STATUTORY INSTRUMENTS

1976 No. 314 (L. 5)

COUNTY COURTS

PROCEDURE

The County Court (Amendment) Rules 1976

Made - - - - 27*th February* 1976

Coming into Operation 1*st April* 1976

1.—(1) These Rules may be cited as the County Court (Amendment) Rules 1976.

(2) In these Rules an Order and Rule referred to by number means the Order and Rule so numbered in the County Court Rules 1936(**a**), as amended (**b**), and a form referred to by number means the form so numbered in Appendix A to those Rules.

(3) The Interpretation Act 1889(**c**) shall apply for the interpretation of these Rules as it applies for the interpretation of an Act of Parliament.

2.—(1) In Order 6, Rule 10, the paragraph beginning "In relation to" shall be revoked.

(2) Order 7, Rule 1(1A), Order 9, Rule 9(4), Order 24, Rule 3, and Order 25, Rule 7B, shall be revoked.

3. For Order 45A there shall be substituted the following Order:—

"ORDER 45A

FAMILY PROVISION ON DEATH

Interpretation

1. In this Order—

"the Act of 1973" means the Matrimonial Causes Act 1973; 1973 c. 18

"the Act of 1975" means the Inheritance (Provision for Family and Dependants) Act 1975; 1975 c. 63

"the deceased" means, in the case of an application under section 36 of the Act of 1973, the deceased party to the agreement to which the application relates and, in the case of an application under section 1 of the Act of 1975, the person to whose estate the application relates.

Mode of application

Form 370, 370A

2.—(1) An application under section 1 of the Act of 1975, or section 36 of the Act of 1973, shall be made by originating application in Form 370 or 370A, whichever is appropriate.

(a) S.R. & O. 1936/626 (1936 I, p.282).
(b) The relevant amending instruments are S.I. 1967/276, 1970/204, 1201, 1871, 1971/2127, 1974/636 (1967 I, p. 990; 1970 I, p.911; II, p. 3984; III, p. 6154; 1971 III, p. 6276; 1974 I, p. 2527).
(c) 1889 c. 63.

(2) The application shall be filed—

(*a*) in the court for the district in which the deceased resided at the date of his death, or

(*b*) if the deceased did not then reside in England or Wales, in the court for the district in which the respondent or one of the respondents resides or carries on business or the estate or part of the estate is situate, or

(*c*) if neither of the foregoing sub-paragraphs is applicable, in the court for the district in which the applicant resides or carries on business.

(3) The applicant shall file with his originating application—

(*a*) an official copy of the grant of representation to the deceased's estate and of every testamentary document admitted to proof, and

(*b*) in the case of an application under section 36 of the Act of 1973, a copy of the agreement to which the application relates.

Parties

3.—(1) Without prejudice to its powers under Orders 5 and 15, the court may, at any stage of the proceedings, direct that any person be added or struck out as a party to the application.

(2) Order 5, Rules 10 and 26, shall apply to an application under section 1 of the Act of 1975 or section 36 of the Act of 1973 as they apply to the proceedings mentioned in those Rules.

Answer

4.—(1) Every respondent shall, within 21 days after service of the originating application on him, inclusive of the day of service, file in the court office an answer, together with a copy thereof for every other party to the proceedings, which shall contain a statement of the respondent's case.

(2) The answer filed by a personal representative pursuant to paragraph (1) shall state to the best of his ability—

(*a*) full particulars of the value of the deceased's net estate, as defined by section 25(1) of the Act of 1975;

(*b*) the persons or classes of persons beneficially interested in the estate, giving the names and (in the case of those who are not already parties) the addresses of all living beneficiaries, and the value of their interests so far as ascertained;

(*c*) if such be the case, that any living beneficiary (naming him) is a minor or a mental patient; and

(*d*) in the case of an application under section 1 of the Act of 1975, any facts known to the personal representative which might affect the exercise of the court's powers under that Act.

(3) The registrar shall send to every other party to the proceedings a copy of any answer filed pursuant to paragraph (1).

Interim order

5. An application for an interim order under section 5 of the Act of 1975 may be made on notice in accordance with Order 13, Rule 1.

Subsequent application

6. Where an order has been made on an application under section 1 of the Act of 1975, any subsequent application, whether made by a party to the proceedings or by any other person, shall be made in those proceedings in accordance with Order 13, Rule 1.

Hearing

7. Any application under section 1 of the Act of 1975 or section 36 of the Act of 1973 may, with the leave of the judge or the consent of the parties, be heard and determined by the registrar and may, if the court thinks fit, be dealt with in chambers.

Endorsement of memorandum on grant

8.—(1) On the hearing of an application under section 1 of the Act of 1975, the personal representative shall produce to the court the grant of representation to the deceased's estate and, if an order is made under the Act, the grant shall remain in the custody of the court until a memorandum of the order has been endorsed on, or permanently annexed to, the grant in accordance with section 19(3) of the Act of 1975.

(2) Immediately after any such order has been drawn up and filed the registrar shall send a sealed copy thereof, together with the grant of representation, to the principal registry of the Family Division.

Transfer to the High Court

9.—(1) The court in which an application under section 36 of the Act of 1973 or section 1 of the Act of 1975 is pending may order the transfer of the application to the High Court where the transfer appears to the court to be desirable.

(2) In considering whether an application should be transferred under paragraph (1) from a county court to the High Court, the court shall have regard to all relevant considerations, including the nature and value of the property involved, the relative expense of proceeding in the High Court and the county court and the limit for the time being of the jurisdiction of county courts under section 22 of the Act of 1975.

(3) Any order of transfer shall state whether it is desired that the proceedings be assigned to the Chancery Division or to the Family Division of the High Court."

4. Order 47 shall be amended as follows:—

(1) After Rule 1 there shall be inserted the following Rule:—

Litigant in person

"2.—(1) Where in any proceedings any costs of a litigant in person are ordered to be paid by any other party or in any other way, then, subject to the following paragraphs of this Rule, there may be allowed to the litigant in person such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by a solicitor on his behalf and the provisions of these Rules shall apply with the necessary modifications to the costs of a litigant in person as they apply to solicitors' charges and disbursements.

(2) Nothing in Rule 36 of this Order or Appendix D shall apply where the plaintiff is a litigant in person.

(3) In relation to the costs of a litigant in person, Rule 37(2) of this Order shall have effect—

(*a*) where the costs are on scale 1, 2 or 3, as if for the words "may, if the solicitor for the party in whose favour the award was made so desires" there were substituted the words "shall, unless the court otherwise orders", and

(*b*) where the costs are on scale 4, as if the words "the solicitor for" were omitted.

(4) Where the costs of a litigant in person are taxed or assessed without taxation—

(*a*) he shall not be allowed more than £2 an hour in respect of the time reasonably spent by him on doing any work to which the costs relate if in the opinion of the court he has not suffered any pecuniary loss in doing the work, and

(*b*) the amount allowed in respect of any work done by the litigant in person shall not in any case exceed two-thirds of the sum which in the opinion of the court would have been allowed in respect of that work if the litigant had been represented by a solicitor.

(5) Where the costs of a litigant in person are assessed under Appendix E, or where on the taxation of the costs of a litigant in person he is allowed a charge for attending court to conduct his own case, then, notwithstanding anything in Rule 29 of this Order, he shall not be entitled to a witness allowance in addition.

(6) Nothing in this Rule shall apply to a solicitor to whom Rule 26 is applicable."

(2) In Rule 26 before the word "solicitor", where it first appears, there shall be inserted the word "practising".

(3) In Rule 37(3) for the word "registrar" there shall be substituted the word "court" and for the word "he" there shall be substituted the word "it".

5. Order 49, Rule 4, shall be revoked.

6. The following form shall be substituted for Form 370:—

"370

ORIGINATING APPLICATION FOR REASONABLE FINANCIAL PROVISION UNDER SECTION 1 OF INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975

[*General Title—Form* 1]

Order 45A, Rule 2(1)

1. I, of , apply to the Court for an order under section 1 of the Inheritance (Provision for Family and Dependants) Act 1975 for reasonable financial provision to be made for me out of the estate of who died on the day of 19 being domiciled in England and Wales and resident at .

2. I am the wife [*or* husband] of the deceased [*or state in what other way the applicant claims to be entitled to make the application*].

3. A grant of probate [*or* letters of administration] in regard to the estate of the deceased was first taken out on the day of 19 and the personal representative[s] is[are] of [and of].

4. To the best of my knowledge and belief the value of the deceased's net estate does not exceed £5,000.

5. The disposition of the deceased's estate effected by his will [*or* by the law relating to intestacy] [*or* by the combination of his will and the

law relating to intestacy] was such as to make no provision for me [*or* to make the following provision for me, namely
].

6. To the best of my knowledge and belief the persons or classes of persons interested in the estate and the nature of their interests are as follows:—

7. The following are particulars of my present and foreseeable financial resources and financial needs [*give details and add any other information which the applicant desires to place before the Court on the matters to which the Court is required to have regard under section* 3 *of the Act*].

8. [*Insert where appropriate*] I request the Court's permission to make this application notwithstanding that the period of six months has expired from the date on which representation in regard to the estate of the deceased was first taken out, and the grounds of my request are as follows:—

9. I ask for reasonable financial provision to be made for me out of the deceased's estate by way of an order for [*state nature of order applied for*].

10. The names and addresses of the respondents on whom this application is intended to be served are—

11. My address for service is :—

Dated this day of 19 .

Applicant

To the Respondent

Within 21 days after service of this application on you, inclusive of the day of service, you must file in the court office an answer, together with a copy for every other party to the proceedings, containing a statement of your case and, if you are a personal representative of the deceased—

(*a*) full particulars of the value of the deceased's net estate;

(*b*) the persons or classes of persons beneficially interested in the estate (including the names and addresses of all living beneficiaries and whether any of them is a minor or a mental patient); and

(*c*) any facts known to you which might affect the exercise of the Court's powers under the Act."

7. Form 370A shall be amended as follows:—

(1) For paragraph 10 there shall be substituted the following paragraph:—

"10. There have been no proceedings in any court against the deceased's estate under the Inheritance (Provision for Family and Dependants) Act 1975 or any Act repealed by that Act [except [*state the nature of the proceedings and the date and effect of any decree or order*]]."

(2) After the words "*Conclusion as in Form* 370" there shall be added the words "*omitting paragraph* (*c*)".

8. Nothing in Rules 3, 6 and 7 of these rules shall apply to proceedings relating to the estate of a person who died before 1st April 1976 and nothing in Rule 4 shall apply to any work done or disbursement made before that date.

We, the undersigned members of the Rule Committee appointed by the Lord Chancellor under section 102 of the County Courts Act 1959(**a**), having by virtue of the powers vested in us in this behalf made the foregoing Rules, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

Conolly H. Gage.
H. S. Ruttle.
David Pennant.
W. Granville Wingate.
T. Richard Nevin.
E. A. Everett.
A. A. Hibbert.
Arnold Russell Vick.
E. Somerset Jones.
D. A. Marshall.
Emyr O. Parry.

I allow these Rules, which shall come into operation on 1st April 1976.

Dated 27th February 1976.

Elwyn-Jones, C.

(**a**) 1959 c. 22.

EXPLANATORY NOTE

(*This Note is not part of the Rules.*)

These Rules amend the County Court Rules 1936 in consequence of two recent Acts. Order 45A is re-written so as to deal with proceedings under the Inheritance (Provision for Family and Dependants) Act 1975 (Rules 3, 6 and 7); and provision is made for the costs recoverable by a litigant in person under the Litigants in Person (Costs and Expenses) Act 1975 (Rule 4).

Minor amendments are also made so as to revoke the Rules which require claims and judgments, and warrants and orders for their enforcement, to be expressed in decimal currency (Rules 2 and 5).

SI 1976/314
ISBN 0-11-060314-1

