STATUTORY INSTRUMENTS

# 1983 No. 623 (L.11)

## SUPREME COURT OF ENGLAND AND WALES

## The Non-Contentious Probate (Amendment) Rules 1983

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| *Made* - - - - | 15*th April* 1983 |
| *Laid before Parliament* | 26*th April* 1983 |
| *Coming into Operation* | 17*th May* 1983 |

The President of the Family Division, in exercise of the powers conferred upon him by section 127 of the Supreme Court Act 1981(**a**), and section 2(5) of the Colonial Probates Act 1892 (**b**), and with the concurrence of the Lord Chancellor, hereby makes the following Rules:—

**1.**—(1) These Rules may be cited as the Non-Contentious Probate (Amendment) Rules 1983 and shall come into operation on 17th May 1983.

(2) The amendments set out in these Rules should be made to the Non-Contentious Probate Rules 1954 (**c**), and references in these Rules to a rule by number are references to the rule so numbered in those Rules.

**2.** For rule 9(2) substitute:—

"(2) Where a will—

*(a)* contains alterations which are not admissible to proof, or

*(b)* has been ordered to be rectified by virtue of section 20(1) of the Administration of Justice Act 1982, (**d**)

there shall be lodged an engrossment of the will in the form in which it is to be proved."

**3.** In rule 15 omit the words "as explained by the Wills Act Amendment Act, 1852 (**e**),".

**4.** After rule 54 insert:—

*"Application for rectification of a will*

**55.**—(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 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 whichever of the following matters are in issue:—

*(a)* in what respects the testator's intentions were not understood; or

*(b)* the nature of any alleged clerical error.

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(**a**) 1981 c.54.
(**b**) 1892 c.6.
(**c**) S.I. 1954/796, as amended by S.I. 1967/748; there are other amendments not relevant to these Rules.
(**d**) 1982 c.53.
(**e**) 1852 c.24.

(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 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 registrar is satisfied that, subject to any direction to the contrary, notice has been given to every person mentioned in paragraph (3) of this rule, and that the application is unopposed, he may order that the will be rectified accordingly."

*J. L. Arnold,* P.

Dated 12th April 1983.

I concur,

*Hailsham of St. Marylebone,* C.

Dated 15th April 1983.

## EXPLANATORY NOTE

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

These Rules amend the Non-Contentious Probate Rules 1954. They make changes consequent upon the coming into force of the Administration of Justice Act 1982. Section 20 of that Act provides for the rectification of wills and necessitates a change to rule 9 to require an engrossment of a will in its rectified form to be lodged, and a new rule 55 to confer on the Registrar the power to rectify a will where rectification is unopposed. Section 69(1) of and Schedule 9, Part I to the Act repealed the Wills Act Amendment Act 1852 and the reference to that Act in rule 15 is deleted accordingly.

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