STATUTORY INSTRUMENTS

1974 No. 597 (L.8)

SUPREME COURT OF JUDICATURE, ENGLAND
PROCEDURE
The Non-Contentious Probate (Amendment) Rules 1974

Made - - - -	*26th March* 1974
Laid before Parliament	*8th April* 1974
Coming into Operation	*1st May* 1974

The President of the Family Division, in exercise of the powers conferred on him by section 100 of the Supreme Court of Judicature (Consolidation) Act 1925(a), and with the concurrence of the Lord Chancellor and the Lord Chief Justice, hereby makes the following Rules:—

1.—(1) These Rules may be cited as the Non-Contentious Probate (Amendment) Rules 1974 and shall come into operation on 1st May 1974.

(2) The Interpretation Act 1889(b) shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

(3) The amendments set out in these Rules shall be made to the Non-Contentious Probate Rules 1954(c), as amended (d).

2. Rule 2 (interpretation) shall be amended as follows:—

(*a*) in the definition of "Registrar" in paragraph (2), for the words "(except in rules 45 and 46)" there shall be substituted the words "(except in rules 45, 46 and 47)";

(*b*) after paragraph (3) there shall be added the following new paragraph:—

"(4) Unless the context otherwise requires, any reference in these Rules to any rule or enactment shall be construed as a reference to that rule or enactment as amended, extended or applied by any other rule or enactment.".

3. For rule 18 (evidence of foreign law) there shall be substituted the following rule:—

"18. Where evidence as to the law of any country or territory outside England is required on any application for a grant, the registrar may accept 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.".

4. Rule 19 (order of priority for a grant where deceased left a will) shall be amended as follows:—

(*a*) in paragraph (iv), after the words "ultimate residuary legatee or devisee" there shall be inserted the words ", including one entitled on the happening of any contingency,"; and after the words "Provided

(a) 1925 c. 49. (b) 1889 c. 63. (c) S.I. 1954/796 (1954 II, p. 2202).
(d) The relevant amending instruments are S.I. 1967/748, 1969/1689, 1971/1977 (1967 II, p. 2225; 1969 III, p. 5319; 1971 III, p. 5650).

that" there shall be inserted the words "(*a*) unless a registrar otherwise directs a residuary legatee or devisee whose legacy or devise is vested in interest shall be preferred to one entitled on the happening of a contingency; and (*b*)";

(*b*) in paragraph (vi), for the words "Any legatee or devisee, whether residuary or specific," there shall be substituted the words "Any specific legatee or devisee".

5. Rule 36 (consent of administrator of enemy property) is hereby revoked.

6. In rule 47 (citation to propound a will), paragraph (2) shall be omitted and there shall be substituted the following paragraph:—

"(2) If the time limited for appearance has expired, the citor may,—

(*a*) in the case where no person cited has entered an appearance, apply to a registrar for an order for a grant as if the will were invalid;

(*b*) in the case where no person who has entered an appearance proceeds with reasonable diligence to propound the will, apply to a 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.".

Dated 22nd March 1974.

George Baker, P

We concur.

Dated 26th March 1974.

Elwyn-Jones, C.

Dated 22nd March 1974.

Widgery, C. J.

EXPLANATORY NOTE

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

These Rules make amendments to the Non-Contentious Probate Rules 1954. The changes include—

(1) dispensing with the necessity for a person giving evidence of foreign law to have practised as a qualified lawyer in the country concerned (Rule 18);

(2) minor alterations to the prescribed order of priority of entitlement to a grant of representation in cases where the deceased has left a will (Rule 19);

(3) dispensing with applications by way of summons in cases where persons cited have not entered appearances following the issue of a citation to propound a will (Rule 47).

These Rules come into force on 1st May 1974.

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