Form 60*: **A6.65**].

[Note.–

(1) For additional wording which must be included in the statement of truth when the deceased was a divorced man or woman or person whose civil partnership was dissolved, see Forms 101 and 102: **A6.106–A6.107** and para **6.131**.

(2) Where one of several assignees is applying for the grant, the consents of the other assignees must be filed with the application.]

A6.120

115. Statement of truth for administration upon disclaimer of person entitled on intestacy to a beneficial interest in the residuary estate death on or after 1 February 2012

(*Heading as in Form 2:* **A6.02**)

I, G H, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . .aged. . . . . years, domiciled in England and Wales intestate a bachelor [spinster] [widower] [widow] [surviving civil partner] [single person*] without issue or parent or any other person entitled in priority to share in the estate by virtue of any enactment, leaving C D [and E F] her sister[s] of the whole blood [*or on clearing other classes as the case may be*] and the only person[s] entitled to [share in] her estate; and the name of the deceased shown on the Death Certificate is A B;

2. By deed of disclaimer dated the. . . . . day of. . . . . 20. C D [and E F] has [have] disclaimed all her [their] whole right and title to and interest in the estate of the intestate; by virtue of s 46A of the Administration of Estates Act 1925 amended by the Estate of Deceased Persons (Forfeiture

Rule and Law of Succession) Act 2011 C D [and E F] is/are treated as having died immediately before the deceased;

3 I am a nephew of the whole blood of the deceased being the son of C D and [one of the person] *or* [the only person] now entitled to the estate of the deceased;

4. No minority or life interest arises under the intestacy;

5. [*add statement as to settled land*];

6. I will:

(i) collect, get in and administer according to law the real and personal estate of the deceased;

(ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

(iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc– complete as in Form 60: A6.65].

* [For additional wording which must be included in the statement of truth when the deceased was a divorced man or woman or person whose civil partnership was dissolved, see Forms 101 and 102 A6.106–A6.107 and para 6.131.]

[Note.–

The statement of truth must clear off the beneficial interest of all persons in the same class as the person(s) disclaiming before a person in the next class may apply for letters of administration.]

A6.121

116. Statement of truth for administration to attorneys of intestate's husband or widow or civil partner

(*Heading as in Form 2:* A6.02)

We, C D of. . . . . and F G of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, intestate, leaving E B her lawful husband [*or* his lawful widow] [*or* his/her lawful civil partner]; and the name of the deceased shown on the Death Certificate is A B;

2. No minority but a life interest arises under the intestacy;

3. [*add statement as to settled land*];

4. We are the lawful attorneys of E B [*and if acting under an enduring power of attorney/registered lasting power of attorney*] acting under an enduring power of attorney which has not been registered and E B remains mentally capable of managing his affairs *or* registered lasting power of attorney and E B does not lack capacity to manage his affairs;

5. We will:

(i) collect, get in and administer according to law the real and personal estate of the deceased for the use and benefit of E B until further representation be granted;

(ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

(iii) when required to do so by the High Court, deliver up to the Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65].

A6.122

117. Statement of truth for administration to attorney of intestate's father or mother

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a bachelor [spinster] [widower] [widow] [surviving civil partner] [single person] without issue or any other person entitled in priority to share in the estate by virtue of any enactment, leaving E F, his [*or* her] father [*or* mother] and the only person entitled to his [*or* her] estate; and the name of the deceased shown on the Death Certificate is A B;

2. No minority or life interest arises under the intestacy;

3. [*add statement as to settled land*];

4. I am the lawful attorney of E F [*and if acting under an enduring power of attorney or lasting power of attorney*] acting under an enduring power of attorney or which has not been registered and E B remains mentally capable of managing his affairs *or* does not lack capacity to manage his affairs;

5. I will:

(i) collect, get in and administer according to law the real and personal estate of the deceased, for the use and benefit of E F until further representation be granted;

(ii) when required to do so by the Court exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

(iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc *as in Form 60*: A6.65].

[Note.–

For additional wording which must be included in the statement of truth when the deceased was a divorced man or woman or person whose civil partnership was dissolved, see Forms 101 and 102: A6.106–A6.107 and para 6.131.]

A6.123

118. Statement of truth for administration to attorneys of intestate's child– another child being a minor

(*Heading as in Form 2:* A6.02)

We, C D of. . . . . and G H of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a widow [*or* a widower] [*or* a surviving civil partner] leaving E F her [*or* his] son and one of the persons entitled to share in her [*or* his] estate; and the name of the deceased shown on the Death Certificate is A B;

2. A minority but no life interest arises under the intestacy;

3. [*add statement as to settled land*];

4. We are the lawful attorneys of E F [*and if acting under an enduring power of attorney or registered lasting power of attorney*] acting under an enduring power of attorney which has not been registered *or* registered lasting power of attorney and E F remains mentally capable of managing his affairs or does not lack capacity to manage his affairs within the meaning of the Mental Capacity Act 2005;

5. We will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased, for the use and benefit of E F until further representation be granted;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *complete as in Form 60*: A6.65].

A6.124

119. Statement of truth for administration (leave having been given to swear to the death)

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on or since the. . . . . day of . . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a bachelor [*or as the case may be, clearing off all prior classes*]; and the name of the deceased shown on the Death Certificate is A B;

2. By an order of Mr District Judge [*or* Registrar]. . . . . of this Division dated the. . . . . day of. . . . . 20. . . . . it was ordered that, on an application being made for letters of administration of the estate of the deceased, the death of the deceased may be sworn to have occurred on or since the. . . . . day of. . . . . 20. . . . . ;

3. No minority or life interest arises under the intestacy;

4. [*add statement as to settled land*];

5. I am the mother and only person entitled to the estate of the deceased [*or as the case may be*];

6. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *complete as in Form 60*: A6.65].

A6.125

120. Statement of truth for administrator (grantee having become mentally incapable) *or* (grantee subsequently lacks capacity within the meaning of the Mental Capacity Act 2005 to manage his affairs)

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, intestate, a widower [*or as the case may be*];and the name of the deceased shown on the Death Certificate is A B;

2. On the. . . . . day of. . . . . 20. . . . . letters of administration of the estate of the deceased were granted at the Principal [*or* . . . . . District Probate] Registry to E B, the son and only person entitled to the estate of the deceased;

3. E B is now by reason of mental incapacity incapable of managing his affairs *or* now lacks capacity within the meaning of the Mental Capacity Act 2005 to manage his affairs, no person has been authorised by the Court of Protection to apply for a grant in the estate of the said deceased, and part of the estate of the deceased remains unadministered;

4. [*add statement as to minority and life interests*];

5. [*add statement as to settled land*];

6. I am the lawful attorney of E B acting under a registered enduring power of attorney or registered lasting power of attorney;

7. I will:

   (i) collect, get in and administer according to law the unadministered estate of the deceased, for the use and benefit of E B and during his incapacity or while he lacks capacity and until further representation be granted;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65, *but with reference to the unadministered estate*].

[Note.–

This form may be adapted for use where the former grantee was one of the persons entitled to share in the estate, in which case the applicant should be one of the other persons entitled to share.]

A6.126

121. Statement of truth for administrator (a former grant having been revoked)

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a widower [surviving civil partner], without issue, parent, or brother or sister of the whole blood or any other person entitled in priority to share in his estate by virtue of any enactment [*or as the case may be*]; and the name of the deceased shown on the Death Certificate is A B;

2. Letters of administration of the estate of the deceased were, on the . . . . . day of. . . . . 20. . . . . granted at the Principal [*or* . . . . . District Probate] Registry to E F, the cousin german of the whole blood of the deceased, on the basis that the deceased died intestate, a widower, without issue, parent, brother or sister of the whole or half blood or their issue, grandparent or uncle or aunt of the whole blood or any other person entitled in priority to share in the estate by virtue of any enactment, and that E F was one of the persons entitled to share in the estate of the deceased;

3. The letters of administration have been since voluntarily brought in by or on behalf of E F, and have been duly revoked and declared null and void;

4. [*add statement as to minority and life interests*];

5. [*add statement as to settled land*];

6. I am the nephew of the whole blood and one of the persons entitled to share in the estate of the deceased;

7. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

(ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

(iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *complete as in Form 60*: A6.65].

A6.127

122. Statement of truth for administration to mother of minor and nominated co-administrator

(*Heading as in Form 2:* A6.02)

We, E F of. . . . . and G H of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a single man leaving C D his son and the only person entitled to his estate, who is now a minor aged.years; and the name of the deceased shown on the Death Certificate is A B;

2. The marriage of the intestate with the deponent E F was dissolved by final decree of the High Court of Justice [*or* of the. . . . . County Court] in England and Wales dated the. . . . . day of. . . . . 20. . . . . and that the intestate did not thereafter remarry;

3. E F is the mother of the minor and that there is no step-parent, guardian, special guardian of the minor or adoption agency or local authority or any other person with parental responsibility for him;

4. That E F has by a nomination dated the. . . . . day of. . . . . 20 . . . . . .nominated the deponent G H to be her co-administrator;

5. A minority but no life interest arises under the intestacy.

6. [*add statement as to settled land*];

7. We will:

   (i) collect, get in and administer according to law the real and personal estate of the intestate, for the use and benefit of the minor until he attains the age of eighteen years and until further representation be granted;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65].

[Note.–

This form may be adapted where the mother has parental responsibility by virtue of an adoption order made within the meaning of s 12 of the Adoption Act 1976. The statement of truth must state that she is the adopter or one of the adopters of the minor by such order and a copy of the order must be produced.]

A6.128

123. Statement of truth for administration to mother of minor and nominated co-administrator (beneficial interest saved by virtue of s 47, Administration of Estates Act as amended by the Estate of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011) (death on or after 1 February 2012)

(*Heading as in Form 2:* A6.02)

We, E F of. . . . . and G F of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 20. . . . . and died on the. . . . . day of. . . . . 20 . . . . . .aged. . . . . .years, domiciled in England and Wales intestate, a single man leaving C D his son, a minor, the only person entitled to his estate; and the name of the deceased shown on the Death Certificate is A B;

2. The marriage of the intestate with H B was dissolved by final decree of the High Court of Justice [*or* of the. . . . . County Court] in England and Wales dated the. . . . . day of. . . . . 20. . . . . and that the intestate did not thereafter remarry;

3. C D died on the . . . . . day of . . . . . 20. . . . . a bachelor without reaching the age of 18 years and thereby failed to attain an absolutely vested interest in the estate of the deceased;

4. For the purpose of this application C D is treated as having died immediately before the deceased by virtue of s 47 of the Administration of Estates as amended by the Estate of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011;

5. C D is survived by his daughter J D, a minor aged. . . . . years now the only person entitled to the estate of the deceased

6. E F is the mother of the minor and that there is no step-parent, guardian, special guardian of the minor or adoption agency or local authority or any other person with parental responsibility for him;

7. That E F has by a nomination dated the. . . . . day of. . . . . 20 . . . . . nominated the deponent G F to be her co-administrator;

8. A minority but no life interest arises under the intestacy.

9. [*add statement as to settled land*];

10. We will:

    (i) collect, get in and administer according to law the real and personal estate of the intestate, for the use and benefit of the minor until he attains the age of eighteen years and until further representation be granted;

(ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

(iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65].

A6.129

124. Statement of truth for administration to father of minor and nominated co-administrator

(*Heading as in Form 2:* A6.02)

We E F of. . . . . and G H of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a single woman leaving C D her son and the only person entitled to her estate who is now a minor aged. . . . . years; and the name of the deceased shown on the Death Certificate is A B;

2. The marriage of the intestate with the deponent E F was dissolved by final decree of the High Court of Justice [*or* of the. . . . . County Court] in England and Wales dated the. . . . . day of. . . . . 20. . . . . and the intestate did not thereafter remarry;

3. E F is the father of the minor with parental responsibility for him under s 2(1) of the Children Act 1989 [*or* has parental responsibility for him under s 2(2)(b) of the Children Act 1989 [by virtue of being registered as the minor's father] [by virtue of a parental responsibility agreement] [under an order of the High Court/. . . . . County/Magistrates Court dated the. . . . . and has not ceased to have it;

4. There is no guardian or special guardian of the minor or adoption agency or local authority with parental responsibility for him;

5. E F has by a nomination dated the. . . . . day of. . . . . 19 . . . . . /20. . . . . nominated G H to be his co-administrator;

6. A minority but no life interest arises under the intestacy;

7. [*Add statement as to settled land.*]

8. We will:

(i) collect, get in and administer according to law the real and personal estate of the intestate, for the use and benefit of the minor until he attains the age of eighteen years and until further representation be granted;

(ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

(iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65].

[**Note.**–

This form may be adapted where the father has parental responsibility by virtue of an adoption order made within the meaning of s 12 of the Adoption Act 1976. The statement of truth must state that he is the adopter or one of the adopters by such order and a copy of the order must be produced.]

A6.130

125. Statement of truth for administration to step-parent of minor and nominated co-administrator

(*Heading as in Form 2:* A6.02)

We E F of. . . . . and G H of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a single woman leaving C D her son and the only person entitled to her estate who is now a minor aged. . . . . years; and the name of the deceased shown on the Death Certificate is A B;

2. The marriage of the intestate with the deponent E F was dissolved by final decree of the High Court of Justice [*or* of the. . . . . County Court] in England and Wales dated the. . . . . day of. . . . . 20. . . . . and the intestate did not thereafter remarry;

3. E F is the step-mother of the minor and has acquired parental responsibility for him under s 4A of the Children Act 1989 [by virtue of an order] [*or* parental responsibility agreement] which is subsisting;

4. There is no guardian or special guardian of the minor or adoption agency or local authority or any other person with parental responsibility for him;

5. E F has by a nomination dated the. . . . . day of. . . . . 19 . . . . . /20. . . . . nominated G H to be her co-administrator;

6. A minority but no life interest arises under the intestacy;

7. [*add statement as to settled land*];

8. We will:

   (i) collect, get in and administer according to law the real and personal estate of the intestate, for the use and benefit of the minor until he attains the age of eighteen years and until further representation be granted;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65].

A6.131

126. Statement of truth for administration to guardian of minor and nominated co-administrator

(*Heading as in Form 2:* A6.02)

We, C D of. . . . . and M N of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a widow, leaving E B and G B, her children and the only persons entitled to share in her estate, who are both now minors, aged.years and. . . . . years respectively; and the name of the deceased shown on the Death Certificate is A B;

2. I B, deceased, the father of the minors having parental responsibility for them, by his will dated the. . . . . day of. . . . . 20. . . . . and proved on the. . . . . day of. . . . . 20. . . . . at the Principal [*or*. . . . . District Probate] Registry, appointed C D to be guardian of his children;

3. There is no other guardian or special guardian of the minors or adoption agency or local authority or any other person with parental responsibility for them, or either of them;

4. C D has by an instrument in writing dated the. . . . . day of. . . . . 20. . . . . nominated M N to be his co-administrator;

5. A minority but no life interest arises under the intestacy;

6. [*add statement as to settled land*];

7. We will:

   (i) collect, get in and administer according to law the real and personal estate of the intestate, for the use and benefit of the minors, and until one of them attains the age of eighteen years and until further representation be granted;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65].

[Note.–

This form may be adapted where the guardian has parental responsibility under one of the other parts of s 5 of the Children Act 1989 or in accordance with para 12, 13 or 14 of Sch 14 to that Act.]

A6.132

127. Statement of truth for administration to special guardians of minor

(*Heading as in Form 2:* A6.02)

We, C D of. . . . . and M N of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged.years, domiciled in England and Wales intestate, a widow, leaving E B and G B, her children and the only persons entitled to share in her estate, who are both now minors, aged. . . . . years and. . . . . .years respectively; and the name of the deceased shown on the Death Certificate is A B;

2. We are special guardians of the minors under s 14A of the Children Act 1989 appointed by virtue of an order of Mr District Judge . . . . . sitting at the [*name of court*] on the . . . . . day of . . . . . 20. . . . . ;

3. A minority but no life interest arises under the intestacy;

4. [*add statement as to settled land*]

5. We will:

   (i) collect, get in and administer according to law the real and personal estate of the intestate, for the use and benefit of the minors, and until one of them attains the age of eighteen years and until further representation be granted;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65].

[Note.–
An office copy of the order appointing the special guardians should be filed with the statement of truth.]

A6.133

128. Statement of truth for persons who have acquired parental responsibility for minors following the making of a residence order

(*Heading as in Form 2:* A6.02)

We, C D of. . . . . and K L of. . . . . make the following statement in support of this application for letters of administration:

1. AB of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a widower, leaving E F and G H, his children and the only persons entitled to share in his estate, who are now minors

aged. . . . . years and. . . . . years respectively; and the name of the deceased shown on the Death Certificate is A B;

2. We have parental responsibility for the minors by virtue of s. 12(2) of the Children Act 1989;. . . . . by order of Mr District Judge . . . . . dated the. . . . . day of. . . . . 20. . . . . sitting in the. . . . . [*name of court*] a residence order under section 8 of the Act was made in our favour in respect of the minors;

3. There is no guardian or special guardian of the minors or adoption agency or local authority with parental responsibility for the minors.

4. [*add statement as to minority and life interests*];

5. [*add statement as to settled land*];

6. We will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased for the use and benefit of E F and G F until one of them attains 18 years of age and until further representation be granted;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65].

[Note.–
An office copy of the residence order should be filed with the statement of truth.]

A6.134

129. Statement of truth for persons appointed to obtain administration for the use of minors

(*Heading as in Form 2:* A6.02)

We, C D of. . . . . and K L of. . . . . make the following statement in support of this application for letters of administration:

1. AB of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a widower, leaving E F and G H, his children and the only persons entitled to share in his estate, who are now minors aged. . . . . years and. . . . . years respectively; and the name of the deceased shown on the Death Certificate is A B;

2. We have been appointed by order of Mr District Judge [*or* Registrar] . . . . . dated the. . . . . day of. . . . . 20. . . . . to obtain letters of administration of the estate of the deceased, for the use and benefit of the minors until one of them attains the age of eighteen years;

3. [*add statement as to minority and life interests*];

4. [*add statement as to settled land*];

5. We will:

(i) collect, get in and administer according to law the real and personal estate of the deceased for the use and benefit of E F and G F until one of them attains 18 years of age and until further representation be granted;

(ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

(iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65].

A6.135

130. Statement of truth for administration to adopters of minor (adopted subsequent to death of parent on or after 1 October 2014)

(*Heading as in Form 2:* A6.02)

We, E F of. . . . . and G H of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . .years, domiciled in England and Wales intestate, a spinster leaving C D her son and the only person entitled to her estate, who is now a minor aged.years; and the name of the deceased shown on the Death Certificate is A B;

2. By an order subsequent to the death of the deceased dated the. . . . . day of. . . . . 20. . . . . made by the . . . . . Court at. . . . . under authority of the Adoption and Children Act 2002 [*or as the case may be*] the minor was duly adopted by us, and that the order is still subsisting;

3. A minority but no life interest arises under the intestacy.

4. [*add statement as to settled land*];

5. We are the lawful adopters of the minor

6. We will:

   (i) collect, get in and administer according to law the real and personal estate of the intestate, for the use and benefit of the said minor until he attains the age of eighteen years and until further representation be granted;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65].

A6.136

131. Statement of truth for administration to guardians of a minor as personal representatives of the person entitled

(*Heading as in Form 2:* A6.02)

We, C D of. . . . . and R F of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a widower [*or as the case may be*], leaving E B, his son and the only person entitled to his estate, who has since died without having taken upon himself letters of administration of the estate of the intestate; and the name of the deceased shown on the Death Certificate is A B;

2. No minority or life interest arises under the intestacy;

3. [*add statement as to settled land*];

4. E B died intestate a bachelor leaving F B his son and only person entitled to his estate;

5. We are the administrators (as guardians and for the use and benefit of F B, who is now a minor) of the estate of E B, letters of administration of his estate having been granted to us at the Principal [*or*. . . . . District Probate] Registry on the. . . . . day of. . . . . 20. . . . . ;

6. We will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased, for the use and benefit of F B until he attains the age of eighteen years and until further representation be granted;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65].

A6.137

132. Statement of truth for person appointed by the Court of Protection for use of a person who lacks capacity to manage his affairs within the meaning of the Mental Capacity Act 2005

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19.. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged.years, domiciled in England and Wales intestate, a bachelor [spinster] [widower] [widow] [surviving civil partner][single person] without issue or any other person entitled in priority to share in

the estate by virtue of any enactment leaving E B, his father and the only person entitled to his estate; and the name of the deceased shown on the Death Certificate is A B;

2. E B now lacks capacity to manage his affairs within the meaning of the Mental Capacity Act 2005;

3. I am the person authorised by an order of the Court of Protection dated the. . . . . day of. . . . . 20. . . . . in the matter of E B, to apply for letters of administration of the estate of A B; *or* I have been appointed as a deputy for E B by order of the Court of Protection dated the . . . . . day of. . . . . 20. . . . . .

4. No minority or life interest arises under the intestacy;

5. [*add statement as to settled land*];

6. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased, for the use and benefit of E B until further representation be granted;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc– complete as in Form 60: A6.65].

[**Note.–**

See also Form 120: A6.125 for statement of truth for further grant where original grantee becomes incapable.]

A6.138

133. Statement of truth for administrator by attorney acting under a registered enduring power of attorney /registered lasting power of attorney

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a widower [*or as the case may be*], leaving E F, his son and the only person entitled to his estate; and the name of the deceased shown on the Death Certificate is A B;

2. E F is now by reason of mental incapacity incapable of managing his affairs [*or* the said E F now lacks capacity to manage his affairs within the meaning of the Mental Capacity Act 2005];

3. No person has been authorised by the Court of Protection to apply for a grant in the estate of the deceased;

4. No minority or life interest arises under the intestacy;

5. [*add statement as to settled land*];

6. I am the lawful attorney of E F, acting under a registered enduring power of attorney [*or* I am the lawful attorney of E F acting under a registered lasting power of attorney];

7. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased, for the use and benefit of E F until further representation be granted;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc– *complete as in Form 60*: A6.65].

A6.139

134. Statement of truth for administrators appointed by district judge or registrar for the use of a person who lacks capacity

(*Heading as in Form 2*: A6.02)

We, C D of. . . . . and G H of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales intestate, a bachelor [spinster] [widower] [widow] [surviving civil partner][single person] without issue or parent or any other person entitled in priority to share in the estate by virtue of any enactment leaving E F, his brother of the whole blood and the only person entitled to his estate, who is now lacks capacity to manage his affairs within the meaning of the Mental Capacity Act 2005; and the name of the deceased shown on the Death Certificate is A B;

2. No minority or life interest arises under the intestacy;

3. [*add statement as to settled land*];

4. By order of Mr District Judge [*or* Registrar]. . . . . dated the . . . . . day of. . . . . 20. . . . . it was ordered that letters of administration of the estate of the said deceased be granted to us under and by virtue of rule 35(4) of the Non-Contentious Probate Rules 1987, the grant to be for the use and benefit of E F limited until further representation be granted;

5. We will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased, for the use and benefit of the said E F until further representation be granted;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

(iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc– complete as in Form 60: A6.65].

A6.140

135. Statement of truth for administrator pending determination of a probate claim

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . widow, deceased, was born on the. . . . . day of. . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales;

2. There is now pending in the Chancery Division of the High Court a probate claim entitled E against F, concerning [the validity of the will of the deceased] *or* [the estate of the deceased]; and the name of the deceased shown on the Death Certificate is A B;

3. By order of the Chancery Division dated the. . . . . day of. . . . . 20. . . . . it was ordered that letters of administration of the estate of the deceased be granted to me, pending the probate claim;

4. [*add statement as to life or minority interest*];

5. [*add statement as to settled land*];

6. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased, pending the said claim, under the directions and control of this court, save distributing the residue thereof;

   (ii) when required to so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc– complete as in Form 60: A6.65].

[Note.–
If the order of the court contains any limitation, this form must be varied accordingly. The grant may be made to one individual administrator notwithstanding any life or minority interest, but the statement of truth must state whether or not such interests arise. Application for the grant may only be made to the Principal Registry because the contention in the case has not been disposed of – see NCPR SI 1987/2024 r 7(1)(a).]

A6.141

136. Statement of truth for administrator, after citation to accept or refuse a grant

(*Heading as in Form 2:* A6.02)

We, D B of. . . . . and E B of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . .aged. . . . . years, domiciled in England and Wales, intestate; and the name of the deceased shown on the Death Certificate is A B;

2. C B, the lawful widow of the intestate, has been duly cited to accept or refuse letters of administration of the estate of the intestate;

3. In default of appearance of C B to the citation, it was ordered by Mr District Judge [*or* Registrar]. . . . . of this Division on the. . . . . day of. . . . . 20. . . . . .that letters of administration of the estate of the intestate be granted to us;

4. No minority but a life interest arises under the intestacy;

5. [*add statement as to settled land*];

6. We are the sons and two of the persons entitled to share in the estate of the intestate;

7. We will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *complete as in Form 60*: A6.65].

A6.142

137. Statement of truth for administrator, after citation to propound will
(NCPR SI 1987/2024 r 48)

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, intestate; and the name of the deceased shown on the Death Certificate is A B;

2. In default of appearance of the persons cited to propound the purported will dated. . . . . 20. . . . . it was ordered by Mr District Judge [*or* Registrar]. . . . . of this Division on the. . . . . day of . . . . . 20. . . . . that a grant of representation of the estate of the deceased be issued as if the purported will were invalid;

3. [*add statement as to minority or life interest*];

4. [*add statement as to settled land*];

5. The deceased died intestate a widow without issue or parent or brother or sister of the whole or half blood or grandparent [*or as the case may be*], and I am a cousin german of the whole blood and only [one of the] person[s] entitled to [share in] the estate of the deceased;

6. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc– *complete as in Form 60*: A6.65].

A6.143

138. Statement of truth for administrator (commorientes) to representative of person deemed to have survived

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . was born on the. . . . . day of. . . . . 19 . . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, intestate, a bachelor [spinster] [widower] [widow] [surviving civil partner] [single person] without issue or parent or any other person entitled in priority to share in the estate by virtue of any enactment [*or as the case may be*]; and the name of the deceased shown on the Death Certificate is A B;

2. All possible enquiries as to survivorship have been made, but it appears that A B and E F,* sister of the whole blood, died in circumstances rendering it uncertain which of them survived the other;

3. E F, being the younger is, by virtue of section 184 of the Law of Property Act 1925, deemed to have survived the intestate, and was the only person entitled to the estate of the intestate;

4. [*Statement as to minority and life interests.*]

5. [*Statement as to settled land.*]

6. I am the sole executor of the will [*or* administrator of the estate] of E F, probate [*or* letters of administration] thereof having been granted to me at the Principal [*or*. . . . . District Probate] Registry on the. . . . . day of. 20.;

7. I will:

   (i) collect, get in and administer [etc – *complete as in Form 83*: A6.88].

[Note.–

Evidence of the circumstances must be submitted previously to the district judge or registrar for his decision whether more enquiries must be made, or whether it may be sworn that the circumstances render survivorship uncertain.]

A6.144

139. Statement of truth for administration (with will) (commorientes)

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. I believe the paper writing now produced to and marked by me to contain the true and original last will and testament of A B of. . . . . deceased, who was born on the. . . . . day of. . . . . 19. . . . . and who died on the. . . . . day of . . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales; and the name of the deceased shown on the Death Certificate is A B;

2. All possible enquiries as to survivorship have been made, but it appears that the deceased and E F, the sole executrix and residuary legatee and devisee named in the will, died in circumstances rendering it uncertain which of them survived the other;

3. No life or minority interest arises in the estate of the deceased;

4. [*add statement as to settled land*];

5. E F, being the younger, is by virtue of section 184 of the Law of Property Act 1925, deemed to have survived the deceased;

6. I am the sole executor of the will of E F [*or* the administrator [with will] of the estate of E F], probate [*or* letters of administration [with will]] thereof having been granted to me at the Principal [*or*. . . . . District Probate] Registry on the. . . . . day of. . . . . 20. . . . . [or, E F, being the elder, is by virtue of section 184 of the Law of Property Act 1925, deemed to have died in the lifetime of the said deceased who died a spinster without issue or parent or any other person entitled in priority to share in her estate by virtue of any enactment [*or as the case may be*];

7. I am the brother of the whole blood and one of the persons entitled to share in the undisposed-of estate of the deceased;]

8. I will:

   (i) collect, get in and administer [etc – *complete as in Form 83:* A6.88].

[Note.–

Evidence of the circumstances must be submitted previously to the district judge or registrar for his decision whether more enquiries must be made, or whether it may be sworn that the circumstances render survivorship uncertain.]

A6.145

140. Statement of truth for cessate administration to person entitled on attaining his majority

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day

of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, intestate, a widower leaving me his son and only person entitled to his estate; and the name of the deceased shown on the Death Certificate is A B;

2. On the. . . . . day of. . . . . 20. . . . . letters of administration of the estate of the deceased were granted at the Principal [*or* . . . . . District Probate] Registry to E F and G H, for my use and benefit, and until I should attain the age of eighteen years;

3. On the. . . . . day of. . . . . 19. . . . . /20. . . . . I attained the age of eighteen years, by reason of which the letters of administration have ceased and expired;

4. No life interest and now no minority interest arises under the intestacy;

5. [*add statement as to settled land*];

6. I am the son and only person entitled to the estate of the deceased;

7. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65, *but with reference to the unadministered estate*].

A6.146

141. Statement of truth for cessate administration, the attorney administrator having died

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, intestate, leaving me her [lawful husband] [lawful civil partner] and only person entitled to her estate; and the name of the deceased shown on the Death Certificate is A B;

2. On the. . . . . day of. . . . . 20. . . . . letters of administration of the estate of the deceased were granted at the Principal [*or* . . . . . District Probate] Registry to E F, my lawful attorney, for my use and benefit, and until I should obtain letters of administration of the estate [*or* until further representation be granted];

3. E F died on the. . . . . day of. . . . . 20. . . . . by reason of which the letters of administration have ceased and expired;

4. [*add statement as to minority and life interests*];

5. [*add statement as to settled land*];

6. I am the [lawful husband] [lawful civil partner] and only person now entitled to the estate of the deceased;

7. I will:

   (i) collect, get in and administer [etc – *complete as in Form 83*: A6.88].

A6.147

142. Statement of truth for cessate administration, following a grant limited to prosecuting/defending a claim

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, intestate, a bachelor [*or as the case may be*]; and the name of the deceased shown on the Death Certificate is A B;

2. On the. . . . . day of. . . . . 20. . . . . letters of administration of the estate of the deceased were granted at the Principal [*or* . . . . . District Probate] Registry under and by virtue of section 116 of the Senior Courts Act 1981 [*or as the case may be*], to J K, limited to prosecuting [*or* defending] a claim in the. . . . . Division of the High Court to be brought against the personal representative of the deceased [*or as the case may be*];

3. The proceedings in the claim have since terminated, whereby the letters of administration have ceased and expired;

4. [*add statement as to minority and life interests*];

5. [*add statement as to settled land*];

6. I am the father and only person entitled to the estate of the deceased [*or as the case may be*];

7. I will:

   (i) collect, get in and administer [etc – *complete as in Form 83*: A6.88].

A6.148

143. Statement of truth for administration limited to prosecuting or defending an claim

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, intestate; and the name of the deceased shown on the Death Certificate is A B;

2. I am the person authorised by order of Mr District Judge [or Registrar] . . . . . under section 116 of the Senior Courts Act 1981, dated . . . . . to apply for and obtain letters of administration of the estate of the deceased, limited as mentioned below;

3. [*add statement as to minority or life interest*];

4. [*add statement as to settled land*];

5. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased, limited for the purpose only of prosecuting [defending] [becoming a party to] a claim in the. . . . . Division of the High Court [*or as the case may be*] to be brought against E F [*or* to be brought by E F], but no further or otherwise;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate, limited as aforesaid, and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60:* **A6.65**, *but with reference to the limited estate, as aforesaid, amounting to the sum of nil.*]

[**Note.–**
The action should be identified in the statement of truth (Registrar's Direction, 23 March 1964).]

A6.149

144. Statement of truth for administration ad colligenda bona

(*Heading as in Form 2:* **A6.02**)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . .and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales; and the name of the deceased shown on the Death Certificate is A B;

2. [*Statement as to minority or life interest.*]

3. [*Statement as to settled land.*]

4. By order of Mr District Judge [*or* Registrar]. . . . . dated the . . . . . day of. . . . . 20. . . . . it was ordered that letters of administration of the estate of the deceased be granted to me limited as mentioned below;

5. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased limited to collecting, getting in and receiving the estate, and doing such acts as may be necessary for the preservation of the same† and until further representation be granted, but no further or otherwise;

(ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

(iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65].

[† *If express powers beyond these have been included in the order they must be recited here.*]

A6.150

145. Statement of truth for administration under s 116 of the Senior Courts Act 1981

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . widow, deceased, was born on the. . . . . day of. . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . .years, domiciled in England and Wales, intestate; and the name of the deceased shown on the Death Certificate is A B;

2. No minority or life interest arises under the intestacy;

3. [*Statement as to settled land.*]

4. On the. . . . . day of. . . . . 20. . . . . it was ordered by Mr District Judge [*or* Registrar]. . . . . that letters of administration of the estate of the deceased be granted to me under and by virtue of section 116 of the Senior Courts Act 1981 [*recite any limitations given in order*];

5. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased [*add, if applicable*, limited as aforesaid];

   (ii) when required to do so by the Court exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *complete as in Form 60*: A6.65].

(Form of statement of truth for grant limited to an action, Form 143: A6.148; Statement of truth for administration (with will) under s 116, Form 171: A6.176.)

A6.151

146. Statement of truth for administration under s 113 of the Senior Courts Act 1981

(*Heading as in Form No 2*:A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of widow, deceased, was born on the. . . . . day of. . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, intestate; and the name of the deceased shown on the Death Certificate is A B;

2. No minority or life interest arises under the intestacy;

3. [*Statement as to settled land.*]

4. On the day of 20 it was ordered by Mr District Judge [*or* Registrar] that letters of administration of the estate of the deceased limited to [*recite the limitation(s) given in order*] be granted to me under and by virtue of section 113 of the Senior Courts Act 1981];

5. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased [*add, if applicable*, limited as aforesaid];

   (ii) when required to do so by the Court exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc– *complete as in Form 60*: A6.65].

A6.152

147. Statement of truth for administration– judicially separated spouse (death on or after 1 August 1970)

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, intestate, E F, his lawful widow [*or* her lawful husband]; and the name of the deceased shown on the Death Certificate is A B;

2. By decree of the High Court of Justice [*or* of the. . . . . County Court] in England and Wales, dated the . . . . . day of. . . . . 20. . . . . it was decreed that A B be judicially separated from E F;

3. At the date of death of the deceased the decree remained in force and the separation thereunder continued;

4. [*Insert clearings, e.g.* The deceased died without issue or parent or any other person entitled in priority to share in the estate by virtue of any enactment;]

5. [*Add statement as to minority and life interests.*]

6. [*Add statement as to settled land.*]

7. I am the brother of the whole blood and only person entitled to [*or* one of the persons entitled to share in] the estate of the deceased;

8. I will:

   (i) collect, get in and administer [etc – *complete as in Form 83*: A6.88].

A6.153

148. Statement of truth for administration– judicially separated civil partner (death on or after 5 December 2005)

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, intestate, leaving E F, his lawful civil partner; and the name of the deceased shown on the Death Certificate is A B;

2. By a separation order of the High Court of Justice [*or* of the . . . . . County Court] in England and Wales, dated the. . . . . day of. . . . . 20. . . . . it was ordered that A B be separated from E F;

3. At the date of death of the deceased the separation order remained in force and the separation thereunder continued;

4. [*Insert clearings, e.g.* The deceased died without issue or parent or any other person entitled in priority to share in the estate by virtue of any enactment;]

5. [*Add statement as to minority and life interests.*]

6. [*Add statement as to settled land.*]

7. I am the sister of the whole blood and only person entitled to [*or* one of the persons entitled to share in] the estate of the deceased;

8. I will:

   (i) collect, get in and administer [etc – *complete as in Form 83*: A6.88].

A6.154

149. Statement of truth for administration (will) to residuary legatee and devisee

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B, of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . and who died on the. . . . . day of 20 . . . . . aged. . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the. . . . . day of . . . . . 20. . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. No executor or residuary legatee or devisee in trust is named in the will; [*or* E F, the sole executor [and residuary legatee and devisee in trust] named in the will died in the lifetime of the deceased [*or* survived the deceased but has since died without having taken upon himself probate of the will [*or* letters of administration with the will annexed]]; [*or* E F, the sole [*or* surviving] executor [and residuary legatee and devisee in trust] named in the will has renounced probate thereof [and letters of administration with the will annexed]];

3. No life or minority interest arises in the estate of the deceased;

4. [*add statement as to settled land*];

5. I am the residuary legatee [*or* the residuary devisee, or the residuary legatee and devisee] named in the will;

6. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration with will;

[etc – *as in Form 60*: **A6.65**.]

[**Note.**–

Under NCPR SI 1987/2024 r 20(c) the class of residuary legatee or devisee includes one for life and under r 20(c)(i) a contingent residuary legatee or devisee is in the same class of priority as a residuary legatee or devisee having a vested interest, but, unless a district judge or registrar otherwise directs, a residuary beneficiary whose interest is vested is preferred to one entitled on the happening of a contingency.]

A6.155

150. Statement of truth for administration (will) to residuary legatee and devisee for life and residuary legatee and devisee substituted

(*Heading as in Form 2:* **A6.02**)

We, E F of. . . . . and G H of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . , died on the. . . . . day of. . . . . 20 . . . . . aged. . . . . .years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . .[with a codicil dated the. . . . . day of . . . . . 20. . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. C D, the sole executor and residuary legatee and devisee in trust named in the will, has renounced probate of the will [and codicil] and administration (with will [and codicil]) of the estate of the deceased;

3. No minority but a life interest arises in the estate of the deceased;

4. [*add statement as to settled land*];

5. The deponent E F is the residuary legatee and devisee for life named in the will, and the deponent G H is the residuary legatee and devisee substituted in the will;

6. We will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration with will;

[etc – *as in Form 60*: A6.65.]

A6.156

151. Statement of truth for administration (will) to residuary legatee and devisee and a specific legatee or devisee, or a creditor

(*Heading as in Form 2:* A6.02)

We, E F of. . . . . and G H of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . , died on the. . . . . day of. . . . . 20 . . . . . aged. . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . .[with a codicil dated the. . . . . day of . . . . . 20. . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. C D, the sole executor named in the will, died in the lifetime of the deceased [*or* survived the deceased, and has since died without having taken upon himself probate of the will] [*or* has renounced probate of the will];

3. A minority but no life interest arises in the estate of the deceased;

4. [*add statement as to settled land*];

5. The deponent E F is the residuary legatee and devisee named in the will, and the deponent G H is a legatee [*or* a devisee] named in the will [*or* a creditor of the deceased];

6. We will:

   (i) collect, get in and administer [etc – *complete as in Form 149*: A6.154].

A6.157

152. Statement of truth for administration (will) to representative of residuary legatee and devisee

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this

application for letters of administration (with will):

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . , died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the . . . . . day of. . . . . 20. . . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. E B, the sole executor and residuary legatee and devisee named in the will survived the deceased and has since died without having proved the will;

3. [*add statement as to life and minority interests*];

4. [*add statement as to settled land*];

5. I am the executor of the will [*or* administrator of the estate] of E B, probate [*or* letters of administration] thereof having been granted to me out of the . . . . . Probate Registry on the. . . . . day of. . . . . 19. . . . . /20. . . . . ;

6. I will:

   (i) collect, get in and administer [etc – *complete as in Form 149*: A6.154].

A6.158

153. Statement of truth for administration (will) to substituted residuary legatees

(*Heading as in Form 2:* A6.02)

We, C D of. . . . . and G H of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . , died on the. . . . . day of. . . . . 20 . . . . . aged. . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the. . . . . day of . . . . . 20. . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. E F the sole executrix and residuary legatee and devisee for life named in the will, has renounced probate thereof and administration (with will) of the estate of the deceased;

3. No minority but a life interest arises in the estate of the deceased;

4. [*add statement as to settled land*];

5. We are two of the residuary legatees and devisees substituted in the will;

6. We will:

   (i) collect, get in and administer according to law [etc – *complete as in Form 149*: A6.154].

A6.159

154. Statement of truth for administration (will) to person entitled to estate not disposed of

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . , died on the. . . . . day of. . . . . 20 . . . . . .aged. . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the. . . . . day of . . . . . 20. . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. No executor or residuary legatee or devisee is named in the will which does not dispose of the whole estate of the deceased;

3. The deceased died a bachelor [spinster] [widower] [widow] without issue or parent or any other person entitled in priority to share in the estate by virtue of any enactment [*or as the case may be*];

4. I am the brother of the whole blood and only person entitled to [*or* one of the persons entitled to share in] the estate of the deceased not disposed of by the will;

5. No life or minority interest arises in the estate of the deceased;

6. [*add statement as to settled land*];

7. I will:

   (i) collect, get in and administer [etc – *complete as in Form 149*: A6.154].

[Note.–

If a residuary gift in a will fails by reason of s 15 of the Wills Act 1837, the following wording, adapted as necessary, should be used: 'The residuary bequest and devise to E F in the will is void by reason that he was an attesting witness to the will [or that at the date of the will he was the lawful husband of G F, an attesting witness to the will].']

A6.160

155. Statement of truth for administration (will) to person entitled to estate not disposed of following disclaimer (death on or after 1 February 2012)

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . , died on the. . . . . day of. . . . . 20 . . . . . .aged. . . . . .years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the. . . . . day of . . . . . 20. . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. E F the sole executor and residuary legatee or devisee named in the will has renounced probate thereof and administration (with will) of the estate of the deceased; further by a deed dated the . . . . . day of . . . . . 20. . . . . E F has disclaimed all his right and title to the estate and is treated by virtue of the s 33A of the Wills Act 1837 (amended by the Estate of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011) as having died immediately before the deceased;

3. The deceased died a bachelor [spinster] [widower] [widow] without issue or parent or any other person entitled in priority to share in the estate by virtue of any enactment [*or as the case may be*];

4. I am the brother of the whole blood and only person now entitled to [*or* one of the persons entitled to share in] the estate of the deceased now not disposed of by the will;

5. No life or minority interest arises in the estate of the deceased;

6. [*add statement as to settled land*];

7. I will:

   (i) collect, get in and administer [etc– *complete as in* Form 149: A6.154].

A6.161

156. Statement of truth for administration (will) to legatee, devisee or creditor

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . and who died on the. . . . . day of . . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the . . . . . day of. . . . . 20. . . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. E F, the sole executor and residuary legatee and devisee named in the will has renounced probate thereof and letters of administration (with will) of the estate of the deceased;

3. [*add statement as to minority or life interest*];

4. [*add statement as to settled land*];

5. I am a legatee [*or* devisee] named in the will [*or* a creditor of the deceased];

6. I will:

   (i) collect, get in and administer [etc – *complete as in Form 149*: A6.154].

[Note.–

(1) Under NCPR SI 1987/2024 r 20(e) a contingent legatee or devisee is in the same class of priority as a legatee or devisee having a vested interest but, unless a district judge or registrar otherwise directs, a legatee or devisee whose interest is vested is preferred to one entitled on the happening of a contingency.

(2) If the residuary gift in a will fails by reason of s 15 of the Wills Act 1837, the following wording, adapted as necessary, should be used: 'The residuary bequest and devise to E F in the will is void by reason that he was an attesting witness to the will [or that at the date of the will he was the lawful husband of G F, an attesting witness to the said will.']

A6.162

157. Statement of truth for administration (will) to legatee in accordance with NCPR SI 1987/2024 r 20(c)(ii); whole, or substantially whole, of known estate disposed of by enumeration

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . , died on the. . . . . day of. . . . . /20 . . . . . .aged. . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the. . . . . day of . . . . . 20. . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. E F, the sole executor named in the will has renounced probate thereof [*or*, No executor, residuary legatee or devisee in trust or residuary legatee or devisee is named in the will];

3. [*add statement as to minority and life interests*];

4. [*add statement as to settled land*];

5. I am a legatee [*or* devisee] named in the will which disposes of the whole [*or* substantially the whole*] of the known estate;

6. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration with will;

[etc – *complete as in Form 60:* A6.65.]

[**Note.–**

* Where application is made by a legatee (or devisee) on the ground that substantially the whole estate is disposed of the case must be submitted to the district judge or registrar for his decision whether the facts bring the case within the terms of the rule, having regard to the size of the estate and the amount disposed of. The following statement should then be added at the end of the statement of truth: '£. . . . . of the total value of the known estate of £ . . . . . is disposed of by the will'.

Unless it is clear from the papers that there are kin entitled to share in any undiposed-of estate, a statement to this effect should (if such be the case) be included in the statement of truth. If there are no such kin, notice of the application should be given to the Treasury Solicitor under NCPR SI 1987/2024 r 38 (Registrar's Direction, 5 August 1954).]

A6.163

158. Statement of truth for administration (will) to the Public Trustee

(*Heading as in Form 2:* A6.02)

I,. . . . . of the Office of the Official Solicitor and Public Trustee, Victory House, 30–34 Kingsway, London, WC2B 6EX, on behalf of C D, the Public Trustee, make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . .and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . ; and the name of the deceased shown on the Death Certificate is A B;

2. [*Clear off executors.*]

3. The deceased by his will appointed E F and G H residuary legatees and devisees [*or* did not in his will name any residuary legatee or devisee and died a bachelor [spinster,] without issue or parent, leaving E F, G H, and I J his l brother and sisters . . . . . the only persons entitled to share in his undisposed-of estate];

4. C D is the Public Trustee constituted by the Public Trustee Act 1906;

5. Notice in writing has been duly given to all persons above mentioned as residuary legatees or devisees [*or* persons entitled to share in the undisposed-of estate] [except the. . . . . whose address the Public Trustee has been unable to discover] that the Public Trustee is about to apply for a grant of letters of administration (with will annexed) of the estate of the deceased, and all the persons have in writing consented to the grant being made to him [except. . . . . who has not within due time after the posting of the notice applied for a like grant or entered any caveat];

6. I believe the paper writing now produced to the Court by me to contain the true and original last will and testament of the deceased;

7. [*Add statement as to life and minority interests.*]

8. [*Add statement as to settled land.*]

9. The Public Trustee will:

   (i) collect, get in and administer [etc – *complete as in Form 149*: A6.154, *duly adapted*].

A6.164

159. Statement of truth for administration (will) to testator's widow and a person entitled to share in estate (there being no executor or residuary legatee or devisee)

(*Heading as in Form 2:* A6.02)

We, E B of. . . . . and C B of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . ., died on the. . . . . day of. 19

. . . . . /20. . . . . .aged.years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the. . . . . day of. . . . . 20. . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. No executor or residuary legatee or devisee is named in the will;

3. No minority but a life interest arises in the estate of the deceased;

4. [*add statement as to any settled land*];

5. We are respectively the lawful widow, and a son and two of the persons entitled to share in the estate of the deceased not disposed of by the will;

6. We will:

   (i) collect, get in and administer [etc – *complete as in Form 149*: A6.154].

A6.165

160. Statement of truth for administration (will) to a person interested in the event of an accretion (estate below £250,000 (where deceased left issue), or £450,000 (where deceased left no issue)) for death on or after 1 February 2009 [for the appropriate lesser sums depending on date of death see para 6.99]

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . , died on the. . . . . day of. . . . . 19 . . . . . /20. . . . . aged.years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the. . . . . day of . . . . . 20. . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. No executor or residuary legatee or devisee is named in the will;

3. E B, the [lawful widow] [lawful civil partner] and the only person now entitled to the undisposed-of estate of the deceased has renounced letters of administration (with will) of the estate of the deceased;

4. [*add statement as to life and minority interests*];

5. [*add statement as to settled land*];

6. I am the son of the deceased and a person who may have a beneficial interest in this estate in the event of an accretion thereto;

7. I will:

   (i) collect, get in and administer [etc – *complete as in Form 149*: A6.154].

A6.166

161. Statement of truth for administration (will) – gift to child or other issue saved by s 33 of the Wills Act 1837

(*Death on or after 1 January 1983*)

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . , died on the. . . . . day of. . . . . 20 . . . . . aged. . . . . .years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . .[with a codicil dated the. . . . . day of . . . . . 20. . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. No executor or residuary legatee or devisee in trust is named in the will;

3. [*add statement as to life and minority interests*];

4. [*add statement as to settled land*];

5. E B, the lawful daughter of the deceased and the residuary legatee and devisee named in the will, died in the lifetime of the deceased leaving lawful issue who survived the deceased;

6. I am [one of] the lawful issue of E B being her lawful son [*or as the case may be*] and [one of the persons] the person now entitled to [share in] the residue under the will;

7. I will:

   (i) collect, get in and administer [etc – *complete as in Form 149*: A6.154].

[Note.–

Where the death occurred on or after 1 January 1970, the provisions of s 33 of the Wills Act 1837 are extended by s 16 of the Family Law Reform Act 1969 so that references to children or other issue of the testator, and to issue of the intended beneficiary, include illegitimate children and persons who would rank as such issue but for their own illegitimacy or that of some other person through whom they have descended from the testator, or the intended beneficiary, as the case may be; furthermore, by virtue of s 39 of the Adoption Act 1976 (which replaced para 3(1) of Sch 1 to the Children Act 1975) it would appear that as respects deaths after 31 December 1975, the references in s 33 of the Wills Act 1837 to children or other issue of the testator are to include children adopted by the testator (see paras 5.170 ff).]

A6.167

162. Statement of truth for administration (will): gift to issue saved by s 33A of the Wills Act 1837 (amended by Estate of Deceased Persons (Forfeiture Rule and Law of Succession Act 2011) upon disclaimer (Death on or after 1 February 2012)

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . , died on the. . . . . day of. . . . . 20 . . . . . aged. . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the. . . . . day of . . . . . 20. . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. [E F the executor and residuary legatee and devisee in trust has renounced probate and administration with will] *or* [No executor or residuary legatee or devisee in trust is named in the will];

3. [*add statement as to life and minority interests*];

4. [*add statement as to settled land*];

5. E B, the daughter of the deceased and the residuary legatee and devisee named in the will has by a deed dated the. . . . . day of . . . . . 20. . . . . disclaimed her right and title to her interest in the estate and is treated by virtue of the s 33A of the Wills Act 1837 (amended by the Estate of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011) as having died immediately before the deceased;

6. I am the son of E B [*or as the case may be*] and [one of the persons] [the only person] now entitled to share in the residue under the will;

7. I will:

   (i) collect, get in and administer [etc – *complete as in Form 149*: A6.154].

A6.168

163. Statement of truth for administration (will) – gift to child or other issue saved from the effect of the forfeiture rule by s 33A of the Wills Act 1837 (amended by Estate of Deceased Persons (Forfeiture Rule and Law of Succession Act 2011) (Death on or after 1 February 2012)

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . , died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the. . . . . day of . . . . . 20. . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. [E F the executor and residuary legatee and devisee in trust has renounced probate and administration with will] *or* [No executor or residuary legatee or devisee in trust is named in the will];

3. [*add statement as to life and minority interests*];

4. [*add statement as to settled land*];

5. G B, the son of the deceased and the residuary legatee and devisee named in the will was convicted of the deceased's [murder][manslaughter] at the . . . . . Crown Court on the . . . . . day of . . . . . 20 . . . . . and by virtue of the Forfeiture Act 1982 the forfeiture rule precludes him from acquiring a beneficial interest in the estate and further he is treated by virtue of the s 33A of the Wills Act 1837 (amended by the Estate of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011) as having died immediately before the deceased;

6. The conviction remains in force and there is no appeal pending against the conviction and [*in the case of manslaughter*] no application was made within three months of the date of the conviction to modify the effect of the forfeiture rule;

7. I am the son of G B [*or as the case may be*] and [one of the persons] [the only person] now entitled to [share in] the residue under the will;

8. I will:

   (i) collect, get in and administer [etc – *complete as in Form 149*: A6.154].

A6.169

164. Statement of truth for administration (will) to assignee (NCPR SI 1987/2024 r 24)

(*Heading as in Form 2:* A6.02)

I, E F, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, who was born on the . . . . . day of . . . . . 19. . . . . , died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . .[with a codicil dated the. . . . . day of . . . . . 20. . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. No executor or residuary legatee or devisee in trust is named in the will [*or* G H, the sole executor (and residuary legatee and devisee in trust) named in the will, died in the lifetime of the deceased *or* has renounced probate thereof (and letters of administration with will annexed of the deceased's estate)];

3. That no life or minority interest arises in the estate of the deceased;

4. [*add statement as to settled land*];

5. By deed of assignment dated the. . . . . day of. . . . . 20 . . . . . C D [and I J], son [and daughter] of the deceased, the universal legatee[s] and devisee[s] named in the will, has [have] assigned to me the deponent [and to K L] all his [their] right and title to an interest in the estate of the said deceased;

6. I will:

   (i) collect, get in and administer [etc – *complete as in Form 149*: A6.154].

[Note.–
The consent of any assignee not joining in the application for the grant must be filed with the application.]

A6.170

165. Statement of truth for administration (will) to the attorney of an executor

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . , and thereof appointed E F sole executor; and the name of the deceased shown on the Death Certificate is A B;

2. [*add statement as to minority or life interest*];

3. [*add statement as to settled land*];

4. I am the lawful attorney of E F;

5. I believe the paper writing now produced to the Court by me to contain the true and original last will and testament of the deceased;

6. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased for the use and benefit of E F, until further representation be granted;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration with will;

[etc – *as in Form 60*: A6.65].

A6.171

166. Statement of truth for administration (will) to nominee of an executor or residuary legatee or devisee (a non-trust corporation)

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, who was born on the. . . . . day of . . . . . 19. . . . . ., died on the. . . . . day of. . . . . 20 . . . . . aged. . . . . years, domiciled in England and Wales having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . [with a codicil dated the. . . . . day of

. . . . . 20. . . . .] which is now produced to the Court; and the name of the deceased shown on the Death Certificate is A B;

2. E F [*the corporation or association*] the sole executor [*or* the residuary legatee and devisee in trust, *or* residuary legatee and devisee] named in the will is not a trust corporation as defined by rule 2(1) of the Non-Contentious Probate Rules 1987;

3. [*Statement as to minority and life interests*];

4. [*Statement as to settled land*];

5. By resolution dated the. . . . . day of. . . . . I was duly appointed by E F as its nominee for the purpose of applying for letters of administration (with will) of the estate of the deceased;

6. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased for the use and benefit of E F, until further representation be granted;

   (ii) when required to do so by the Court [etc – *complete as in Form 149*: A6.154].

[Note.–

If the corporation is an executor, it must be established (eg by producing a copy of its constitution) that it has power to take a grant through a nominee. In the case of a corporation, association, or public or charitable or private body of persons, entitled as beneficiary or creditor, it is sufficient to lodge an authenticated copy of a resolution of the committee or other body most completely representing the corporation or association etc appointing the nominee (Registrar's Direction, 2 January 1956).]

A6.172

167. Statement of truth for administration (will) to both parents of a minor jointly

(*Heading as in in Form 2*: A6.02)

We, E D. . . . . and F D, both of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . ; and the name of the deceased shown on the Death Certificate is A B;

2. No executor or residuary legatee or devisee in trust is named in the will [*or* G H, the sole executor [and residuary legatee and devisee in trust] named in the will died in the lifetime of the deceased *or* has renounced probate of the will [and letters of administration with will annexed of the deceased's estate] *or as the case may be*];

3. C D the residuary legatee and devisee named in the will is now a minor of the age of.years;

4. We believe the paper writing now produced to the Court by us to contain the true and original last will and testament of the deceased;

5. A minority but no life interest arises in the estate of the deceased;

6. [*Add statement as to settled land.*]

7. We are the parents of C D and have parental responsibility for him under s 2(1) of the Children Act 1989, and we will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased for the use and benefit of C D until he attains 18 years of age and until further representation be granted;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration with will;

[etc – *as in Form 60*: A6.65].

A6.173

168. Statement of truth for administration (will) to person authorised by Court of Protection where executor is lacks capacity to manage his affairs within the meaning of the Mental Capacity Act 2005

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . and thereof appointed E F sole executor; and the name of the deceased shown on the Death Certificate is A B;

2. E F is now lacks capacity to manage his affairs within the meaning of the Mental Capacity Act 2005;

3. By an order of the Court of Protection dated the. . . . . day of . . . . . 20. . . . . I was duly authorised to apply for letters of administration (with will) of the estate of the deceased for the use and benefit of E F;

4. [*add statement as to minority or life interest*];

5. [*add statement as to settled land*];

6. I believe the paper writing now produced to the Court by me to contain the true and original last will and testament of the deceased;

7. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased for the use and benefit of E F until further representation be granted;

   (ii) when required to do so by the Court [etc – *complete as in Form 149*: A6.154].

A6.174

169. Statement of truth for administration (will) to attorney acting under a registered enduring power of attorney or registered lasting power of attorney; for the use executor who lacks capacity within the meaning of the Mental Capacity Act 2005

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . ; and the name of the deceased shown on the Death Certificate is A B;

2. E F, the sole executor named in the will, is now by reason of mental incapacity incapable of managing his affairs [*or* now lacks capacity to manage his affairs within the meaning of the Mental Capacity Act 2005];

3. No one has been authorised by the Court of Protection to apply for a grant of representation of the estate of the deceased for the use and benefit of E F;

4. I am the lawful attorney of E F acting under a registered enduring power of attorney [*or* I am the lawful attorney of E F acting under a registered lasting power of attorney];

5. [*add statement as to minority or life interest*];

6. [*add statement as to settled land*];

7. I believe the paper writing now produced to the Court by me to contain the true and original last will and testament of the deceased;

8. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased for the use and benefit of E F until further representation be granted;

   (ii) when required to do so [etc – *complete as in Form 149*: A6.154].

A6.174A

169A. Statement of truth for administration (will) to person appointed by district judge or registrar; for the use of an executor who lacks capacity within the meaning of the Mental Capacity Act 2005

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, having made and duly executed his last will and testament dated

the. . . . . day of. . . . . 20. . . . . ; and the name of the deceased shown on the Death Certificate is A B;

2. E F, the sole executor and residuary legatee and devisee named in the will, is now by reason of mental incapacity incapable of managing his affairs [*or* now lacks capacity to manage his affairs within the meaning of the Mental Capacity Act 2005];

3. [*add statement as to minority or life interest*];

4. [*add statement as to settled land*];

5. I believe the paper writing now produced to the Court by me to contain the true and original last will and testament of the deceased;

6. By order of District Judge [*or* Registrar] . . . . . dated the . . . . . day of . . . . . 20. . . . . it was ordered that letters of administration (with will) of the estate of the deceased be granted to me under and by virtue of rule 35(4) of the Non-Contentious Probate Rules 1987, the grant to be for the use and benefit of E F limited until further representation be granted;

8. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased for the use and benefit of E F until further representation be granted;

   (ii) when required to do so [etc – *complete as in Form 149*: A6.154].

A6.175

170. Statement of truth for administration (will) to person entitled to the residuary estate; for the use of executor who lacks capacity within the meaning of the Mental Capacity Act 2005

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, having made and duly executed his last will and testament dated the. . . . . day of.. . . . . 20. . . . . .; and the name of the deceased shown on the Death Certificate is A B;

2. E F, the sole executor named in the will, is now lacks incapacity to manage his affairs within the meaning of the Mental Capacity Act 2005;

3. No one has been authorised by the Court of Protection to apply for a grant of representation of the estate of the deceased for the use and benefit of E F;

4. There is no lawful attorney of E F acting under a registered lasting power of attorney or registered enduring power of attorney [*or* G H, the lawful attorney of E F acting under a registered lasting power of attorney/registered enduring power of attorney, has renounced administration for the use and benefit of E F];

5. I am the residuary legatee and devisee named in the will;

6. [*add statement as to minority or life interest*];

7. [*add statement as to settled land*];

8. I believe the paper writing now produced to the Court by me to contain the true and original last will and testament of the deceased;

9. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased for the use and benefit of E F until further representation be granted;

   (ii) when required to do so [etc – *complete as in Form 149*: A6.154].

A6.176

171. Statement of truth for administration (will) under s 116 of the Senior Courts Act 1981

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 19. . . . . /20. . . . . aged. . . . . years, domiciled in England and Wales, having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . ; and the name of the deceased shown on the Death Certificate is A B;

2. On the. . . . . day of. . . . . 20. . . . . it was ordered by Mr District Judge [Registrar]. . . . . of this Division that letters of administration (with will annexed) of the estate of the deceased be granted to me under and by virtue of s 116 of the Senior Courts Act 1981 [*recite any limitations given in order*];

3. [*Add statement as to life and minority interests.*]

4. [*Add statement as to settled land.*]

5. I believe the paper writing now produced to the Court by me to contain the true and original last will and testament of the deceased;

6. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased [*add, if applicable*, limited as aforesaid];

   (ii) when required to do so by the Court [etc – *complete as in Form 149*: A6.154].

A6.177

172. Statement of truth for administration (will) where deceased died domiciled out of England and Wales; attorney of person entrusted with administration by court of domicile

(*Heading as in Form 2:* A6.02)

I, E F, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . , deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years domiciled in the State of Texas in the United States of America having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20 . . . . . .[with a codicil thereto dated the. . . . . day of. . . . . 20. . . . .]; and the name of the deceased shown on the Death Certificate is A B;

2. I believe the paper writing now produced to the Court by me to contain an official copy of the true and original last will [and codicil] and testament of the deceased;

3. C D is the person entrusted with the administration of the estate of the deceased by the Court having jurisdiction at the place where the deceased died domiciled [*if order was made under r 30(1)(a) of the Non-Contentious Probate Rules 1987 on prior application add here the relevant details of the order*] [*file the entrusting document/grant of probate or administration with the application*];

4. [*add statement as to minority and life interests*];

5. [*add statement as to settled land*];

6. I am the lawful attorney of C D, and [*if order not made on prior application,*] I hereby apply for an order under r 30(1)(a) of the Non-Contentious Probate Rules 1987 directing that letters of administration, with the will annexed, of the estate of the deceased be granted to me for the use and benefit of C D until further representation be granted and] I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased for the use and benefit of C D, until further representation be granted;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

7. To the best of my knowledge, information and belief the gross value of the estate in England and Wales of the deceased passing under the grant [amounts to the sum of £. . . . .] [does not exceed £ . . . . .] and [the net value amounts to £. . . . . .] [and the net value does not exceed £. . . . .] [and this not a case in which an Inheritance Tax account is required to be delivered] (See A2.118 ff and A2.144 ff).)

[Note.–

The grant is made by order of a district judge or registrar founded on the statement of truth, or an affidavit of facts, supported by the grant issued by the court of domicile. If the deceased died intestate this form should be adapted accordingly.]

A6.178

173. Statement of truth for administration (will) where deceased died domiciled out of England and Wales; person beneficially entitled to the estate by the law of the place where the deceased died domiciled

(*Heading as in Form 2:* A6.02)

I, E F, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in Spain having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . ; and the name of the deceased shown on the Death Certificate is A B;

2. I believe the paper writing now produced to the Court by me to contain [an official copy of] the true and original last will and testament of the deceased;

3. No one has been entrusted with the administration of the estate of the deceased by the court having jurisdiction at the place where the deceased died domiciled;

4. [If order was made under r 30(1)(b) of the Non-Contentious Probate Rules 1987 on a prior application, recite here the relevant details of the order. If, instead, the order is to be applied for in the statement of truth, confirm here all the relevant facts upon which the expert relies, e.g. nationality of deceased, no one in class(es) of kin entitled to a reserved share etc or, if relying on a certificate of inheritance issued by the court of domicile or European Certificate of Succession, give the details and file an an official copy of it with the application];

5. [*add statement as to minority and life interests*];

6. [*add statement as to settled land*];

7. I am the person beneficially entitled to the estate of the deceased by the law of the place where he died domiciled and [*if order not made on prior application*, I hereby apply for an order under r 30(1)(b) of the Non-Contentious Probate Rules 1987 directing that letters of administration, with the will annexed, of the estate of the deceased be granted to me and] I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so [etc – *complete as in Form 172*: A6.177].

[Notes.–

The grant is made by order of a district judge or registrar founded on the statement of truth, or an affidavit of facts, supported by an affidavit of law or other sufficient evidence of the law in question.

If the deceased died intestate the above form should be adapted accordingly.]

A6.179

174. Statement of truth for administration or administration (with will) where deceased died domiciled out of England and Wales– discretionary order made under NCPR SI 1987/2024 r 30(1)(c)

(*Heading as in Form 2:* A6.02)

I, E F, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years domiciled in Spain, [*or*

having made and duly executed his last will and testament dated the . . . . . day of . . . . . 20. . . . . and I believe the paper writing now produced to the Court by me to contain [an official copy of] the true and original last will and testament]; and the name of the deceased shown on the Death Certificate is A B;

2. [*add statement as to minority and life interests*];

3. [*add statement as to settled land*];

4. On the. . . . . day of. . . . . 20. . . . . .it was ordered by Mr District Judge [*or* Registrar]. . . . . that letters of administration [with will annexed] of the estate of the deceased be granted to me under and by virtue of r 30(1)(c) of the Non-Contentious Probate Rules 1987;

5. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased;

   (ii) when required to do so [etc – *complete as in Form 172*: A6.177].

[Note.–
The grant is made by order of a district judge or registrar founded on an affidavit of facts supported by an affidavit of law or other sufficient evidence of the law in question.]

A6.180

175. Statement of truth for administration (will) to legatee in accordance with NCPR SI 1987/2024 r 30(3)(b); whole or substantially whole estate in England and Wales consists of immoveable property

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. I believe the paper writing now produced to the Court by me to contain the true and original last will and testament dated the. . . . . day of . . . . . 20. . . . . of A B of. . . . . deceased, who was born on the. . . . . day of. . . . . 19. . . . . and who died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in Spain; and the name of the deceased shown on the Death Certificate is A B;

2. E F, the sole executor named in the will has renounced probate thereof [*and/or*, No executor, residuary legatee or devisee in trust or residuary legatee or devisee is named in the will];

3. [*add statement as to minority and life interests*];

4. [*add statement as to settled land*];

5. The whole estate in England and Wales consists of immoveable estate;

6. I am the devisee named in the will entitled to the immoveable estate;

I will:

(i) collect, get in and administer according to law the immoveable estate of the deceased;

(ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

(iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration with will;

[etc – *complete as in Form 172*: A6.174.]

[**Note.–**

* Where application is made by a legatee (or devisee) on the ground that substantially the whole estate is immoveable the case must be submitted to the district judge or registrar for his decision whether the facts bring the case within the terms of the rule, having regard to the size of the estate. The following statement should then be added at the end of the statement of truth: '£ . . . . . of the total value of the known estate of £. . . . . is immoveable estate'.

This form may be adapted where the deceased dies intestate.]

A6.181

176. Statement of truth – limited administration (with will)– will made under power and not revoked by subsequent marriage (Wills Act 1837, s 18)

(*Heading as in Form 2:* A6.02)

I, J H R, of. . . . . widow (formerly J H S spinster), make the following statement in support of this application for letters of administration (with will):

1. G B R of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on. . . . . aged. . . . . years, domiciled in England and Wales, having made and duly executed a will dated the. . . . . day of . . . . . 20. . . . . whereby, in exercise of a power of appointment vested in him under the will of his mother, E R, deceased, dated the . . . . . day of. . . . . 20. . . . . and proved at the Principal [*or* . . . . . District Probate] Registry on the. . . . . day of . . . . . 20. . . . . he gave and bequeathed all such estate over which at the time of his decease he should have power of appointment to me, J H R, in his will described as J H S, and by his will he appointed me sole executrix; and the name of the deceased shown on the Death Certificate is A B;

2. G B R on the. . . . . day of. . . . . 20. . . . . married me, J H R, whereby the said will was revoked except so far as it was made in exercise of the power;

3. [*add statement as to minority or life interest.*]

4. [*add statement as to settled land.*]

5. I believe the paper writing now produced to the Court by me to contain the true and original last will and testament of the deceased;

6. I am the appointee named in the will;

7. I will:

   (i) collect, get in and administer according to law the real and personal estate of the deceased, limited to such estate as the said deceased, by virtue of the will of ER, had power to appoint or dispose of, and has, in and by his will, appointed or disposed of accordingly, but not further or otherwise;

(ii) when required to do so by the Court [etc – *complete as in Form 141*:A6.146].

A6.182

177. Statement of truth for cessate administration (will) to residuary legatee [or devisee] on his attaining his majority

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . and thereof appointed E F sole executor [and residuary legatee and devisee in trust], and me, residuary legatee [and devisee]; and the name of the deceased shown on the Death Certificate is A B;

2. E F renounced probate of the will [and letters of administration with will annexed of the deceased's estate], and on the. . . . . day of . . . . . 20. . . . . letters of administration (with the will annexed) of the estate of the deceased were granted at the Principal [*or* . . . . . District Probate] Registry to G H and J H for my use and benefit, and until I should attain the age of eighteen years;

3. On the. . . . . day of. . . . . 20. . . . . I attained the age of eighteen years, by reason of which the letters of administration with will annexed ceased and expired;

4. No life interest and now no minority interest arises in the estate of the deceased;

5. [*add statement as to settled land*];

6. I believe the paper writing now produced to the Court by me to contain [an official copy of] the true last will and testament of the deceased;

7. I am the residuary legatee [and devisee] named in the will, and I will:

   (i) collect, get in and administer [etc – *complete as in Form 140*: A6.145].

A6.183

178. Statement of truth for administration de bonis non to intestate's child

(*Heading as in Form 2:* A6.02)

I, C B, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, intestate; and the name of the deceased shown on the Death Certificate is A B;

2. On the. . . . . day of. . . . . 20. . . . . letters of administration of the estate of the deceased were granted at the Principal [*or* . . . . . District Probate] Registry to E B, his lawful widow, and G B one of his sons and one of the persons entitled to share in the estate;

3. G B survived his co-administrator and died on the. . . . . day of . . . . . 20. . . . . leaving part of the estate unadministered*;

4. There is no minority, and now no life interest in the estate;

5. [*add statement as to settled land*];

6. I am a son and one other of the persons entitled to share in the estate of the deceased;

7. I will:

   (i) collect, get in and administer according to law the unadministered real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – as *in Form 60*: A6.65, *but with reference to the unadministered estate*].

[Note.–

* If no estate remains unadministered, but it is necessary to constitute a personal representative for some other purpose, substitute 'without having completed the administration of the estate': the statement of truth must include a statement of the reason for the application.]

A6.184

179. Statement of truth for administration de bonis non to personal representative of spouse [civil partner]

(*Heading as in Form 2:* A6.02)

I, E F, of. . . . . make the following statement in support of this application for letters of administration:

1. A B, of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 19. . . . . /20. . . . . aged. . . . . years, domiciled in England and Wales, intestate, leaving C D, his lawful widow [*or* her lawful husband] [his/her lawful civil partner] and the only person entitled to his [her] estate; and the name of the deceased shown on the Death Certificate is A B;

2. On the. . . . . day of. . . . . 20. . . . . letters of administration of the estate of the deceased were granted at the Principal [*or* . . . . . District Probate] Registry to C D, who died on the . . . . . day of. . . . . 20. . . . . leaving part of the estate unadministered*;

3. No life or minority interest arises under the intestacy;

4. [*add statement as to settled land*];

5. I am the sole executor of the will [*or* the administrator [with will] of the estate] of C D, probate [*or* letters of administration [with will]] thereof having been granted to me at the Principal [*or*. . . . . District Probate] Registry on the. . . . . day of. . . . . 20. . . . . ;

6. I will:

   (i) collect, get in and administer according to law the unadministered estate of the deceased [etc – *complete as in Form 178*: **A6.183**].

[Notes.–

As to the circumstances in which the personal representative of the spouse/civil partner is entitled in priority to a grant de bonis non, see paras **13.35–13.37**.

* See note to Form 178: **A6.183**.]

A6.185

180. Statement of truth for administration de bonis non to personal representative of only person entitled

(*Heading as in Form 2:* **A6.02**)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, intestate, a bachelor [spinster] [widower] [widow] [surviving civil partner] [single person] without issue or parent or any other person entitled in priority to share in the estate by virtue of any enactment [*or as the case may be*] leaving E B, his [*or her*] father and the only person entitled to his [*or her*] estate; and the name of the deceased shown on the Death Certificate is A B;

2. On the. . . . . day of. . . . . 20. . . . . letters of administration of the estate of the deceased were granted at the Principal [*or* . . . . . District Probate] Registry to E B, who died on the . . . . . day of. . . . . 19. . . . . /20. . . . . leaving part of the estate unadministered*;

3. [*add statement as to minority or life interest*];

4. [*add statement as to settled land*];

5. I am the sole executor of the will [*or* administrator of the estate] of E B, probate thereof [*or* letters of administration thereof] having been granted to me at the Principal [*or*. . . . . District Probate] Registry on the . . . . . day of. . . . . 19. . . . . /20. . . . . ;

6. I will:

   (i) collect, get in and administer according to law the unadministered estate of the deceased [etc – *complete as in Form 178*: **A6.183**].

[* See note* to Form 178: **A6.183**.]

A6.186

181. Statement of truth for administration de bonis non to another person sharing on intestacy

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, intestate, a bachelor [spinster] [widower] [widow][surviving civil partner][single person] without issue or parent or any other person entitled in priority to share in the estate by virtue of any enactment [*or as the case may be*]; and the name of the deceased shown on the Death Certificate is A B;

2. On the. . . . . day of. . . . . 20. . . . . letters of administration of the estate of the deceased were granted at the Principal [*or* . . . . . District Probate] Registry to E B, a brother of the whole blood, and one of the persons entitled to share in the estate of the deceased, who died on the. . . . . day of. . . . . 20. . . . . .leaving part of the estate unadministered*;

3. [*add statement as to minority or life interest*];

4. [*add statement as to settled land*];

5. I am the nephew of the whole blood and one other of the persons entitled to share in the estate of the deceased, being the son of G B, a brother of the whole blood of the deceased, who died in his lifetime;

6. I will:

   (i) collect, get in and administer according to law the unadministered estate of the deceased [etc – *complete as in Form 178*: A6.183].

[* See note* to Form 178: A6.183.]

A6.187

182. Statement of truth for administration (will) de bonis non to residuary legatee or devisee

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . .years, domiciled in England and Wales, having made and duly executed his last will and testament dated the. . . . . day of. . . . . 20. . . . . ; and the name of the deceased shown on the Death Certificate is A B;

2. On the. . . . . day of. . . . . 20. . . . . probate of the will was granted at the Principal [*or*. . . . . District Probate] Registry, to E

F, the sole executor named in the will, who died on the. . . . . day of . . . . . 20. . . . . .intestate [*or as the case may be, showing how the chain of executorship is broken*], leaving part of the estate of the deceased unadministered*;

3. [*add statement as to minority or life interest*];

4. [*add statement as to settled land*];

5. I believe the paper writing now produced to the Court by me to contain [an official copy of] the true and original last will and testament of the deceased;

6. No residuary legatee or devisee in trust is named in the will [*or otherwise clear off any such trustee*];

7. I am the residuary legatee [and/*or* devisee] named in the will, and I will:

   (i) collect, get in and administer according to law the unadministered estate of the deceased [etc – *complete as in Form 178*: A6.183].

[* See note* to Form 178: A6.183.]

A6.188

183. Statement of truth for administration (will) de bonis non to representative of residuary legatee and devisee

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . .and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, having made and duly executed his last will and testament, dated the. . . . . day of. . . . . 20. . . . . , and thereof appointed E B and G B executors (*and residuary legatees and devisees in trust*), and G B residuary legatee and devisee; and the name of the deceased shown on the Death Certificate is A B;

2. On the. . . . . day of. . . . . 20. . . . . probate of the will was granted at the Principal [*or*. . . . . District Probate] Registry to E B and G B;

3. E B survived his co-executor and died on the. . . . . day of. . . . . 20. . . . . intestate [*or as the case may be, showing how the chain of executorship is broken*] leaving part of the estate of the deceased unadministered*;

4. [*add statement as to minority or life interest*];

5. [*add statement as to settled land*];

6. I believe the paper writing now produced to the Court by me to contain [an official copy of] the true and original last will and testament of A B;

7. I am the administrator (with will annexed) [*or as the case may be*] of the estate of G B, deceased, under a grant of administration (with will) made to me at the. . . . . Registry on the. . . . . day of. . . . . 20. . . . . ;

8. I will:

(i) collect, get in and administer according to law the unadministered estate of the deceased [etc – *complete as in Form 178*: A6.183].

[* See note* to Form 178: A6.183.]

A6.189

184. Statement of truth for administration (will) de bonis non to specific legatee or devisee or creditor

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration (with will):

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged.years, domiciled in England and Wales, having made and duly executed his last will and testament, dated the . . . . . day of. . . . . 20. . . . . , and thereof appointed E F sole executor [and residuary legatee and devisee in trust]; and the name of the deceased shown on the Death Certificate is A B;

2. On the. . . . . day of. . . . . 20. . . . . probate of the will was granted at the Principal [*or*. . . . . District Probate] Registry to E F, who died on the. . . . . day of. . . . . 20. . . . . intestate [*or as the case may be, showing how the chain of executorship is broken*], leaving part of the estate of the deceased unadministered*;

3. G H, the residuary legatee and devisee named in the will has renounced letters of administration (with will annexed) of the unadministered estate of the deceased [*or* No residuary legatee or devisee is named in the will and the deceased died a widower leaving GH, his son, the only person entitled to his undisposed-of estate, who has renounced letters of administration (with will annexed) of the unadministered estate of the deceased];

4. [*add statement as to minority or life interest*];

5. [*add statement as to settled land*];

6. I believe the paper writing now produced to the Court by me to contain an official copy of the last will and testament of the deceased;

7. I am a creditor of the deceased [*or* a legatee [*or* a devisee] named in the said will], and I will:

   (i) collect, get in and administer according to law the unadministered estate of the deceased [etc– *complete as in Form 178*: A6.183].

[* See note* to Form 178: A6.183.]

A6.190

185. Statement of truth for administration caeterorum to only person entitled to the estate, after limited administration

(*Heading as in Form 2:* A6.02)

I, C D, of. . . . . make the following statement in support of this application for letters of administration:

1. A B of. . . . . deceased, was born on the. . . . . day of . . . . . 19. . . . . and died on the. . . . . day of. . . . . 20. . . . . aged. . . . . years, domiciled in England and Wales, intestate, a bachelor [spinster] [widower] [widow] [surviving civil partner] [single person] without issue or any other person entitled in priority to share in the estate by virtue of any enactment; and the name of the deceased shown on the Death Certificate is A B;

2. On the. . . . . day of. . . . . 20. . . . . letters of administration of the estate of the deceased, limited to prosecuting [*or* defending] a claim in the Queen's Bench Division [*or as the case may be*] were granted at the Principal [*or*. . . . . District Probate] Registry to G H, under and by virtue of s 116 of the Senior Courts Act 1981 [*or as the case may be*];

3. I am the mother and only person entitled to the estate of the intestate;

4. No minority or life interest arises under the intestacy;

5. [*add statement as to settled land*];

6. I will:

   (i) collect, get in and administer according to law the rest of the real and personal estate of the deceased;

   (ii) when required to do so by the Court, exhibit in the Court a full inventory of the estate and render an account thereof to the Court; and

   (iii) when required to do so by the High Court, deliver up to that Court the grant of letters of administration;

[etc – *as in Form 60*: A6.65, *but with reference to the value of the remainder of the estate*].

Order

A6.191

186. Order for grant after caveat

(*Heading as in Form 1*:A6.01)

Upon hearing. . . . . [and by consent,] it is ordered that probate of the will dated. . . . . [*or* letters of administration [with will] of the estate] of A B, of. . . . . , the deceased herein, be granted to. . . . . , the sole executor named in the will [*or as the case may be*], if entitled thereto.

And that on application for a grant by. . . . . Caveat No. . . . . entered on the. . . . . day of. . . . . 20. . . . . do cease to have effect.

Dated the. . . . . day of. . . . . 20. . . . . .

(Signed)

District Judge/Registrar.

Powers of attorney

A6.195

190. Power of attorney where further grant to attorney in his representative capacity is required

(*Heading as in Form 1*:A6.01)

A B of. . . . . died on the. . . . . day of. . . . . 20. . . . . , intestate a widow, leaving D B, her son/daughter and the only person entitled to her estate;

C B of. . . . . died on the. . . . . day of. . . . . 20. . . . . , having made and duly executed his last will and testament wherein he named no executor or residuary legatee or devisee in trust, but named A B as residuary legatee and devisee:

I, D B of. . . . . do hereby nominate, constitute and appoint E F of . . . . . to be my lawful attorney for the purpose of obtaining letters of administration of the estate of A B and for the purpose of obtaining (as administrator of the estate of A B) letters of administration (with will) of the estate of C B deceased, both grants to be for my use and benefit and limited until further representation be granted in the estate of A B:

And I hereby promise to ratify and confirm whatever my attorney shall lawfully do or cause to be done in the premises.

In witness whereof I have hereunto set my hand this. . . . . day of . . . . . 20. . . . . .

Signed as a deed and delivered

by D B in the

presence of. . . . . .

(Witness's name, address and occupation)

Pre-lodgement enquiry

A6.195A

190A. Pre-lodgement enquiry

In the High Court of Justice Family Division

The Principal (*or*. . . . . District Probate) Registry

In the estate of . . . . . deceased

Date of Death:

Country or state in which deceased died domiciled:

Case History: (Set out factual matters relating to the deceased and surrounding the proposed application for a grant of representation. State the nature of the difficulty or complexity that arises.)

Direction or order required:

The following documents are enclosed:

(Itemise all documents or supporting papers enclosed, specifying whether originals or copies; the following list is not comprehensive.)

— Will and codicil

— Official copies of orders of declaration of Court of deceased's domicile

— Certificate of Inheritance

— Translation of any wills or papers not in English or Welsh

— Court orders – Court of Protection; parental responsibility and residence orders

— Medical certificate

— Former grants

— Draft statement of truth/affidavit

— Other (*specify*)

Subpoenas

A6.205

200. Subpoena to bring in a testamentary document

(*Heading as in Form 1:* A6.01)

Elizabeth the Second, by the grace of God, of the United Kingdom of Great Britain and Northern Ireland and of our other realms and territories Queen, Head of the Commonwealth, Defender of the Faith.

To. . . . . of. . . . . .

It appears by an affidavit of. . . . . sworn on the. . . . . day of..and filed in the Principal Registry of the Family Division of our High Court of Justice [*or* in the. . . . . District Probate Registry], that a certain document, being or purporting to be testamentary, namely [*here describe the document*], bearing date the. . . . . day of. . . . . 20. . . . . of A B, deceased, late of . . . . . who died on the. . . . . day of. . . . . 20. . . . . is

now in your possession, custody or power:

We command you that, within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave with the proper officer of the Principal Registry of the Family Division [*or* in the. . . . . District Probate Registry] aforesaid the said document now in the possession, custody or power of you the said. . . . . :

Witness, the Right Honourable [. . . . .] Lord High Chancellor of Great Britain, the. . . . . day of. . . . . 20. . . . . .

(Signed)

District Judge/Registrar.

Subpoena issued by. . . . . of. . . . . solicitor for

[*To be indorsed prominently on the front of the copy to be served:*] You the within-named. . . . . are warned that disobedience to this subpoena by the time therein limited would be a contempt of court punishable by imprisonment.

[*Also to be indorsed on the copy to be served:*]

1. N.B.– The Principal Registry of the Family Division of the High Court of Justice is at . . . . . and the proper officer referred to is the Probate Manager [*or* The. . . . . District Probate Registry is at . . . . . and. . . . . the proper officer referred to is the .Probate Manager].

2. If you the said. . . . . deny that the testamentary document(s) referred to is/are in your possession, custody or power, you may swear an affidavit to that effect and file it in the (issuing) registry. (*Registrar's Direction (1989) 23 June.*)

[For form of affidavit to lead subpoena, see Form 35: A6.40.]

[For subpoena to bring in a testamentary document in a probate claim, see CP51: A6.261.]

A6.206

201. Order for examination of person with knowledge of testamentary document

(*Heading as in Form 1:* A6.01)

Elizabeth the Second, [etc *as in Form 200:* A6.205]:

To. . . . . of

We command you to appear before the [Right] Honourable Sir. . . . . Knight, the President [or Judge] of the Family Division of our High Court of Justice at the Royal Courts of Justice, Strand, London WC2 on the . . . . . day of. . . . . 20. . . . . at. . . . . o'clock, to testify the

truth according to your knowledge [*or* to answer any question to be put to you], relating to a certain document, being or purporting to be testamentary, namely [*here describe the document, and give its date as accurately as possible*], of which said document there are reasonable grounds for believing that you have knowledge.

Witness the Right Honourable [Lord Chancellor], the. . . . . day of. . . . . 20. . . . . .

(Signed)

District Judge/Registrar.

[*Name and address of solicitor.*]

[Note.–

To be indorsed prominently on the front of the copy to be served:] You the within-named . . . . . are warned that disobedience to this order would be a contempt of court punishable by imprisonment.

Summonses

A6.207

202. Summons (general form) (Family Division)

(*Heading as in Form 1:* A6.01)

Let all parties concerned attend one of the judges of this Division in Chambers at the Royal Courts of Justice [*or* one of the district judges at the Principal Registry of the Family Division, at . . . . . [*or* the District Registrar at the . . . . . District Probate Registry at. . . . .], on the. . . . . day of. . . . . 20. . . . . at. . . . . o'clock, on the hearing of an application on the part of [*or* to show cause why. . . . .].

Dated the. . . . . day of. . . . . 20. . . . . .

This summons was taken out by. . . . . of. . . . . solicitor for the. . . . . .

To. . . . . [solicitor for] the. . . . . .

A6.208

203. Summons for discontinuance of caveat after appearance to warning (Family Division)

(*Heading as in Form 1:* A6.01)

Let E F attend one of the district judges at the Principal Registry of the Family Division of the High Court of Justice, at . . . . . [or the registrar at the District Probate Registry at . . . . .], on the. . . . . day of . . . . . 20. . . . . at. . . . . o'clock, to show cause why the caveat

no. . . . . entered on the. . . . . day of. . . . . 20. . . . . in this matter should not be discontinued, and why probate of the will dated the . . . . . day of. . . . . 20. . . . . [*or as the case may be*] of A B of . . . . . the deceased herein, should not be granted to C D, the sole executor named in the will [*or as the case may be*], if entitled thereto, and that on application for a grant by C D the caveat do cease to have effect.

This summons was taken out by. . . . . of. . . . . solicitor for the. . . . . .

To. . . . . [solicitor for] the. . . . . .

[Note.–

If the application to discontinue the caveat is made by consent, the summons may be issued in the district probate registry where the application for the grant has been, or is to be, made for hearing by the registrar at that registry.]

Warning

A6.209

204. Warning to caveat NCPR SI 1987/2024 r 44(5))

In the High Court of Justice

The . . . . . Registry [that in which the caveat index is maintained]

To . . . . . of . . . . . a party who has entered a caveat in the estate of . . . . . deceased.

You have fourteen days (starting with the day on which this warning was served on you):

(i) to enter an appearance either in person or by your solicitor or probate practitioner, at the [*name and address of the registry in which the caveat index is maintained*], setting out what interest you have in the estate of the above-named . . . . . of . . . . . deceased contrary to that of the party at whose instance this warning is issued; or

(ii) if you have no contrary interest but wish to show cause against the sealing of a grant to such party, to issue and serve a summons for directions by a district judge of the Principal Registry or a registrar of a district probate registry.

If you fail to do either of these, the court may proceed to issue a grant of probate or administration in the estate notwithstanding your caveat.

Dated the . . . . . day of . . . . . 20. . . . . .

Issued at the instance of

[Here set out the name and interest (including the date of the will, if any, under which the interest arises) of the party warning, the name of his solicitor and the address for service. If the party warning is acting in person, this must be stated.]

Registrar

[Note.–
The caveat index is currently maintained at the Leeds District Probate Registry.]

PART II – FORMS FOR USE IN PROBATE CLAIMS

A6.210

CP0A. Heading for all claims issued in the Business and Property Courts

In the High Court of Justice. . . . . Claim No. [PT[1]] – [*year*] – [*number*]

Business and Property Courts of England and Wales

Property, Trusts and Probate List (Ch)

[Business and Property Courts in [. . . . .][2]

Property, Trusts and Probate List (Ch)

[In the County Court at . . . . . hearing centre][3]

In the Estate of A B, deceased (Probate)

Claimant	C D
Defendant	E F

[Notes.–

[1] PT is the prefix for claims issued in London in the Property, Trusts and Probate List after 2 October 2017.

[2] This must be one of the B&PCs District Registries.

[3] This must be a hearing centre where there is also a Chancery District Registry, or be the county court at Central London (Chancery List).

A6.210A

CP0B. Heading for claims issued outside London in a Chancery District Registry which is not one of the B&PCs District Registries

In the High Court of Justice. . . . . Claim No. [. . . . .]

Chancery Division

[. . . . . District Registry]

In the Estate of A B, deceased (Probate)

Claimant	C D

Defendant E F

Affidavits and witness statements

A6.214A

CP4A. Handing out Testamentary Documents for examination1 (Form CH27)[1]

(*Heading:* A6.210)

UPON the application of the [*party*] by application notice dated [. . . . .]

AND UPON HEARING [. . . . .] for the Claimant and [. . . . .] for the Defendant

AND . . . . . [*name*], the Solicitors for the [*party*] having undertaken (1) that they will on or before [*date*] or earlier if so directed by this Court return the testamentary documents specified in the attached Schedule to Masters' Appointments, Ground Floor, Rolls Building, Fetter Lane, London EC4A 1NL and (2) that until the specified testamentary documents are returned as stated above they will remain in the possession of [*name*] and [*name*] who are handwriting experts

IT IS ORDERED that

1. the testamentary documents be handed out to [*name*] the Solicitors for the Claimant/Defendant for the purpose of handwriting analysis being examined by microscope and immersion tests
2. an officer of the Chancery Division attend [*name*] at [*address*] and produce to him for the purpose of handwriting analysis the testamentary documents specified in the attached Schedule
3. [*name*] return the specified testamentary documents to Masters' Appointments, Ground Floor, Rolls Building, Fetter Lane, London EC4A 1NL on or before [*date*] or earlier if so directed by the Court
4. the costs of the Application shall be costs in the case
5. this order shall be served by the [*Claimant*] on the [*Defendant*]

Service of the order

The court has provided a sealed copy of this order to the serving party:

ABC Solicitors LLP at [*address*] [*reference*]

SCHEDULE

[*Identify the testamentary documents the subject of the order*]

[1] Note CPR 57.5(5) provides that except with the permission of the court, a party is not allowed to inspect the testamentary documents or written evidence lodged or filed by any other party until he himself has lodged his testamentary document and filed his evidence.

Notices

A6.218

CP8. Notice of claim to non-parties (CPR 19.8A) (based on Form CH7)

(*Heading:* A6.210)

TAKE NOTICE THAT:

(1) Proceedings have been commenced in the Chancery Division of the High Court of Justice in accordance with the attached claim form.

(2) You are or may be one of the persons who are interested in the estate to which the claim relates.

(3) You may within 14 days after service of this notice acknowledge service of the claim form by completing the attached acknowledgment and handing it in at, or sending it by post to the Issue Section, Ground Floor, The Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL [*or* . . . . . District Registry] and thereby become a party to the claim.

(4) If you do not acknowledge service of the claim form you will be bound by any judgment given in the proceedings as if you were a party to them.

Dated

To

Signed

Orders

A6.220

CP10. Order in probate action involving compromise (Form CH26)

(*Heading:* A6.210)

UPON the application of [. . . . .]

by application notice dated [. . . . .]

AND upon hearing [. . . . .] for the [. . . . .] and for the [. . . . .]

AND upon reading the written evidence filed

AND UPON [probate of the alleged last will and testament of the above named deceased bearing date. . . . . having been granted on. . . . . to. . . . .] [*or* letters of administration of the estate

of the above named deceased having been granted on. . . . . to . . . . .]

AND UPON the parties having agreed the terms set out in the attached schedule

[[And the Court being satisfied

(1) that consents by or on behalf of every relevant beneficiary (as defined by s 49, Administration of Justice Act 1985) have been given to the making of this order hereinafter made and

(2) that the said order is for the benefit of those relevant beneficiaries who are children

The Court pronounces for [against] the force and validity of the last will and testament of the above named deceased a completed copy of which is the script bearing the date [. . . . .] being the exhibit marked [. . . . .] referred to in the [witness statement] [affidavit] of testamentary documents of [. . . . .] dated [. . . . .] and against the force and validity of the last will and testament of the above named deceased a completed copy of which is the script bearing the date [. . . . .] being the exhibit marked [. . . . .] referred to in the [witness statement] [affidavit] of testamentary documents of [. . . . .] dated [. . . . .]]]

AND it is ordered that

(1) this claim [and counterclaim] be discontinued

(2) the said probate [letters of administration] be revoked

(3) the terms set out in the Schedule be carried into effect

(4) [probate of the will] [and. . . . . codicil] [letters of administration of the estate] of the above named deceased late of [. . . . .] be granted to the claimant/the defendant [. . . . .] the executor named therein [*if entitled thereto – see Note*]

(5) on application for such a grant the caveat numbered [. . . . .] and entered on [. . . . .] do if still subsisting cease to have effect

(6) there be assessed if not agreed

  (a) the costs of this claim [and counterclaim] of the claimant/defendant [. . . . .] the executor named in the said will

  (b) the costs of this claim [and counterclaim] of the claimant/defendant [. . . . .] and [. . . . .]

(7) that the costs specified in (a) and (b) above be paid out of the estate of the said deceased in the due course of administration.

Service of the order

The court has provided a sealed copy of this order to the serving party:

ABC Solicitors LLP at [*address*] [*reference*]

Schedule

[*Set out the agreed terms*]

[Note.–

The words 'if entitled thereto' must be included unless it is proved that the named person is solely entitled without the exercise of any discretion under the Non-Contentious Probate Rules or unless all persons to whom a grant could be made are before the Court ([1972] 1 WLR 1217).]

Text in [[ ]] is only applicable in cases where the court is being asked to pronounce for or against the validity of one or more wills under s 49 of the Administration of Justice Act 1985. Section 49 permits a probate claim to be compromised without a trial if every 'relevant beneficiary', as defined in that section, has consented to the proposed order. It is only available in the High Court.

A6.223A

CP13A. Revocation/refusal of revocation of grant of probate (Form CH28)

(*Heading:* A6.210)

UPON the application of the [*party*] by application notice dated [*date*]

UPON THE TRIAL of this Claim and Counterclaim

AND UPON HEARING [*names of the advocates and/or those given permission to address the court*] for the Claimant / the Defendant

AND UPON READING [Probate of the alleged last Will and Testament of the deceased dated [*date*] granted on [*date*] to [*name*] *or* Letters of Administration of the estate of the deceased granted on . . . . . [*date*] to . . . . . [*name*]]

THE COURT PRONOUNCES FOR the force and validity of the Last Will and Testament of the deceased dated [*date*]

AND THE COURT PRONOUNCES AGAINST the force and validity of the alleged Last Will and Testament of the deceased dated [*date*]

AND IT IS ORDERED that

(1) the Probate / Letters of Administration be [revoked] [handed to the [party] or [his] Solicitors]

(2) this Claim and Counterclaim be dismissed

(3) there be a detailed assessment if not agreed of

  (a) the costs of this Claim and Counterclaim of the Claimant / Defendant / Executor named in the Will dated [*date*]

  (b) the costs of this Claim and Counterclaim of the Claimant / Defendant

  that the costs specified in (a) and (b) shall above be paid out of the estate of the deceased in the due course of administration

  that the Claimant / Defendant do pay to the Claimant / Defendant [his] costs of this Claim and Counterclaim such costs to be subject to detailed assessment if not agreed [*delete as required*]

(4) this order shall be served by the Claimant on the Defendant

Service of the order

The court has provided a sealed copy of this order to the serving party:

ABC Solicitors LLP at [*address*] [*reference*]

A6.223B

CP13B. Order pronouncing for some words, against others (Form CH29)

(*Heading:* A6.210)

UPON the application of the [*party*] by application notice dated [*date*]

AND UPON HEARING [*names of the advocates and/or those given permission to address the court*] for the Claimant / the Defendant

AND it appearing from a Witness Statement / an Affidavit of the Claimants that the testamentary documents of which they had knowledge and which they produce in this Claim included [three] paper writings now remaining in Court each bearing the date [*date*]

One ("Testamentary document A") beginning with the words " ", another ("Testamentary document B") beginning with the words " " and a third ("Testamentary document C") beginning with the words " " [*amend as appropriate*]

THE COURT PRONOUNCES FOR the force and validity of the last Will and Testament of the deceased late of [*address*] dated [*date*] and of the Codicil of the last Will and Testament being so much of Testamentary document A and Testamentary document B as is mentioned below that is to say the whole of Testamentary document A except the following:

the words beginning with " " down to and including the words " " [*as appropriate*]

AND THE COURT PRONOUNCES AGAINST the force and validity of [*as appropriate*]

(1) the words beginning with " " down to and including " "

(2) the whole of Testamentary document B except the words " " and the signature of the deceased and its attestation and

(3) the whole of Testamentary document C

AND IT IS ORDERED that this order shall be served by the Claimant on the Defendant

Service of the order

The court has provided a sealed copy of this order to the serving party:

ABC Solicitors LLP at [*address*] [*reference*]

Statements of case

III.

Defences

A6.254

CP44. Claimant propounds privileged will: Defendant pleads claimant was not in actual military service and propounds earlier will

(*Heading:* A6.210)

Defence and Counterclaim

The defendant says that:

1. The alleged will dated the. . . . . day of. . . . . 20. . . . . was not executed in accordance with the provisions of the Wills Act 1837.

Particulars

[*As in Form CP32*: A6.242, *or as the case may be.*]

2. The said letter is not a will.

Particulars

The said letter is not in the form of a will and was not intended to take effect as such, as clearly appears from the language thereof.

3. The deceased was not in actual military service at the time the said letter purports to have been written.

Particulars

The said letter was written before the outbreak of war and before any order for mobilisation had been issued.

4. That the deceased was not at the time the said letter purports to have been written domiciled in England and Wales.

Particulars

The deceased was born in Scotland of Scottish parents. His domicile of origin was in Scotland, and he at all times retained such domicile.

And by way of counterclaim:

5. The defendant is the surviving executor named in the true last will and testament dated the. . . . . day of. . . . . 20. . . . . of the said deceased.

The defendant counterclaims:

1. That the Court shall pronounce against the force and validity of the said alleged will dated the. . . . . day of. . . . . 20. . . . . .

2. That the Court shall pronounce for the force and validity of the said true last will and testament dated the. . . . . day of. . . . . 20. . . . . in sclemn form of law.

Index

A

Access to Health Records Act 1990
text, A1.458–A1.459
Action, grant limited to an
cessate grants, and, 13.105
introduction, 11.374–11.378
practice, 11.379
Ad colligenda bona, grant
applications without notice, and, 25.182, 25.186
practice, 11.384–11.385
subsequent application for full grant, 11.387
Addition of limitation
amendment of grant, and, 16.14
Addresses
amendment of grant, and, 16.09
executor's statements of truth, in
deponent, 4.110–4.115
testator, 4.143–4.148
Administration de bonis non
introduction, 13.34
Administration pendente lite
form of order, 11.365–11.366
lodgment of papers, 11.367
practice, 11.371
subsequent application for full grant, 11.370
Administration pending determination of probate claim
generally, 2.05
Administration with will de bonis non
codicils, and, 13.25
inheritance provision, and, 13.28–13.29
introduction, 13.12
trust corporations as
consents required, 9.39
Administrator with will
Public Trustee as, 9.60
trust corporations as
consents required, 9.37
Public Trustee, and, 9.60
Admissibility of wills
domicile in England & Wales, 3.26
Adoption and Children Act 2002
generally, A1.498–A1.537
Adoptive parents
grants for use of minors, and, 11.155–11.164
Affidavits
execution, of
witness, by, 3.122
introduction, 22.02
online applications for grants of representation, 22.05A
rules, 22.05A–22.10
swearing, 4.230
Affirmations
introduction, 22.02
Age of testator
executor's statements of truth, in, 4.175
privileged wills, and, 3.340
Alias
executor's statements of truth, in, 4.130
Alternative business structures
executors, as, 4.49
Amendment of grant
addition of limitation, 16.14
codicils subsequent to that of will, 16.19
errors
deceased, as to, 16.04
grantee, as to, 16.11
errors as to deceased
address, 16.09
date of death, 16.04
surname, 16.04
settled land grants, and
generally, 10.136
Amount of estate
calculation
assets, 8.117–8.119
liabilities, 8.132–8.133
lifetime gifts, 8.115
grant *de bonis non*, and, 13.66
probates, and
civil servants' gratuities, 4.224
community of property, 4.221
inter vivos gifts, 4.225–4.227
introduction, 4.204–4.214
joint property, 4.225–4.227
nil estate, 4.218
nominated property, 4.225–4.227

Amount of estate – *cont.*
probates, and – *cont.*
settled property, 4.225–4.227
unascertained, 4.217
Appearance to caveats
contrary interests, 23.67
effect, 23.54
method of entry, 23.60
subsequent proceedings, 23.71
Applications
inheritance provision orders, and
introduction, 16.50
Principal Registry, in, 16.51–16.52
introduction, 25.03
refusal of probate, and, 3.140
Applications by summons
caveats, and, 25.221–25.223
practice
form of order, 25.252
hearing times, 25.245
issue, 25.233
reference to Hansard, 25.238
Applications without notice
ad colligenda bona, for
grant, 25.182–25.186
joinder of co-administrator, and, 7.19
original will not available,
where, 25.82—25.94
pass over prior rights, for order to, 25.96
refusal of probate, and, 3.140
swear to death, for leave to, 25.20–25.20B
Appointee of court, grants to
for use of persons under disability, 11.291–11.292
Appointment of executors
conditional appointment, 4.14—4.15
Attestation
generally, 3.107–3.108A
Attorneys, grants to
companies, of, 11.94
filing of power, 11.79
form of power
generally, 11.42—11.44
form of statements of truth, 11.82
jointly with second person
generally, 7.31
non-trust corporations, of, 11.94
one of executors, to, 11.89
sole executor, to, 11.83
some of executors, to, 11.89
surviving executor, to, 11.83
Australia
resealing colonial grants, and, 18.85
Averments in particulars of claim
forfeiture, 33.72–33.75

B

Beneficially entitled person
grant where deceased died domiciled abroad, and, 12.104
Bring a testamentary paper into registry, order to
common form business, and
subpoena, 25.194
Bundles for trial
generally, 37.26
Burden of proof
want of knowledge and approval, and, 34.64–34.67
Business and Property Courts
Civil Procedure Rules
Practice Directions, A2.228—A2.235
Rule, A2.225—A2.227
Practice Directions
general provisions, A2.228—A2.232
Shorter and Flexible Trials Schemes, A2.233—A2.235
venue for proceedings, 29.02A

C

Caetorum, grant
generally, 11.333–11.336
practice, 11.338
Capital transfer tax (CTT)
rates, A4.10
Case management
bundles, 37.26
directions, 37.07–37.09
pre-trial review, 37.21–37.25
reading lists, 37.27–37.28
skeleton arguments, 37.27–37.28
trial timetable, 37.20
Caveats
appearance to
contrary interests, 23.67
effect, 23.54
method of entry, 23.60
persons appearing, 23.62
subsequent proceedings, 23.71
application by summons, and, 25.222
definition, 23.01
duration
commencement of claim, 23.17
extension, 23.28—23.29
generally, 23.15
entry
duration, 23.17
method, 23.18
place, 23.18

Caveats – *cont.*
entry – *cont.*
restriction on further, 23.33
extension, 23.28—23.29
fees
generally, 23.26
non-appearance, 23.52
form
generally, 23.22
precedent, A6.46
indexation, 23.23–23.24
non-appearance to warning
fees, 23.52
restriction on further, 23.33
searches, and
generally, 23.36
warning
generally, 23.39
method, 23.41
Cessate grants
attorneys, and, 11.106
death of attorney, and, 13.102
death of executor for life, and, 13.88–13.90
grant limited to legal proceedings, and, 13.105
incapable executor, and, 13.93–13.96
lost wills, and, 13.87
minors, and, 13.97–13.99, 13.106
practice, 13.117
Chain of executorship
abeyance, in, 4.87
power reserved to another, 4.86
Child en ventre sa mère
administration, and, 6.127
Children Act 1989
definitions, A1.451
general provisions
care and supervision orders, A1.445
Citations
accept grant, to
generally, 24.04–24.19
forms, A6.48–A6.53
postal application, 24.57
procedure
postal application, 24.57
propound a will, to
generally, 24.36
refuse grant, to
generally, 24.04–24.19
types
accept grant, to, 24.04–24.19
propound a will, to, 24.36
refuse grant, to, 24.04–24.19
Civil partnerships
dissolution order, 6.135
Civil partnerships – *cont.*
jurisdiction
Regulations 2005, A2.133–A2.143
letters
letters of administration, and
generally, 6.33A, 6.124
grant of, and, 6.97–6.101, 6.112—6.114
nullity order, 6.137
recognition of judgments
revocation of wills, and, 3.42A
Civil Procedure Rules
Business and Property Courts
Practice Directions, A2.228—A2.235
Rule, A2.225—A2.227
Practice Directions
Business and Property Courts, A2.228—A2.232
Shorter and Flexible Trials Schemes, A2.233—A2.235
text, A2.166–A2.174
Claim forms
Business and Property Courts, and, 29.02A
costs management, 29.19
introduction, 29.02
place of issue, 29.02
statements of interest
considerations for settlement, 29.14–29.15
form, 29.11
representative capacity, by person in, 29.12
title of claim, 29.06
Claimants
propounding against will
person opposed and wishing to bring claim, 27.13, 27.15
person opposed to will, 27.10
Clearance letters
generally, 8.221–8.222
Clearing off
probates, and, 4.199–4.203
Codicils
amendment of grant, and, 16.19
revocation, 3.172
Colonial grants, resealing of
applications
postal applications, 18.66
Australia, 18.85
change of status, and, 18.37
class of grantee, 18.51
copy of will, 18.60
evidence of domicile, 18.42
grant *de bonis non*, and, 13.47
New Zealand, 18.81–18.84

Colonial grants, resealing of – *cont.*
postal applications
generally, 18.66
relevant documents, 18.55
relevant territories, 18.39
Commencement of proceedings
Business and Property Courts, and, 29.02A
Commissioners for Oaths
England & Wales, 22.30
Common form business
fees, 1.54
introduction, 1.30–1.41
Rules, 1.49–1.50
Commorientes
death of spouses intestate after 1952, 14.60
disasters, and, 14.54
evidence, 14.51–14.52
Community of property
amount of estate, and, 4.221
grant where deceased died domiciled abroad, and, 12.137
Companies
executors, as
capacity, 4.195
generally, 4.39
grants to attorney, and, 11.94
Conditional will
generally, 3.227
Consents
forms, A6.57
Consular officers, grants to
practice, 11.114–11.115
Contemplation of marriage
validity of wills, and, 3.51
Content of will not known
original will not available, and, 25.85
Contentious business
affidavits, A6.214A
associated actions
inheritance provision, 41.19, 41.41
introduction, 27.41
missing persons, 41.48
presumption of death, 41.42–41.47
rectification of will, 41.01
removal of personal representative, 41.12, 41.16
avoidance of gifts to attesting witnesses or spouses, 34.103–34.104
bundles, 37.26
case management
bundles, 37.26
directions, 37.07–37.09
pre-trial review, 37.21–37.25
reading lists, 37.27–37.28
Contentious business – *cont.*
case management – *cont.*
skeleton arguments, 37.27–37.28
trial timetable, 37.20
categories of claims
interest actions, 27.22
revocation of grants, 27.29
claim form
generally, 29.02
title, 29.06
counterclaim, 34.04
defences
fraudulent calumny, 34.52A
incapacity, 34.28
defendants, 28.07
directions, 37.07–37.09
disclosure
DNA testing, 36.27
general rules, 36.00
DNA testing, 36.27
estimate of duration, 39.06
final speeches, 39.15
forms
affidavits, A6.214A
orders, A6.220–A6.223B
refusal of grant of probate, A6.223A
revocation of grant of probate, A6.223A
witness statements, A6.214A
hearings
estimate of duration, 39.06
final speeches, 39.15
opening speeches, 39.09
time limits, 39.08
witness statements, 39.10
inheritance provision
generally, 41.19
introduction, 27.41
time limits, 41.35–41.36
interest actions, 27.22
interim applications
summary judgments, 38.43
issue of claim form
place of issue, 29.02
title of claim, 29.06
jurisdiction of court
High Court, 26.16, 26.18
missing persons, 41.48
opening speeches, 39.09
orders, A6.220–A6.223B
particulars of claim, averments in forfeiture, 33.72–33.75
parties
defendants, 28.07
introduction, 28.01–28.03
pre-action steps, 26.31

Contentious business – *cont.*
pre-trial review, 37.21–37.25
presumption of death
applications, 41.42
effect of declaration, 41.45
form of declaration, 41.44
jurisdiction, 41.43
procedure, 41.46
register of presumed deaths, 41.47
procedural rules
pre-action steps, 26.31
reading lists, 37.27–37.28
rectification of wills
generally, 41.01
introduction, 27.41
refusal of grant of probate, A6.223A
removal of personal representative
generally, 41.12, 41.16
introduction, 27.41
revocation of grants
administration, 27.27
administration with will, 27.26
form, A6.223A
lodgment of grant, 27.29
probates, 27.26
skeleton arguments, 37.27–37.28
statements of case
initial disclosure, 32.08
statement of interest, 32.07
statements of interest
considerations for settlement, 29.14–29.15
form, 29.11
representative capacity, by person in, 29.12
substitution of personal representative, 27.41
summary judgments, 38.43
testamentary documents
generally, 31.01
inspection, 31.15
title of claim, 29.06
trial
estimate of duration, 39.06
final speeches, 39.15
opening speeches, 39.09
time limits, 39.08
witness statements, 39.10
trial timetable, 37.20
witness statements
forms, A6.214A
generally, 39.10
Copies of will for grant
generally, 4.232
Copies of wills and grants
generally, 21.17
Copies of wills and grants – *cont.*
office, 21.19
Corrective accounts
clearance letters, 8.221–8.222
generally, 8.219
pre-owned assets, 8.229
Costs management
claim forms, and, 29.19
family provision claims, and, 41.41
Costs of contentious business
beneficiary caused litigation, where, 40.30
circumstances lead reasonably to an investigation, where, 40.35
opposition to grant (unsuccessful parties)
beneficiary caused litigation, where, 40.30
circumstances lead reasonably to an investigation, where, 40.35
opposing party gives notice to cross-examine, 40.37
Counterclaim
contentious business, and, 34.02–34.04
Courts and Legal Services Act 1990
general provisions, A1.469
Crown
entitlement to grant, and, 6.332

D

Damaged wills
limited grants, and, 11.28
Date of birth
executor's statements of truth, in, 4.140–4.141
Date of death
amendment of grant, and, 16.04
executor's statements of truth, in
generally, 4.151
HM Forces, of, 4.158
introduction, 4.140–4.141
order for leave to swear, if, 4.154–4.155
Presumption of Death Act 2013, and, 4.157
seamen, of, 4.160
unknown, if, 4.152
De bonis non, grant
practice
amount of estate, 13.66
engrossment of will, 13.73
fees, 13.80
foreign will, 13.71
form of statements of truth, 13.60–13.65
lodgment of papers, 13.77
marking of will or copy, 13.67–13.70

Death of attorney
cessate grants, and, 13.102
Death of executor for life
cessate grants, and, 13.88–13.90
Deceased died domiciled out of England & Wales, grant where
applications
prior to application for grant, 12.128
simultaneously with application for grant, 12.129
beneficially entitled person, to, 12.104
community of property, 12.137
domicile, and
choice, of, 12.07
origin, of, 12.04
statement of, 12.13
European certificate of succession, 12.107
foreign language wills, and, 12.71
form of statements of truth, 12.131–12.135
immoveable estate in England & Wales
entitlement to grant, 12.120
inheritance tax, and, 12.150
law of domicile, and
generally, 12.31
life interests, and, 12.138
minority interests, and, 12.138
Northern Ireland, in, 12.23
procedure on proof of wills
foreign language, 12.71
Scotland, in, 12.23
second grantee, and, 12.141
settling papers, and, 12.146
Defences
fraudulent calumny, 34.52A
incapacity
nature of the inquiry by court, 34.32
testamentary capacity, 34.28
precedents
fraudulent calumny, 34.52A
incapacity, 34.28
testamentary capacity, 34.28
undue influence
exclusions, 34.48
meaning, 34.47
summary of cases, 34.47
want of due execution
forgery, 34.12
notice under CPR 57.7(5), 34.13
want of knowledge and approval
burden of proof, 34.64–34.67
Defendants
contentious business, and, 28.07
Deponent's details in grant
address, 4.110–4.115
Deponent's details in grant – *cont.*
affidavit of identity, 4.99–4.104
change of name, 4.105–4.109
name, 4.96–4.98
Deposit of wills
records, 20.17
Destruction of will
limited grants, and, 11.16
Directions
contentious business, and, 37.07–37.09
Disasters, death in
commorientes, and, 14.54
Disclaimers
forms
interest under intestacy, A6.57A
interest under will, A6.57B
letters of administration with will annexed, and, 5.99
Disclosure
DNA testing, 36.27
general rules, 36.00
District judge of Principal Registry
applications
introduction, 25.03
District probate registrars
applications
introduction, 25.03
powers, 2.18–2.19
District probate registries
jurisdiction
administration pending determination of probate claim, 2.16
generally, 2.15
location, 2.08–2.09
powers, 2.18–2.19
Divorce
leave to swear to death, and, 25.37
DNA testing
disclosure, and, 36.27
Domicile
choice, of, 12.07
executor's statements of truth, in, 4.176
origin, of, 12.04
resealing colonial grants, and, 18.42
statement of, 12.13
Double probate
form of statements of truth, 13.129
marking of will, 13.130
practice, 13.128
Duchy of Cornwall
entitlement to grant, 6.332
Duchy of Lancaster
entitlement to grant, 6.332

E

Election
redemption of life interest, for
introduction, 16.36
spouse, by.
redemption of life interest, for, 16.36
Enduring powers of attorney
Regulations 2007, A2.145–A2.153
Enemy action, damage due to
original will not available, and
generally, 11.28
Entry of caveat
duration, 23.17
method, 23.18
place, 23.18
restriction on further, 23.33
Errors in grant, amendment of
deceased, as to
address, 16.09
date of death, 16.04
surname, 16.04
grantee, as to, 16.11
Estimate of duration
contentious business, and, 39.06
European certificate of succession
grant where deceased died domiciled abroad, and, 12.107
Evidence of death
commorientes, and, 14.51–14.52
Evidence of execution
affidavits
witness, by, 3.122
Ex parte applications
ad colligenda bona, for
grant, 25.182—25.186
joinder of co-administrator, and, 7.19
original will not available, where, 25.82—25.94
pass over prior rights, for order to, 25.96
swear to death, for leave to, 25.20–25.20B
Execution of will (after 1963)
attestation
generally, 3.107–3.108A
duty of practitioners to check, 3.95
evidence of
affidavit by witness, 3.122
presence of witness, 3.102
signature
mark, by, 3.75
witnesses
position of signature, 3.113
presence, 3.102
Execution of will in accord with law of place of execution
formalities, 3.417
Executors
alternative business structures, 4.49
appointees
alternative business structures, 4.49
companies, 4.39
executor according to the tenor, 4.21A
firms, 4.41
limited liability partnership, 4.47
official, 4.51
partnership, 4.47
solicitors' firm, 4.41–4.47
appointment
conditional, 4.14–4.15
capacity, 4.194
chain of executorship, and
abeyance, in, 4.87
power reserved to another, 4.86
companies, 4.39
conditional appointment, 4.14–4.15
executor according to the tenor, 4.21A
firms, 4.41
limited liability partnership, 4.47
official, 4.51
partnership, 4.47
reservation of power, 4.55–4.56
settled land, and
generally, 4.63
solicitors' firm, 4.41–4.47
transmission of executorship, and
abeyance, in, 4.87
power reserved to another, 4.86
trust corporations as capacity
introduction, 9.26
Executors according to the tenor
generally, 4.21A
Executor's oath
see now **Executor's statements of truth**
Executor's statements of truth
address
deponent, 4.110–4.115
testator, 4.143–4.148
age of testator, 4.175
alias name, 4.130
amount of estate
civil servants' gratuities, 4.224
community of property, 4.221
death before 5 April 2004, 4.205
death on and after 6 April 2004, 4.208–4.214
inter vivos gifts, 4.225–4.227
introduction, 4.204–4.214
joint property, 4.225–4.227
nil estate, 4.218
nominated property, 4.225–4.227
settled property, 4.225–4.227
unascertained, 4.217

Executor's statements of truth – *cont.*
capacity of executor
companies, 4.195
firms, 4.196
incorporated practice, 4.196
individuals, 4.195
introduction, 4.194
officials, 4.196
partnerships, 4.196
change of name
deponent, 4.105–4.109
testator, 4.133–4.134
clearing off, 4.199–4.203
codicil proved after probate, 4.123
date of birth, 4.140–4.141
date of death
generally, 4.151
HM Forces, of, 4.158
introduction, 4.140–4.141
order for leave to swear, if, 4.154–4.155
Presumption of Death Act 2013, and, 4.157
seamen, of, 4.160
unknown, if, 4.152
deponent's details
address, 4.110–4.115
affidavit of identity, 4.99–4.104
change of name, 4.105–4.109
description, 4.114–4.115
name, 4.96–4.98
documents to be proved, 4.117–4.122
domicile, 4.176
introduction, 4.91–4.92C
judgments in probate actions
certificate of judgment, 4.186
generally, 4.182
marking documents, 4.124–4.129
names
deponent, 4.96–4.98
testator, 4.130
order of executors, 4.116
place of death, 4.174
relationship of applicant, 4.190–4.193
settled land, and
generally, 4.63
settling, 4.94
statement of truth, 4.231
swearing, 4.230
testator's details
additional addresses, 4.148
address, 4.143–4.147
age, 4.175
alias, 4.130
change of name, 4.131–4.134
date of birth, 4.140–4.142
date of death, 4.151–4.173
Executor's statements of truth – *cont.*
testator's details – *cont.*
description, 4.149–4.150
domicile, 4.176
name, 4.130
place of death, 4.174
property held in alias name, 4.139
will in incorrect name, 4.135–4.138
trust corporations, and, 9.18–9.23
Exemplifications
generally, 21.38
Expedition of issue of grant
generally, 4.90

F

Family and dependants, orders for provision for
administration with will de bonis non, and, 13.28–13.29
costs management, 41.41
introduction, 16.50, 27.41
procedure
generally, 41.19
Principal Registry, in, 16.51–16.52
production of grant, 41.39
time limits, 41.35–41.36
Family Law Act 1986
general provisions
recognition of divorces, etc., A1.392–A1.401
Family provision claims
administration with will de bonis non, and, 13.28–13.29
costs management, 41.41
introduction, 16.50, 27.41
procedure
generally, 41.19
Principal Registry, in, 16.51–16.52
production of grant, 41.39
time limits, 41.35–41.36
Fees
caveats, and
generally, 23.26
non-appearance, 23.52
district registries, in
personal application, 2.95
generally, 2.32
grant *de bonis non*, and, 13.80
grant of probate, for
calculation, 4.271
excluded property, 4.271
filing documents, 4.274
introduction, 4.259A–4.263

Fees – *cont.*
grant of probate, for – *cont.*
remission, 4.264A
non-contentious probate, and
generally, 1.53–1.54
Order (2004), A3.01–A3.10
Order (2018), A3.12
personal application, 2.95
Fiat against will
generally, 3.140
Final speeches
contentious business, and, 39.15
Firms
executors, as
capacity, 4.196
generally, 4.41
Foreign wills
grant *de bonis non*, and, 13.71
grant where deceased died domiciled abroad, and, 12.71
Forfeiture
letters of administration with will annexed, and, 5.185
particulars of claim, and, 33.72–33.75
Forfeiture Act 1982
general provisions, A1.359
Forgery
want of due execution, and, 34.12
Form of grant
generally, 2.47–2.58
Forms
non-contentious probate
affidavits, A6.33–A6.42
caveat, A6.46
citations, A6.48–A6.53
consents, A6.57
disclaimer, A6.57A–A6.57B
order, A6.191
powers of attorney, A6.192–A6.195
statements of truth, A6.103, A6.136, A6.159–A6.160, A6.164, A6.173–A6.174A
subpoenas, A6.206
summonses, A6.207–A6.208
warning, A6.209
witness statements, A6.02, A6.22A, A6.33—A6.42
probate claims
affidavits, A6.214A
defences, A6.254
heading, A6.210–A6.210A
orders, A6.220–A6.223B
refusal of grant of probate, A6.223A
revocation of grant of probate, A6.223A
Forms – *cont.*
probate claims – *cont.*
witness statements, A6.214A
Fraudulent calumny
defences, and, 34.52A

G

Gender Recognition Act 2004
text, A1.577, A1.581, A1.605–A1.610
Government stock
production of unproved wills, 1.93
Grant ad colligenda bona
applications without notice, and, 25.182, 25.186
practice, 11.384–11.385
subsequent application for full grant, 11.387
Grant in common form
form, 2.48—2.57
government stock
production of unproved wills, 1.93
issue
search against records, 2.42–2.44
settling documents, 2.28
online applications, 22.05A
payment without
MPs emoluments, 1.101
postal applications
fees, 2.32
procedure
form of grant, 2.48—2.57
personal applications, 2.81
search against records, 2.42–2.43
settling documents, 2.28
search against records, 2.42–2.43
settling documents, 2.28
small sums
MPs emoluments, 1.101
vesting prior to issue, 1.70
Grant limited as to property
caetorum
generally, 11.333–11.336
practice, 11.338
part of estate only
proof of will, 11.315
trust property, 11.315
save and except, 11.326
terms of will, in, 11.323–11.324
trust property only, 11.315
Grant limited to an action
introduction, 11.374–11.378

Grant limited to an action – *cont.*
practice, 11.379
Guarantees
forms, A6.209
Guardian of minor
grants for use of minors, and
form of statements of truth, 11.195
generally, 11.178
supporting evidence, 11.192–11.193
Guardianship (Missing Persons) Act 2017
text A1.722A–A1.722Z

H

Hansard, reference to
application by summons, and, 25.238
Hearings
application by summons, and
times, 25.245–
contentious business, and
estimate of duration, 39.06
final speeches, 39.15
opening speeches, 39.09
time limits, 39.08
witness statements, 39.10
HMRC account
assessment
generally, 8.198–8.203
introduction, 8.196–8.197
Cap A5C
availability, 8.84
generally, 8.74
use, 8.74
Cap A5N, 8.84
clearance letters, 8.221–8.222
completion
exemptions from tax, 8.138
introduction, 8.102–8.110
reliefs from tax, 8.139
corrective accounts
clearance letters, 8.221–8.222
generally, 8.219
pre-owned assets, 8.229
examination, 8.217
forms
availability, 8.100
Cap A5C, 8.74–8.84
IHT400, 8.67–8.73
Helpline, 8.01
IHT200, 8.03
IHT205
deaths on or after 6 April 2011, 8.07
IHT400
generally, 8.65–8.67–8.73
HMRC account – *cont.*
IHT400 – *cont.*
introduction, 8.03–8.04
no estate other than trust property, 8.73
inheritance tax
lifetime transfers, 8.49
pension death benefits, 8.44
rates, 8.50
scope, 8.20
introduction, 8.01
National Helpline, 8.01
necessity
introduction, 8.02–8.03
personal applications, 8.05
solicitor applications, 8.04
PA1, 8.05
payment of tax
generally, 8.205–8.211
personal applications
necessity for account, and, 8.05
practice
availability of forms, 8.100
pre-owned assets, 8.229
solicitor applications, 8.04
Human Fertilisation and Embryology Act 2008
text, A1.665–A1.666

I

IHT200
generally, 8.03
IHT205
deaths on or after 6 April 2011, 8.07
IHT400
generally, 8.67–8.73
introduction, 8.03–8.04
no estate other than trust property, 8.73
settled land, 8.72
Immoveable estate in England & Wales
entitlement to grant, 12.120
Impounding grant
form of new grant, 17.70
introduction, 17.67
Incapable executor
cessate grants, and, 13.93–13.96
Incapable person
impounding grant, and
form of new grant, 17.70
introduction, 17.67
Incapacity of grantee(s)
defences, and
generally, 34.28, 34.32
nature of the inquiry by court, 34.32

Incapacity of grantee(s) – *cont.*
testamentary capacity, 34.28
Incorporation of papers by reference
practice, 3.315
production of document, 3.301–3.302
Indexation
caveats, and, 23.23–23.24
Inheritance provision
administration with will de bonis non, and, 13.28–13.29
costs management, 41.41
introduction, 16.50, 27.41
procedure
generally, 41.19
Principal Registry, in, 16.51–16.52
production of grant, 41.39
time limits, 41.35–41.36
Inheritance tax (IHT)
Act of 1984
persons treated as domiciled in UK, A1.742
rates, A1.727
delivery of accounts, 2004 Regulations, A2.119
exemptions, 8.138
grant where deceased died domiciled abroad, and, 12.150
Helpline, 8.01
lifetime transfers, 8.49
National Helpline, 8.01
payment, 8.205–8.211
pension death benefits, 8.44
rates
amounts, A4.10
generally, 8.50
reliefs
introduction, 8.139
scope, 8.20
valuation of estate
assets, 8.117–8.119
liabilities, 8.132–8.133
lifetime gifts, 8.115
Initial disclosure
statements of case, 32.08
Insolvency
trust corporations, and, 9.55
Inter vivos gifts
amount of estate, and, 4.225–4.227
Interest actions
generally, 27.22
Interim applications
summary judgments, 38.43
Issue of proceedings
application by summons, and, 25.233
place of issue, 29.02
Issue of proceedings – *cont.*
title of claim, 29.06

J

Joinder
minority interests, and, 7.19
Joint wills
generally, 3.211
proof
practice, 3.218
revocation, 3.222
Jointly owned assets
amount of estate, and, 4.225–4.227
Judgments in probate claims
certificate of judgment, 4.186
generally, 4.182
Jurisdiction
district probate registries
administration pending determination of probate claim, 2.16
generally, 2.15
High Court, 26.16, 26.18

K

Knowledge and approval
defences, and
burden of proof, 34.64–34.67

L

Lasting powers of attorney
Regulations 2007, A2.145–A2.153
Law of Property (Amendment) Act 1925
definitions, A1.138
Leave to swear to death, application for
corroboration, and
divorce decree, 25.37
form of statement of truth, 25.46
generally, 25.20–25.20B
rescission of order, 25.50
Legal proceedings, grant limited to
cessate grants, and, 13.105
introduction, 11.374–11.378
practice, 11.379
Letters of administration, grant of
administrator's statements of truth,
alias, 6.386
clearing off, 6.388
description of applicant, 6.390–6.392

Letters of administration, grant of – *cont.*
administrator's statements of truth, – *cont.*
domicile, 6.383
generally, 6.379–6.395
judgment or order, 6.387
minority or life interest, 6.384
settled land, 6.385
adopted persons, to,
requirements on obtaining grant, 6.285–6.286
after citation to propound paper writing, 6.04
after judgment pronouncing against will, 6.05
amendment
addition of limitation, 16.14
codicils, 16.19
application by attorney administrator, 6.16
assignee, to, 6.371
assignment of life interest, and, 6.27—6.28
brothers and sisters, to, 6.312–6.318
child *en ventre sa mere*, and, 6.127
children or other issue, grants to
generally, 6.169–6.176
legitimated persons, 6.240
paternity, evidence of, 6.186
person of unsound mind on 1 January 1926, 6.167–6.168
right of illegitimate child (death before 1 January 1970), 6.193
civil partnership, and
dissolution order, 6.135
generally,
generally, 6.33A, 6.97–6.101, 6.112, 6.114
nullity order, 6.137
creditors, to
deceased having no kin, 6.347–6.348
firm as, 6.362
generally, 6.343
speciality or simple contract, 6.351
Crown, to
entitlement to grant, 6.332
deceased an illegitimate person, 6.337
decree of nullity of marriage, 6.133
distribution of estate
additional rights of surviving spouse or civil partner, 6.50A
failure of statutory trusts, 6.90
husband or wife or civil partner: death on or after 1 January 1953, 6.48
parents of illegitimate child, to, 6.75–6.79
statutory trusts for issue, 6.67
divorce, 6.131
Duchy of Cornwall, to
entitlement to grant, 6.332
Letters of administration, grant of – *cont.*
Duchy of Lancaster, to
entitlement to grant, 6.332
foreign divorce decrees
practice, 6.154
general
form, 2.48—2.57
personal applications, 2.81
procedure, 2.80
vesting prior to issue, 1.70
grandparents, to
entitlement to grant, 6.323
impounding
form of new grant, 17.70
introduction, 17.67
intestacies–pre-1926 but post-1897, 6.426
legitimated persons, to
children of void marriage, 6.231
children of voidable marriage, 6.234
description of, 6.239–6.241
marriage, on, 6.199
practice where title depends on legitimation, 6.235
limited to settled land, 10.119–10.122
parents, and
adopted persons, of, 6.310
father and mother, 6.299
generally, 6.299–6.311
interest of mother in estate of illegitimate person, 6.309
paternity, evidence of, 6.308
personal representative of parents, 6.311
presumption in relation to natural father and other relatives, 6.305–6.306
preference of living interests, 6.08
representative grants, 6.12–6.15
retraction
practice, 15.75
same sex couples, 6.31A
separation order or decree, 6.160
surviving spouse or civil partner
changes in valuation of estate, 6.104
death of, and all other persons entitled to share, 6.124
death where not entitled to whole estate, 6.123
deductions to be sworn to in statements of truth, 6.107–6.109
generally, 6.124
joint grant, 6.105, 6.120
right to grant, 6.97–6.101
to whom granted, 6.17
uncles and aunts, to
entitlement to grant, 6.324–6.328

Letters of administration (will annexed), grant of
amendment
addition of limitation, 16.14
codicils, 16.19
clearing off
disclaimer, 5.99
prior clauses, 5.97
disclaimer, 5.99
executors to be cleared off, 5.09
general
form, 2.48—2.57
personal applications, 2.81
procedure, 2.80
vesting prior to issue, 1.70
grantees
assignees, 5.253
death by murder or manslaughter, 5.196
deeds of assignment executed before 1 December 2003, 5.256
estate not wholly disposed of by will, 5.228
estate wholly disposed of by will, 5.227
forfeiture, 5.185
nominee or attorney of corporation, 5.240
order of priority, 5.268
persons entitled to share in undisposed-of estate, 5.205–5.224
preference of persons of full age, 5.130
residuary legatee or devisee, 5.111
Rule 20, Class (c), 5.111
Rule 20, Class (f), 5.235
substituted residuary legatees or devisees, 5.154
undisposed of estate vested in spouse who has since died, 5.230
impounding
form of new grant, 17.70
introduction, 17.67
oath, 5.270
order of priority, 5.05A
persons entitled to share in undisposed-of estate
deceased left surviving spouse, 5.205—5.207
disposition of residue not ascertainable, 5.215
generally, 5.205–5.224
no surveying spouse, 5.209
notice to Treasury Solicitor, 5.217
virtual disposition of residue, 5.219–5.224
persons interested in residuary estate
adopted persons, 5.46–5.81
disclaimer, 5.99
gift to charities, 5.86–5.87
Letters of administration (will annexed), grant of – *cont.*
persons interested in residuary estate – *cont.*
limited gift of residue, 5.23
practice as to will, 5.269C
Public Trustee, and, 9.60
retraction
practice, 15.75
statements of truth
clearing off, 5.270
descriptions, 5.278
generally, 5.270
minority or life interest, 5.271–5.273
proof of indemnity, 5.278
settled land, 5.276
swearing, 5.278
Life interests
attorneys, and, 7.31
foreign domicile, 7.08
grants for use of minors, and nomination of co–ordinator, 11.235–11.240
grant where deceased died domiciled abroad, and, 12.138
introduction, 7.03–7.05
joinder of co-administrator, 7.19
one of several children of full age, and, 7.28
practice, 7.44–7.46
second administrator
dispensing with, 7.11
generally, 7.15
surviving spouse, and, 7.25
Life interests, election for redemption of
introduction, 16.36
Lifetime transfers
inheritance tax, and, 8.49
Limited grants
action, to an, 11.374–11.376
ad colligenda bona, 11.387
consular officers, to
practice, 11.114–11.115
damaged wills, 11.28
destroyed wills, 11.16
lost wills, 11.16
mislaid wills, 11.16
settling statements of truth, 11.07
Limited liability partnership
appointment as executor, 4.47
Living persons, wills of
deposit
records, 20.17
Local authorities
grants for use of minors, and, 11.217

Lost wills
cessate grants, and, 13.87
limited grants, and, 11.16

M

Manslaughter
letters of administration with will annexed, and, 5.196
Mark, signature by
generally, 3.75
Marking documents
double probate, and, 13.130
executor's statements of truth, in, 4.124–4.129
Marriage (Same Sex Couples) Act 2013
text, A1.699
Mental Capacity Act 2005
text, A1.621
Minority interests
attorneys, and, 7.31
foreign domicile, 7.08
grants for use of minors, and
nomination of co–ordinator, 11.235–11.240
grants where deceased died domiciled abroad, and, 12.138
introduction, 7.03–7.05
joinder of co-administrator, 7.19
one of several children of full age, and, 7.28
practice, 7.44–7.46
second administrator
dispensing with, 7.11
generally, 7.15
surviving spouse, and, 7.25
Minors
cessate grants, and, 13.97–13.99, 13.106
Minors, grants for use of
adoption agency, 11.209–11.210
adoptive parents, to, 11.155–11.165
form of grant, 11.141
generally, 11.126–11.127
guardians, to
form of statements of truth, 11.195
generally, 11.178
supporting evidence, 11.192–11.193
life interests, and
nomination of co-ordinator, 11.235–11.240
local authority, to, 11.217
minority interests, and
nomination of co-ordinator, 11.235–11.240
minors domiciled abroad, where, 11.224
Minors, grants for use of – *cont.*
nomination of co-ordinator, and, 11.235–11.240
parental responsibility, to person with
generally, 11.155–11.165B
nomination of co-ordinator, 11.235–11.240
parents, to
generally, 11.155–11.165B
nomination of co-ordinator, 11.235–11.240
supporting evidence, 11.166
person of full age, to, 11.130–11.131
procedure, 11.233
residence order, to person with
form of statements of truth, 11.171
supporting evidence, 11.170
special guardians
supporting evidence, 11.203–11.204
statements of truth
supporting evidence, 11.165A–11.204
step-parents, to
supporting evidence, 11.175
supporting evidence, 11.166
Mislaid wills
limited grants, and, 11.16
Missing persons
generally, 41.48
MPs emoluments
small sums, and, 1.101
Murder
administration with will annexed, and, 5.196
Mutual wills
generally, 3.211
proof
practice, 3.218
revocation, 3.222

N

Names
amendment of grant, and
surname, 16.04
executor's statements of truth, and
deponent, 4.96–4.98
testator, 4.130
Neglect or refusal to give up will
original will not available, and, 25.82
New Zealand
resealing colonial grants, and, 18.81–18.84
Nil estate
amount of estate, and, 4.218

Nominated assets
amount of estate, and, 4.225–4.227
Nomination of co-ordinator
grants for use of minors, and, 11.235–11.240
Non-appearance
caveats, and
fees, 23.52
Non-contentious business
fees
generally, 1.54
Order (2004), A3.01–A3.11
Order (2018), A3.12
forms
affidavits, A6.33–A6.42
caveat, A6.46
introduction, 25.96
method of application, 25.105
statements of truth, 25.112
Non-Contentious Probate Rules 1987
generally, 1.49–1.50
text, A2.40–A2.111

O

Online applications
grants of representation, for, 22.05A

P

Parental responsibility
agreements
Regulations, A2.119
grants for use with minor
generally, 11.155–11.165
nomination of co-ordinator, 11.235–11.240
Partnership
executors, as
capacity, 4.196
generally, 4.47
Personal applications
fees, 2.95
generally, 2.81
place, 2.88–2.89
procedure, 2.90–2.94
Personal representative
settled land grants, and, 10.95
Persons lacking capacity, grants for use of
appointees of district judge, to, 11.291–11.292
attorney, to, 11.273–11.274
Persons lacking capacity, grants for use of – *cont.*
form of statements of truth, 11.256–11.257
lawful attorney acting under registered LPA, 11.279A–11.280
notice to Court of Protection, 11.262
one person entitled on intestacy, where, 11.287
persons with equal right, to, 11.253–11.254
residuary legatee, to, 11.282–11.284
Place of death
executor's statements of truth, in, 4.174
Postal applications
citations, and, 24.57
fees, 2.32
resealing, 18.66
Powers of attorney forms
generally, A6.192–A6.195
Practice directions
Business and Property Courts
general provisions, A2.228–A2.232
Shorter and Flexible Trials Schemes, A2.233–A2.235
Pre-owned assets
corrective accounts, and, 8.229
Presence of witness
generally, 3.102
Presumption of death
applications, 41.42
effect of declaration, 41.45
form of declaration, 41.44
jurisdiction, 41.43
procedure, 41.46
register of presumed deaths, 41.47
Pre-trial review
contentious business, and, 37.21–37.25
Principal Registry
administration pending determination of probate claim, and, 2.05
location, 2.01–2.04
Prior rights to grant, order to pass over
form of order, 25.110
introduction, 25.96
method of application, 25.105
statements of truth, 25.112
Privileged wills
age of testator, 3.340
HM Forces member, by
oral form, in, 3.372
oral form, in
HM Forces, 3.372
Probate
amendment
addition of limitation, 16.14

Probate – *cont.*
amendment – *cont.*
codicils, 16.19
chain of executorship
abeyance, in, 4.87
power reserved to another, 4.86
copies of will
generally, 4.232
deponent's details
address, 4.110
affidavit of identity, 4.99–4.104
change of name, 4.105–4.109
name, 4.96–4.98
executors
appointees, 4.51
reservation of power, 4.55–4.56
settled land, 4.63
executor's statements of truth
amount of estate, 4.204–4.214
capacity of executor, 4.194–4.196
clearing off, 4.200–4.203
codicil proved after probate, 4.123
deponent's details, 4.96–4.115
documents to be proved, 4.117–4.122
introduction, 4.91–4.92
judgments in probate action, 4.182–4.186
marking documents, 4.124–4.129
order of executors, 4.116
relationship of applicant, 4.190–4.193
settling, 4.94
statement of truth, 4.231
swearing, 4.230
testator's details, 4.130
expedition, 4.90
fees
calculation, 4.271
excluded property, 4.271
filing documents, 4.274
introduction, 4.259A–4.263
remission, 4.264A
general
form, 2.48–2.57
personal applications, 2.81
procedure, 2.80
vesting prior to issue, 1.70
impounding
form of new grant, 17.70
introduction, 17.67
notice to Treasury Solicitor, 4.229
proof
executor's statements of truth, 4.91–4.92
fees, 4.259A–4.274
retraction
practice, 15.75
Probate – *cont.*
settled land, and
generally, 4.63
testator's details
additional addresses, 4.148
address, 4.143–4.147
age, 4.175
alias, 4.130
change of name, 4.133–4.134
date of birth, 4.140–4.141
date of death, 4.151
description, 4.149–4.150
domicile, 4.176
name, 4.130
place of death, 4.174
property held in alias name, 4.139
will in incorrect name, 4.135–4.138
Probate and Inheritance Tax Helpline
HMRC account, and, 8.01
Probate claims
affidavits, A6.214A
associated actions
inheritance provision, 41.19, 41.41
introduction, 27.41
missing persons, 41.48
presumption of death, 41.42–41.47
rectification of will, 41.01
removal of personal representative, 41.12, 41.16
bundles, 37.26
case management
bundles, 37.26
directions, 37.07–37.09
pre-trial review, 37.21–37.25
reading lists, 37.27–37.28
skeleton arguments, 37.27–37.28
trial timetable, 37.20
categories of claims
interest actions, 27.22
revocation of grants, 27.29
Civil Procedure Rule
generally, A2.166–A2.174
claim forms
costs management, 29.19
introduction, 29.02
place of issue, 29.02
title, 29.06
costs management, 29.19
counterclaim, 34.02–34.04
defences
incapacity, 34.28
defendants, 28.07
directions, 37.07–37.09
disclosure
general rules, 36.00
estimate of duration, 39.06

Probate claims – *cont.*
final speeches, 39.15
forms
affidavits, A6.214A
orders, A6.220– A6.223B
refusal of grant of probate, A6.223A
revocation of grant of probate, A6.223A
witness statements, A6.214A
hearings
estimate of duration, 39.06
final speeches, 39.15
opening speeches, 39.09
time limits, 39.08
witness statements, 39.10
inheritance provision
generally, 41.19
introduction, 27.41
production of grant, 41.39
time limits, 41.35–41.36
interest actions, 27.22
interim applications
summary judgments, 38.43
issue of claim form
place of issue, 29.02
title of claim, 29.06
jurisdiction of court
High Court, 26.16, 26.18
missing persons, 41.48
opening speeches, 39.09
orders, A6.220– A6.223B
particulars of claim, averments in
forfeiture, 33.72–33.75
parties
defendants, 28.07
introduction, 28.01–28.03
pre-action steps, 26.31
pre-trial review, 37.21–37.25
presumption of death
applications, 41.42
effect of declaration, 41.45
form of declaration, 41.44
jurisdiction, 41.43
procedure, 41.46
register of presumed deaths, 41.47
procedural rules
pre-action steps, 26.31
reading lists, 37.27–37.28
rectification of wills
generally, 41.01
introduction, 27.41
refusal of grant of probate, A6.223A
removal of personal representative
generally, 41.12, 41.16
introduction, 27.41

Probate claims – *cont.*
revocation of grants
administration, 27.27
administration with will, 27.26
form, A6.223A
lodgment of grant, 27.29
probates, 27.26
skeleton arguments, 37.27–37.28
statements of case
initial disclosure, 32.08
statement of interest, 32.07
statements of interest
considerations for settlement, 29.14–29.15
form, 29.11
person in representative capacity, by, 29.12
substitution of personal representative, 27.41
summary judgments, 38.43
testamentary documents
generally, 31.01
inspection, 31.15
title of claim, 29.06
trial
estimate of duration, 39.06
final speeches, 39.15
opening speeches, 39.09
time limits, 39.08
witness statements, 39.10
trial timetable, 37.20
witness statements
forms, A6.214A
generally, 39.10
Probate rules
generally, 1.49–1.50
Proof of grant
deponent's details
address, 4.110–4.115
affidavit of identity, 4.99–4.104
change of name, 4.105–4.109
name, 4.96–4.98
executor's statements of truth
amount of estate, 4.204–4.214
codicil proved after probate, 4.123
deponent's details, 4.96–4.115
documents to be proved, 4.117–4.122
introduction, 4.91–4.92
judgments in probate action, 4.180–4.186
marking documents, 4.124–4.129
order of executors, 4.116
relationship of applicant, 4.190–4.193
settled land, 4.180
settling, 4.94
statement of truth, 4.231

Proof of grant – *cont.*
executor's statements of truth – *cont.*
swearing, 4.230
testator's details, 4.130
fees
excluded property, 4.271
filing documents, 4.274
introduction, 4.259A–4.263
remission, 4.264A
testator's details
additional addresses, 4.148
address, 4.143–4.147
age, 4.175
alias, 4.130
change of name, 4.131–4.134
date of birth, 4.140–4.141
date of death, 4.151
description, 4.149–4.150
domicile, 4.176
name, 4.130
place of death, 4.174
property held in alias name, 4.139
will in incorrect name, 4.135–4.138
Pronouncing against solemn will, claims for
claimants
person opposed to will, 27.10
Proof of will
exercise of power of appointment, and, 11.363
Property, grant limited as to
part of estate only
proof of will, 11.315
trust property, 11.315
trust property only, 11.315
Pronouncing against solemn will, claims for
claimants
person opposed and wishing to bring claim, 27.13, 27.15
Property, grant limited as to
caetorum
generally, 11.333–11.336
practice, 11.338
save and except, 11.326
terms of will, in, 11.323–11.324
Propounding a will
citations, and
generally, 24.36
Proved wills, copies of
copies, 21.17
office copies, 21.19
Provision out of estate, orders for
introduction, 16.50
procedure
Principal Registry, in, 16.51–16.52
Public Guardian
Regulations 2007, A2.145–A2.153
Public Records Act 1958
general provisions, A1.165–A1.166
Public Trustee
administration with will annexed, and, 9.60

R

Reading lists
contentious business, and, 37.27–37.28
Recognition of grants
notation of domicile
generally, 18.23
Rectification of wills
applications for
introduction, 27.41
Refusal to give up will
original will not available, and, 25.82
Reliefs for tax
introduction, 8.139
Removal of representatives
applications for
generally, 41.01
introduction, 27.41
Redemption of life interest, election for
introduction, 16.36
Reference to Hansard
application by summons, and, 25.238
Refusal of probate
generally, 3.140
Removal of representatives
applications for
generally, 41.12, 41.16
Renunciation
citations, and
generally, 24.11
timing
before application, 15.22
Rescission of orders
leave to swear to death, and, 25.50
Resealing
colonial grants, of
Australia, 18.85
change of status, and, 18.37
class of grantee, 18.51
copy of will, 18.60
evidence of domicile, 18.42
New Zealand, 18.81–18.84
postal applications, 18.66
relevant documents, 18.55
relevant territories, 18.39
relevant documents, 18.55
relevant territories, 18.39

Resealing colonial grants
applications
postal applications, 18.66
Australia, 18.85
change of status, and, 18.37
class of grantee, 18.51
copy of will, 18.60
evidence of domicile, 18.42
grant *de bonis non*, and, 13.47
New Zealand, 18.81–18.84
postal applications
generally, 18.66
relevant documents, 18.55
relevant territories, 18.39
Residence order, grant to person with
form of statements of truth, 11.171
supporting evidence, 11.170
Residuary legatees
grants for use of persons under disability, and, 11.282–11.284
Retraction
practice, 15.75
Revocation of codicils
generally, 3.172
Revocation of grant
applications for
administration, 27.27
administration with will, 27.26
lodgment of grant, 27.29
probates, 27.26
lodgment of grant, 27.29
new grant, and
combined application, 17.57
generally, 17.55–17.56
procedure
other documents, 17.52
Revocation of wills
burning, by, 34.87
civil partnership after execution of the will, by
generally, 3.42A
cutting, by, 34.87
dependent relative revocation
summary of cases, 34.93
destruction, by
summary of cases, 34.87
exceptions as to marriage and civil partnership
contemplation of marriage, 3.51
marriage after execution of the will, by
wills made after 1982, 3.40A
subsequent civil partnership, by
generally, 33.42A
subsequent marriage, by
wills made after 1982, 3.40A
Revocation of wills – *cont.*
subsequent marriage (wills made after 1982), by
contemplation of marriage, 3.51
generally, 3.40–3.43A
tearing, by, 34.87

S

Save and except, grants
grant limited as to property, and, 11.326
settled land, and, 10.66–10.69
Scotland
grant where deceased died domiciled abroad, and, 12.23
Searches
online, 21.09
Principal Registry, in, 2.42–2.43
proved wills since 1858, of
copies, 21.17
office copies, 21.19
public online searches, 21.09
public online, 21.09
unproved wills, of
standing search, 21.12–21.14
Second administrator
dispensing with, 7.11
generally, 7.15
surviving spouse, and, 7.25
Second grantee
grant where deceased died domiciled abroad, and, 12.141
Senior Courts Act 1981
general provisions
jurisdiction, A1.304–A1.305
Settled land
grants
and see below
amendment, 10.136
limited letters of administration, 10.119–10.122
save and expect, 10.66–10.69
letters of administration limited to, 10.119–10.122
probates, and
generally, 4.63
Settled land grants
additional personal representatives, and, 10.136
amendment, 10.136
entitled persons
personal representative of settlor, 10.95
special executors, 10.77–10.78
necessity
after 1996, 10.39

Settled land grants – *cont.*
personal representative of settlor, to, 10.95
save and expect, 10.66–10.69
special executors, to, 10.77–10.78
special personal representatives, and, 10.136
Settlements with no beneficial interest in possession
inheritance tax, and, 8.172
Settling documents
executor's statements of truth, and, 4.94
grant where deceased died domiciled abroad, and, 12.146
limited grants, and, 11.07
Principal Registry, in, 2.28
Signature of will
mark, by
generally, 3.75
presence of witnesses
generally, 3.102
witnesses, by
presence, 3.102
Skeleton arguments
contentious business, and, 37.27–37.28
Small sums
MPs emoluments, 1.101
Solicitors
executors, as, 4.41–4.47
Special certificates
generally, 21.38
Special executors
settled land grants, and, 10.77–10.78
Special guardians
grants for use of minors, and supporting evidence, 11.203–11.204
Standing search
unproved wills, and, 21.12–21.14
Statements of claim
counterclaim, 34.02–34.04
defence
incapacity, 34.28
particulars of claim, averments in
forfeiture, 33.72–33.75
statements of interest
considerations for settlement, 29.14–29.15
form, 29.11
representative capacity, by person in, 29.12
Statements of interest
considerations for settlement, 29.14–29.15
form, 29.11
Statements of truth
and see **Executor's statements of truth**
double probate, 13.129
form, 25.46
Statements of truth – *cont.*
generally, 4.231
grants de bonis non, 13.60–13.65
grants for use of minors, 11.165A—11.204
grants for use of persons lacking capacity, 11.256–11.257
grants to attorney, 11.82
grants to person with residence order, 11.171
grants where deceased died domiciled out of England & Wales, 12.131–12.135
limited grants, 11.07
order to pass over prior rights of grant, 25.112
precedents, A6.65–A6.190
Public Trustee, and, 9.71
trust corporations, and, 9.18–9.23
wills in two or more documents, 3.207
Step-parents
grants for use of minors, and supporting evidence, 11.175
Subpoena
non-contentious business, A6.206
Sub-registries
and see **District probate registries**
location, 2.08–2.09
Substitution of representatives
applications for
generally, 41.12, 41.16
introduction, 27.41
Summary judgments
contentious business, and, 38.43
Summonses
forms, A6.207–A6.208
Surviving executor
grants to attorney, and, 11.83
Surviving spouse
life interests, and, 7.25
Swear to death, leave to
corroboration, and divorce decree, 25.37
form of statement of truth, 25.46
generally, 25.20–25.20B
rescission of order, 25.50
Swearing
affidavits, and, 4.230

T

Terms of will, grant in
grant limited as to property, and, 11.323–11.324
Testamentary capacity
generally, 34.28

Testamentary documents
generally, 31.01
loan, 31.12
transmission to relevant office
RCJ, from, 31.15
verification, 31.14
Testamentary paper into registry, order to bring
subpoena, 25.194
Testator's details
additional addresses, 4.148
address, 4.143–4.147
age, 4.17
alias, 4.130
change of name, 4.133–4.134
date of birth, 4.140–4.141
date of death, 4.151
description, 4.149–4.150
domicile, 4.176
name, 4.130
place of death, 4.174
property held in alias name, 4.139
will in incorrect name, 4.135–4.138
Title of claim
contentious business, and, 29.06
Transmission of executorship
abeyance, in, 4.87
power reserved to another, 4.86
Trial of claim
estimate of duration, 39.06
final speeches, 39.15
opening speeches, 39.09
time limits, 39.08
timetable, 37.20
witness statements, 39.10
Trust corporations
administrator, as
consents required, 9.39
administrator with will, as
consents required, 9.37
Public Trustee, and, 9.60
executors, as
introduction, 9.26
executor's statements of truth, and, 9.18–9.23
insolvency, and, 9.55
Public Trustee, and
administrator with will, 9.60
statements of truth, 9.71
Trust property only
grant limited as to property, and, 11.315
Two or more documents, wills in codicil confirming earlier will
condition to be met, 3.206
description in statements of truth, 3.207
Two or more documents, wills in codicil confirming earlier will – *cont.*
probate of earlier will, 3.206

U

Undue influence
exclusions, 34.48
meaning, 34.47
summary of cases, 34.47
Unproved wills, search of
standing search, 21.12–21.14

V

Validity of wills
domicile in England & Wales, 3.26
Value of estate
calculation
assets, 8.117–8.119
liabilities, 8.132–8.133
lifetime gifts, 8.115
probates, and
civil servants' gratuities, 4.224
community of property, 4.221
inter vivos gifts, 4.225–4.227
introduction, 4.204–4.214
joint property, 4.225–4.227
nil estate, 4.218
nominated property, 4.225–4.227
settled property, 4.225–4.227
unascertained, 4.217
Vesting prior to issue
generally, 1.70

W

Want of due execution
defences, and
forgery, 34.12
notice under CPR 57.7(5), 34.13
Want of knowledge and approval
burden of proof, 34.64–34.67
Warning to caveat
form, A6.209
generally, 23.39
method, 23.41–23.42
Wills
admissibility to proof
generally, 3.26

Wills – *cont.*
codicils
revocation, 3.172
conditional, 3.227
contemplation of marriage, made in, 3.51
deposit
records, 20.17
execution (after 1963)
attestation, 3.107–3.113
duty of practitioners to check, 3.95
execution in accord with law of place of execution
formalities, 3.417
fiat against, 3.140
incorporation of papers by reference
practice, 3.315
production of document, 3.301–3.302
joint
generally, 3.211
revocation, 3.222
mutual
generally, 3.211
revocation, 3.222
privileged wills
age of testator, 3.340
HM Forces, 3.372
refusal of probate, 3.140
Wills – *cont.*
signature
mark, by, 3.75
two or more documents, in
condition to be met, 3.206
description in oath, 3.207
probate of earlier will, 3.206
validity
generally, 3.26
Wills Act 1963, under
formalities, 3.417
Wills Act 1837
definitions, A1.01
Witness statements
contentious business, and, 39.10
forms, A6.214A
limited grants, and, 11.07
Witnesses
acknowledgment of signature by
summary of cases, 34.21
affidavit of execution, and, 3.122
attestation
generally, 3.107–3.108A
evidence of execution, and, 3.122
position of signature
generally, 3.113
presence
generally, 3.102

KR-058-
ISBN 978-1-4743-
9 781474 314664