EXPLANATORY MEMORANDUM TO

THE NON-CONTENTIOUS PROBATE (AMENDMENT) RULES 2025

2025 No. 1004 (L. 8)

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Alex Davies-Jones MP, Parliamentary Under-Secretary of State at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

2.2 Steven Jarman, Deputy Director for Civil Justice and Law at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Declan Murray, at the Ministry of Justice, can be contacted at 07860329590 or declan.murray@justice.gov.uk with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The instrument amends the Non-Contentious Probate Rules 1987 (SI 1987/2024) ("the NCPR"), which govern practice and procedure in the Probate Registry where there is no dispute about entitlement to a grant of representation or the validity of any will or codicil. It amends the NCPR to:

- **(a)** include a reference to applications made under rule 36 (grants to trust corporations and other corporate bodies) in the definition of "online portal";
- **(b)** enable solicitors and probate practitioners based in Scotland who are entitled to carry out probate activities in England and Wales to provide an address of their place of business in Scotland when making applications on behalf of a client;
- **(c)** permit caveats, citations, warnings, and appearances to contain an address for service in Scotland;
- **(d)** introduce an order of priority that a district judge or registrar can choose to apply to a dispute between two or more people who are equally entitled to apply for a grant of letters of administration;
- **(e)** require all applications for a grant to trust corporations to be made online using the online portal;
- **(f)** require a district judge or registrar to unilaterally revoke a grant issued in error, in cases where a caveat had already been entered at the time of the grant being issued;
- **(g)** remove the ability to enter a caveat in person at a registry;

(h) require a caveator wishing to issue and serve a summons for directions to also provide a statement in support of the directions they are seeking;

(i) enable, under certain circumstances, a judge or registrar to apply the new order of priority described in **(d)** when disposing of a summons for directions;

(j) replace Form 4 in the First Schedule to the NCPR, allowing 14 days to a caveator to make an appearance at the registry or to issue and serve a summons for directions with a supporting statement; and

(k) remove the exception of rules 27(1) to (3) from the requirement that applications made by professionals be submitted using the online portal.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 "Probate" refers to the procedure for establishing entitlement to a grant of representation and assessing the validity of any will or codicil. The NCPR are those rules and procedures governing non-contentious (or "common form") probate proceedings in England and Wales. "Non-contentious or common form probate business" is defined as "the business of obtaining probate and administration where there is no contention as to the right thereto" and includes "all businesses of a non-contentious nature in matters of testacy and intestacy not being proceedings in any action" (section 128 of the Senior Courts Act 1981). The law regulating non-contentious probate is contained in the NCPR. The NCPR were issued under the Senior Courts Act 1981 and the Colonial Probates Act 1892, revoking (and replacing) the Non-Contentious Probate Rules 1954 (and subsequent amendments) to reflect changes in law and practice since that time.

5.2 There are separate civil procedure rules for contentious probate cases. Specifically, the rules relating to contentious probate claims are contained in Section 1 of Part 57 of the Civil Procedure Rules (CPR)[1] (rules 57.2 to 57.11—the remaining provisions of Part 57 deal with other types of claim) and the associated Practice Direction (PD 57).[2]

5.3 The NCPR required updating to resolve issues identified during implementation, to accommodate service modernisation, and to resolve inconsistencies with other legislation.

5.4 Amendments to rules 4 and 49 are required to address complexities arising from existing legislative provisions, which allow solicitors or probate practitioners based in Scotland to conduct probate activities in England and Wales. These Regulations introduce changes that enable such professionals to provide their business address in Scotland, rather than mandating an address in England and Wales (as was previously required).

5.5 Rule 27 is amended to introduce an order of priority among individuals with equal legal entitlement to apply for a grant of letters of administration. In situations where

[1] https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part57
[2] https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part57/pd_part57

disputes occur between these parties, these amendments empower a district judge or registrar to resolve such disputes using this order of priority.

5.6 Changes are made to rule 36 to require trust corporations to submit applications for grants of probate via the online portal, as the necessary technology is now available. In addition, two related amendments are made. One amends the Third Schedule to remove the exception of trust corporation applications from the requirement to use the online portal for practitioner applications; the other updates rule 2 to expand the definition of "online portal" to include applications made under rule 36.

5.7 Rule 41 is amended to require a district judge or registrar to revoke a grant issued in error when a caveat was in place at the time of issuance. This amendment enhances the fairness and effectiveness of the process by supplementing existing provisions that permit revocation, such as upon application by the person to whom the grant was made.

5.8 Rule 44 is amended to remove the ability to enter a caveat in person at a registry and also to require a caveator wishing to issue and serve a summons for directions to provide a statement in support of the directions they are seeking. These changes are made to accommodate service modernisation and resolve inconsistencies with other legislation.

5.9 Rule 44 is also amended to enable a district judge or registrar to apply the new order of priority inserted into rule 27 when disposing of a summons for directions in cases where two or more people are equally entitled to apply for a grant of administration. The amended rule 27 allows the court to determine which of a number of competing equal applications for probate is the lead application; this amendment to rule 44 enables registrars to deal with any caveats (objections) to this decision.

5.10 Form 4 (in the First Schedule to the NCPR) afforded 8 days for either a caveator or their representative to make an appearance at the registry in which the caveat index was maintained, or for a caveator to issue and serve a summons for directions with a supporting statement. Form 4 is amended to allow 14 days in order to align with other NCPR provisions.

5.11 The Third Schedule is amended so that the exception to the requirement to use the online portal now applies exclusively to rules 27(4)–(8), which cover applications from public users, rather than to rule 27 in its entirety. As a result, this exception no longer extends to applications submitted by professionals, since electronic submission for these applications is now supported by the technology. As described above (paragraph 5.6), the Third Schedule is also amended following the changes to rule 36, in order to remove the exemption of grants to trust corporations from the requirement that applications made by solicitors and probate practitioners be made through the online portal.

What was the previous policy, how is this different?

5.12 The Legal Services Act 2007 (Approved Regulators) Order 2009 (S.I. 2009/3233) amended the Legal Services Act 2007 so that the Institute of Chartered Accountants of Scotland (ICAS) was recognised as an approved regulator under the 2007 Act by including it in the table of approved regulators in paragraph 1 of Schedule 4. Rule 4 of the NCPR is therefore amended to enable a solicitor or probate practitioner who is based in Scotland but entitled to carry out probate activities in England and Wales to provide an address of their place of business in Scotland. Rule 49 is similarly amended to permit caveats, citations, warnings, and appearances to contain an address for service in Scotland.

5.13 When a person dies intestate, a dispute can arise between two or more people who are equally legally entitled to apply for a grant of letters of administration. Previously, rule 27 lacked provisions establishing priority among such applicants, resulting in numerous practical difficulties. To address these challenges and ensure greater efficiency and clarity, rule 27 is amended to introduce an order of priority that a district judge or registrar may apply to resolve such disputes.

5.14 Previously, rule 36 did not allow trust corporations to apply for grants of probate online, even though these applications are typically handled by professional practitioners. Meanwhile, other professional practitioners have been required to submit their applications online. With the necessary technology now available, rule 36 is amended to require all applications for grants by trust corporations to be submitted via the online portal. Accordingly, the definition of "online portal" in rule 2 is also updated to reference these changes, in addition to its previous references to rules 4 (applications through solicitors or probate practitioners), 5ZA (online procedure for personal applications), and 5A (alternative online procedure for personal applications). Additionally, the Third Schedule is amended to remove the exception of trust corporation applications from the online portal requirement for practitioner applications.

5.15 Some applications for grants submitted using the online portal are processed rapidly. One consequence of this rapid processing is that, in a very small number of cases, a grant is issued before the system registers a caveat (objection) having been lodged against it. Normally, where a caveat is raised, a grant would not be sealed if the caveat is dated before the date of the grant being sealed. Usually, amendment and revocation of a grant were only possible (i) following an application from the person to whom the grant was made, or (ii) with the consent of the person to whom the grant was made, or (iii) in exceptional circumstances. Pursuant to the amendments to rule 41 introduced by these Regulations, a district judge or registrar now must revoke a grant that was issued in error where a caveat was in place at the time the grant was made.

5.16 Caveats are only entered online or by post nowadays; they are not lodged in person in a registry, and court offices no longer have ledger books available to be completed. However, rule 44 still allowed for a caveat form to be physically completed in "the appropriate book" at a registry. This option was outdated; hence, rule 44 is amended to remove the ability to enter a caveat in person at a registry. Additionally, registrars regularly have to request a statement from a caveator in support of a summons for directions, meaning that no grounds may be set out for an objection. To forestall this situation and reduce delays, rule 44 now requires a caveator wishing to issue and serve a summons for directions to provide a statement in support of the directions they are seeking. A consequential amendment to rule 44 is also made to enable a district judge or registrar to apply the new order of priority inserted into rule 27.

5.17 Form 4 (in the First Schedule to the NCPR) afforded 8 days for either a caveator or their representative to make an appearance at the registry in which the caveat index was maintained, or for a caveator to issue and serve a summons for directions with a supporting statement. However, this was inconsistent with rules 44(6), 44(10), and 44(12), all of which were updated by the Non-Contentious Probate (Amendment) Rules 2018 (S.I. 2018/1137) to provide for a period of 14 days during which to serve notice for various stages of the caveat process. Hence, Form 4 is amended to allow 14 days to a caveator.

5.18 The Non-Contentious Probate (Amendment) Rules 2020 (S.I. 2020/1059) excepted all grants under rule 27 from the requirement to use the online portal for applications for

grants made through solicitors or probate practitioners. Rule 27 concerns those grants for which two or more people are entitled to apply in the same degree (e.g., as co-executors). There is no reason, however, to exempt probate applications made by professionals under rules 27(1)–(3) (which pertain to applications made by professionals only, and not to applications made by public users) from this general requirement, since the technology can now support these applications electronically. Rules 27(4)–(8), by contrast, include applications made by public users. Hence, the Third Schedule is amended such that the exception to the requirement to use the online portal now applies only to rules 27(4)–(8) rather than to rule 27 in its entirety.

5.19 The Third Schedule is also amended to remove the exemption of grants to trust corporations from the requirement that applications made by solicitors and probate practitioners be made through the online portal.

6. Legislative and Legal Context

How has the law changed?

6.1 The power to make rules governing non-contentious probate business in the High Court is set out in Section 127 of the Senior Courts Act 1981 and section 2(5) of the Colonial Probates Act 1892. The rules are periodically updated to ensure that they reflect any changes in legislation or practice, such as the ability of the courts to process some claims through the online portal. The changes to the law made in this Instrument are summarised in paragraphs 5.4–5.18, which also set out the policy rationale for the amendments.

Why was this approach taken to change the law?

6.2 This is the appropriate approach to amending the rules and is consistent with the terms of the governing provision in the Senior Courts Act 1981 and the Colonial Probates Act 1892.

7. Consultation

Summary of consultation outcome and methodology

7.1 There has not been any formal consultation on the changes proposed as the amendments are modest in scope and are designed to reflect current practices and remove some anomalies in the existing rules.

8. Applicable Guidance

8.1 Amendments to the NCPR are drawn to the attention of solicitors and probate practitioners by correspondence addressed to members of the judiciary, to relevant representative bodies (the Law Society, the Bar Council, etc.) and to the editors of relevant legal publications, as well as by publicity within HMCTS.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because these reforms are relatively minor and will have only a small effect on a specialist group of businesses: those businesses that are involved in probate applications.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses other than probate practitioners, on whom it does not have a significant impact.

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through the NCPR being kept under continuous review by the President of the Family Division and the Lord Chancellor. HMCTS has regular stakeholder engagement with professional representatives on the Probate Service. Periodic amendments to these rules reflect this ongoing process.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 These Rules have been made in part in consequence of a defect in S.I. 2018/1137 and are being issued free of charge to all known recipients of that Statutory Instrument. Form 4 corrects defects identified in that instrument. Specifically, while rules 44(6), 44(10), and 44(12) of the NCPR were amended by S.I. 2018/1137 to establish a 14-day period for serving notice at various stages of the caveat process, Form 4 continued to provide only 8 days for a caveator or their representative to make an appearance at the registry in which the caveat index was maintained, or for a caveator to issue and serve a summons for directions with a supporting statement. Accordingly, Form 4 has now been revised to also allow 14 days.

11.2 The MoJ has complied with the requirement to consult with the S.I. Registrar on this matter.

12. European Convention on Human Rights

12.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).