Annex B

PROBATE RULES 2013 : Final draft June 2013

Part 1: Introduction

1 Citation and commencement

(1) These Rules may be cited as the Probate Rules 2013.

(2) These Rules shall come into force on [XXX].

2 Meaning of words used in these rules

(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 to sign grants of representation or seal and certify copies;

“capacity” means capacity within the meaning of the Mental Capacity Act 2005;

“collection grant” means a grant limited to the taking of steps for the preservation of the estate (formerly called a “grant ad colligenda bona”);

“the court” means a registrar or district judge or judge (as the case may be);

“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 of administration (including a grant of administration with the will annexed) and includes, where the context so admits, the resealing of such a grant under the Colonial Probates Acts 1892 and 1927;

”judge” means a judge of the High Court ;

“notification” (formerly known as “citation”) means a document of the kind referred to in Part 10 of these Rules and “notifier” means the person at whose request a notification is issued;

“objection” means ‘caveat’ within the meaning of section 108 of the Act, that is a notice filed in accordance with Part 11 of these Rules by a person who wishes to prevent the making of a grant;

“objector” means a person who wishes to prevent the making of a grant and for that purpose enters or wishes to enter an objection;

“office copy” is a copy bearing the seal of the Court;

“Practice Direction” means any practice direction made in accordance with rule 6;

“Principal Registry” means the Principal Registry of the Family Division of the High Court of Justice;

“probate claim” means a claim as defined by r.57.1(2)(a) of the Civil Procedure Rules 1998;

“probate matters” mean non-contentious or common form probate business within the meaning of sections 127 and 128 of the Act, that is any matters relating to obtaining probate or administration in accordance with the Act and these Rules;

“probate practitioner” means a solicitor and any person to whom section 23(1) of the Solicitors Act 1974 does not apply by virtue of section 23(2) of that Act or section 55 of the Courts and Legal Services Act 1990;

“registrar” means the district probate registrar of any district probate registry;

“registry” means the Principal Registry or a district probate registry, including any sub-registry;

“response” means a person’s response to an objection filed in accordance with Part 11 of these rules;

“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;

“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;

“statement of truth” means a statement that the party putting forward a document (being in the case of a witness statement the maker of that witness statement) believes the facts stated in the document to be true;

“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.

“will” for the purposes of these rules, includes any will, codicil or other testamentary instrument relating to the estate in question;

(2) The meaning of certain other expressions (in these Rules marked ^{G}) is explained (but without affecting their legal meaning) in the Glossary set out in the First Schedule.

(3) A form referred to by number means the form so numbered in the relevant Practice Direction; and such forms shall be used wherever applicable, with such variation as the court may in any particular case direct or approve.

3 Application of other rules

Subject to the provisions of these Rules and to any enactment, the Civil Procedure Rules 1998 shall apply with any necessary modifications to probate matters, and any reference in these Rules to those Rules shall be construed accordingly.

4 Application to pending probate matters

Subject in any particular case to any direction given by the court, these Rules shall apply to any probate matter which is pending on the date on which they come into force as well as to any probate matter commenced on or after that date.

5 Revocation of previous rules

(1) Subject to paragraph (2), 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 4.

6 Practice Directions

These Rules may be supplemented by Practice Directions made in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005.

Part 2: General functions and powers of the court

7 Overriding objective

The overriding objective of these Rules is to enable probate matters to be dealt with justly and expeditiously by the registries, the court and persons dealing with them.

8 Notices, etc

Unless the court 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 Part 6 of the Civil Procedure Rules 1998.

9 Address for service

All objections, notifications, responses and acknowledgements of service shall contain an address for service in England and Wales.

Part 3: Who is entitled to a grant

10 Order of priority for grant where person 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 23(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[G] on behalf of the Crown, provided that –

(i) unless the court 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 court may, if it 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 the court 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.

11 Order of priority for grant in case of intestacy

(1) Where the deceased died on or after 1 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[G] on behalf of the Crown.

(3) If all persons entitled to a grant under the foregoing provisions of this rule have been cleared off[G], 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 increase in the value of the estate.

(4) Subject to rule 13(6), the personal representative of a person in any of the classes mentioned in paragraph (1) 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 paragraph (1)(b)-(h) above shall be preferred

to the personal representative of a spouse or a 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.

12 Order of priority for grant in pre-1926 cases

Where the deceased died before 1st 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.

13 Grants where two or more persons entitled in same degree

(1) Subject to paragraphs (2), (3) and (4) 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 court otherwise directs, the witness statement in support of that application shall state that such notice has been given.

(2) Where executors are members of a firm described in the will and any member of that firm applies for probate, notice need not be given to other members under paragraph (1) if power is being reserved to them

(3) Where power is to be reserved to members of a firm, notice for the purposes of paragraph (1) may be given to the members by sending it to the firm at its principal or last known place of business.

(4) The court may dispense with the giving of notice under paragraph (1) if it is satisfied that the giving of such a notice is impracticable or would result in unreasonable delay or expense.

(5) A grant of administration may be made to any person entitled thereto without notice to other persons entitled in the same degree.

(6) Unless the court otherwise directs, administration shall be granted to

(a) a person of 18 years or more of age entitled thereto in preference to a guardian of a person of less than 18 years of age and who is otherwise entitled in the same degree, and

(b) to a living person entitled thereto in preference to the personal representative of a deceased person who had been otherwise entitled in the same degree.

(7) A dispute between persons entitled to a grant in the same degree shall be brought before the court by application.

(8) The making of an application under rule 13(7) shall be noted forthwith in the record of pending grant applications.

(9) If the issue of an application under rule 13(7) is known to the court, it shall not allow any grant to be sealed until such application is finally disposed of.

14 Joinder of administrator

(1) A person entitled in priority to a grant of administration may, without the need to apply for permission, apply for a grant to be made to that person together with a person entitled in a lower degree, provided that

(a) there is no other person entitled in a higher degree to the person who is to be joined as co-administrator, or
(b) every person entitled in a higher degree to the person who is to be joined as co-administrator has renounced.

(2) Subject to paragraph (3) where paragraph (1) does not apply, a person entitled in priority to a grant of administration may apply to the court for permission for the making of a grant to that person together with a person having no right or no immediate right to a grant of administration as co-administrator. Such application shall be supported by

(a) a witness statement made by the person entitled in priority,
(b) the consent in writing of the person proposed to be joined as co-administrator and
(c) such other evidence as the court may direct.

(3) Unless the court otherwise directs, a grant of administration may be made without the need to apply for permission to a person entitled in priority to such a grant together with as co-administrator –

(a) any person who is nominated under rule 41(3) or rule 43(3) or
(b) a trust corporation.

15 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.

16 Grants to attesting witnesses, etc

Where a gift to any person fails by reason of section 15 of the Wills Act 1837 (“gifts to an attesting witness and his or her spouse or civil partner at the date of the will to be void”), 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.

17 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 because of the operation of rules 10,11,13 or 14.

(2) Where the deceased died domiciled outside England and Wales Rules 10,11 13 or 14 shall not apply except in a case to which rule 44(3) applies.

18 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 any other capacity. unless he expressly renounces such right.

(2) Renunciation of probate or administration by members of a firm –

(a) may be effected, or
(b) subject to paragraph (4) 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) Unless the court otherwise directs, no person who has renounced administration in one capacity may obtain a grant thereof in some other capacity.

(4) A renunciation of probate or administration may be retracted at any time with the permission of the court; provided that only in exceptional circumstances may an executor be given permission to retract a renunciation of probate after a grant has been made to some other person entitled in a lower degree.

19 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 their behalf.

(2) The right of a minor to administration may be renounced only by a person appointed under rule 41(2), and authorised by the court to renounce on behalf of the minor.

Part 4: Applications for a grant

20 Who may apply

Subject to rules XXX an application for a grant may be made:

(a) through a probate practitioner; or
(b) by personal application;

21 Applications for grants made through a probate practitioner

Every probate practitioner through whom an application for a grant is made shall give the address of their place of business within England and Wales.

22 Personal applications

(1) Except as provided by rule 45 (resealing a colonial grant) a personal applicant may not apply through an agent, whether paid or unpaid, and may not be attended at the registry by any person acting or appearing to act as their adviser.

(2) No personal application shall be proceeded with if –

(a) it becomes necessary to bring the matter before the court by action or application, unless a registrar, district judge or judge so permits;
(b) an application has already been made by a probate practitioner on behalf of the applicant and has not been withdrawn; or
(c) the court so directs.

(3) 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 court so directs.

(4) No legal advice shall be given to a personal applicant by an officer of a registry.

23 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 shall make a witness statement stating that the corporation is a trust corporation as defined by these Rules and that it has power to accept a grant.

(2) 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.

(3) Where paragraph (2) does not apply –

(a) a certified copy of the resolution of the trust corporation authorising the officer to make the application shall be lodged, or
(b) it shall be stated in the witness statement –
(i) that such certified copy has been filed with the senior district judge,
(ii) that the officer is therein identified by the position he holds, and
(iii) 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 court may dispense with any such consents as aforesaid on such terms, if any, as the court may think fit.

(4) This paragraph applies where a corporate body would, if an individual, be entitled to a grant but is not a trust corporation as defined by these Rules. In such a case –

(a) Subject to sub-paragraph (d) below, administration for the use and benefit of such corporate body, limited until further representation be granted, may be made to its nominee or to its lawfully constituted attorney or to any person lawfully appointed to act on its behalf (not being a trust corporation) pursuant to section 15 of the Local Government Act 2000.

(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 court's satisfaction.
(c) The nominee or attorney or lawfully appointed person shall make a witness statement stating that the corporate body is not a trust corporation as defined by these Rules.
(d) The provisions of sub-paragraph (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.[G]

24 How to apply

(1) An application for a grant may be made to any registry.

(2) The application may be delivered to the registry in any of the ways set out in any relevant Practice Direction.

(3) An application by a personal applicant shall be made as follows:

(a) the applicant shall complete and deliver to the registry a questionnaire in the form set out in the relevant Practice Direction;
(b) the applicant shall verify the truth of the answers in the manner required by the form;
(c) the applicant shall deliver to the registry such other papers as may be required by any relevant Practice Direction

(4) An application made through a probate practitioner shall:

(a) specify the form of grant being applied for;
(b) be supported by a witness statement by the person seeking the grant setting out all the facts necessary to be established if such a grant is to be made; and
(c) be accompanied by such other papers as may be required by any relevant Practice Direction.

25 Requirement to provide further information or documents or to attend for interview

Any applicant shall if requested by the registry

(a) provide any further information or any copy or original document requested or specified by the registry; and
(b) attend for interview at the registry

26 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:

(a) notice of intended application for a grant shall be given to the Treasury Solicitor:
(i) if the application has been made in accordance with rule xxx by the court; and
(ii) in every other case by the applicant;

(b) the court may direct that no grant shall issue within 28 days after the notice has been given.

Part 5: Evidence in support of an application for a grant

27 Witness statement in support of grant

(1) Every witness statement in support of a grant shall be verified by a statement of truth.

(2) Unless otherwise directed by the court, the witness statement referred to in paragraph (1) shall state

(a) the full name of the deceased (subject to rule 28);
(b) the date of birth of the deceased as stated on the death certificate or as applicable to the circumstances;
(c) the date of death of the deceased as stated on the death certificate;
(d) the address of the principal residence of the deceased; and
(e) the state or territory where the deceased died domiciled."

(3) The witness statement referred to in paragraph (1) shall also state:

(a) the basis on which the applicant claims to be entitled to a grant;
(b) in what manner any person having a prior right to a grant has been cleared off [G];
(c) where the application is for a grant of administration, whether any minority or life interest arises under the will or intestacy and
(d) the gross and net value of the estate of the deceased"

28 Evidence where 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's witness statement must:

(a) state the name and (and any other name(s) of the deceased including that shown on the death certificate),
(b) identify any part or parts of the estate which was held in the other name or names, and
(c) give any other reason why the deceased should be described in the grant by the additional name as well as by his true name.

29 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 court may accept –

(a) a witness statement from any person whom, having regard to the particulars of their knowledge or experience given in the statement, the court 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.

30 Marking of wills to be admitted to proof

(1) Subject to paragraph (2) every will in respect of which an application for a grant is made;

(a) shall be marked by the signatures of the applicant and referred to in the witness statement; and
(b) shall be exhibited to any witness statement which may be required under these Rules as to the validity, terms, condition or date of execution of the will.

(2) The court may allow a facsimile copy of a will to be marked or exhibited in lieu of the original document.

(3) 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 a copy or reproduction of the will in the form in which it is to be proved.

(4) Any version of the will 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.

Part 6: Evidence and procedure in particular cases

31 General

(1) This Part of the Rules applies 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) This Part of the Rules applies where –

(a) the original of a will is not available; or
(b) the court is in doubt as to the due execution of a will because the will contains no attestation clause or the attestation clause is insufficient or for any other reason; or
(c) the will appears to have been signed by a blind or illiterate testator or by another person by direction of the testator; or
(d) there is a doubt as to the date on which a will was executed; or
(e) 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; or
(f) there is an appearance of attempted revocation of a will by burning, tearing, or otherwise destroying.

(3) In any case referred to in paragraph (2) the court may if it thinks fit –

(a) require that notice of the application be given to any person who may be adversely affected by the will being admitted to proof;

(b) require a witness statement from any person it may think fit for the purpose of satisfying itself as to any of the matters referred to in paragraph (2).

32 Where the original of a will is not available

(1) 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.

(2) In every other case falling within rule 31 (2)(a) an application shall be made to the court for an order admitting to proof an oral will, or a will contained in a copy or reconstruction thereof where the original is not available.

(3) An application under paragraph (2) above shall be supported by a witness statement setting out the grounds of the application, and by

(a) such evidence by witness statement as the applicant can adduce–

(i) as to 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;
(ii) in respect of an oral will, as to the contents of that will;
(iii) in respect of a reconstruction of a will, as to the accuracy of that reconstruction; and

(b) such further evidence as the court may require as to due execution of the will.

(4) Where the original of a will is not available, the court may order that a copy of the will be proved if it is satisfied that

(a) no person might be adversely affected by the failure to prove the original, or
(b) the person who is holding the original will has failed to produce the original after being required to do so.

33 Due execution

(1) In a case falling within rule 31(2)(b), the court, subject to the provisions of this rule shall before admitting the will to proof require a witness statement as to due execution from:

(a) one or more of the attesting witnesses; or
(b) if no attesting witness is conveniently available, from any other person who was present when the will was executed;

or, if no such witness statement can be obtained, evidence by witness statement from any person the court may think fit to show that the signature on the will is in the handwriting of the deceased, or any other matter which may raise a presumption in favour of due execution of the will.

(2) A witness statement made by an attesting witness or by any other person who was present at the time of the execution of a will shall contain such evidence as

the maker of the statement can give with regard to the manner in which the will was executed.

(3) The court may accept a will for proof without such evidence if the court is satisfied either

(a) that the distribution of the estate is not thereby affected, or
(b) that any person who might be adversely affected by accepting the will for proof has consented to its proof without evidence.

(4) If the court, after considering any evidence, is satisfied that the will was not duly executed, the court shall refuse probate and mark the will accordingly.

34 Blind or illiterate testator

In a case falling within rule 31(2)(c) the court shall, before admitting the will to proof, satisfy itself that the testator had knowledge of the contents of the will at the time of its execution.

35 Obliterations, alterations, etc

(1) In a case falling within rule 31(2)(e), the court, subject to paragraph (2) below, shall satisfy itself as to 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) paragraph (1) shall not apply to any alteration which appears to the court 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 court shall require the document to be produced and may call for evidence as it may think fit to satisfy itself with regard to the incorporation of the document.

36 Attempted revocation

In any case falling within rule 31(2)(f), the court shall satisfy itself that the will has not been revoked.

Part 7: Applications for grants in particular cases

37 Wills proved otherwise than under section 9 of the Wills Act 1837

A will that is to be established otherwise than by reference to **section 9 of the Wills Act 1837** may be so established upon the court being satisfied as to its terms and validity. This includes, for example:

(a) any will to which rule 38 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.

(2) An application to establish a will in accordance with paragraph (1) above, shall be supported by such evidence as the court may require in order to satisfy itself as to its terms and validity.

38 Wills of persons on military service and seamen

Where the deceased died domiciled in England and Wales and it appears to the court that there is prima facie evidence that a will is one to which section 11 of the Wills Act 1837 (“soldiers and mariners wills”) applies, the will may be admitted to proof if the court is satisfied that it was signed by the testator or, if unsigned, that it is in the testator's handwriting.

Part 8: Applications for particular types of grant

39 Grants to attorneys

(1) Subject to paragraphs (2) and (3) where a person (referred to in this rule as “the donor”) is entitled to a grant, the lawful attorney of the donor 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 court may direct.

(2) Where the donor referred to in paragraph (1) is an executor, notice of the application shall be given to any other executor unless such notice is dispensed with by the court.

(3) Where the donor referred to in paragraph (1) lacks capacity 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 43

40 Appointment of additional personal representatives during minority or life interest

(1) An application under section 114(4) of the Act to add a personal representative shall be supported by:

(a) a witness statement made by the applicant,
(b) the written consent of the person proposed to be added as personal representative and
(c) such other evidence as the court may require.

(2) On any such application the court may direct that a note shall be made on the original grant of the addition of a further personal representative, or it may impound or revoke the grant or make such other order as the circumstances of the case may require.

41 Grants on behalf of minors

(1) Subject to paragraph (2), where a person to whom a grant would otherwise be made is a minor, administration for the use and benefit of the minor, limited until the minor attains the age of eighteen years, shall be granted to

(a) a parent of the minor who has, or is deemed to have, parental responsibility for the minor 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

(b) 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 where the court has made a residence order under section 8 of that Act in respect of the minor in favour of that person; or

(c) a step-parent of the minor who has parental responsibility for the minor in accordance with section 4A of the Children Act 1989; or

(d) 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

(e) a special guardian of the minor who is appointed in accordance with section 14A of the Children Act 1989; or

(f) an adoption agency which has parental responsibility for the minor by virtue of section 25(2) of the Adoption and Children Act 2002; or

(g) 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 the court otherwise directs, be granted to the person entitled to the residuary estate.

(2) The court may by order appoint a person to obtain administration for the use and benefit of the minor, limited until the minor attains the age of eighteen years in default of, or jointly with, or to the exclusion of, any person mentioned in paragraph (1). The person to be so appointed shall make a witness statement in support of their 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, a grant may, unless the court otherwise directs, be made jointly to that person and to any fit and proper person nominated by that person.

42 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) Where a minor is appointed executor jointly with one or more other executors, administration for the use and benefit of the minor until the minor attains the age of eighteen years may be granted under rule 41 if, and only if, the other executor or executors who are not under disability renounce or, on being notified under Part 10 of these Rules to accept or refuse a grant, fail to make an effective application therefore.

43 Grants in case of lack of mental capacity to administer the estate

(1) Subject to paragraph (2), where the court is satisfied that a person entitled to a grant lacks capacity to administer the estate, administration for the use and benefit of that person, limited until further representation be granted or in such other way as the court 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 acting under a registered enduring power of attorney or registered 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, to the person entitled to the residuary estate of the deceased.

(2) Unless the court otherwise directs, no grant shall be made under this rule unless all persons entitled in the same degree as the person who lacks capacity to administer the estate referred to in paragraph (2) have been cleared off.[G]

(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 the court otherwise directs, be granted jointly to such person and to any fit and proper person nominated by that person.
(4) Notwithstanding the foregoing provisions of this rule, administration for the use and benefit of the person who lacks capacity may be granted to such other person as the court may by order direct.

44 Grants where deceased died domiciled outside England and Wales

(1) Subject to paragraph (3), where the deceased died domiciled outside England and Wales, the court may order that a grant, limited in such way as the court may direct, be made 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 court may direct; or
(c) if in the opinion of court the circumstances so require, to such person as the court may direct.

(2) A grant made under paragraph (1)(a) or (b) may be made jointly with such person as the court may direct if the grant is required to be made to not less than two administrators.

(3) Without any order made under paragraph (1):

(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; or
(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.

45 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) Except with the permission of the court, no grant shall be resealed unless it was made to such a person as is mentioned in rule 44(1)(a) or (b) or to a person to whom a grant could be made under rule 44(3)(a).

(3) No limited or temporary grant shall be resealed except with the permission of the court.

(4) 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 section 2(1) 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.

(5) The court shall send notice of the resealing to the court which made the grant.

(6) 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.

46 Grants in respect of settled land

(1) 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:

(a) the special executors in regard to settled land constituted by section 22 of the Administration of Estates Act 1925;
(b) the trustees of the settlement at the time of the application for the grant; and
(c) the personal representatives of the deceased.

(2) 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.

47 Grants to part of an estate under section 113 of the Act

An application under section 113 of the Act for an order for a grant to part of an estate may be made to the court, and shall be supported by a witness statement -

(a) setting out the grounds of the application; and
(b) stating whether the estate of the deceased is known to be insolvent; and
(c) showing how any person entitled to a grant in respect of the whole estate in priority to the applicant has been cleared off.[G]

48 Grants of administration under discretionary powers of the court, and collection grants

An application for an order for –

(a) a grant of administration under section 116 of the Act; or
(b) a collection grant,

may be made to the court and shall be supported by a witness statement setting out the grounds of the application.

Part 9: Duties and powers of the court on receiving application for grant

49 Duty of court on receiving application for grant

(1) The court shall not allow any grant to be made until all inquiries which it may see fit to make have been answered to its satisfaction and unless it is satisfied that the applicant has sufficiently complied with any requirements set out in these Rules and in any relevant Practice Direction.

(2) Except with the leave of the court, no grant shall be made within fourteen days of the death of the deceased.

50 Grants by registrars

(1) No grant shall be made by a registrar –

(a) in any case in which there is a dispute about entitlement to the grant or the validity of the will, until that dispute is resolved or determined; or
(b) in any case in which it appears to him that a grant ought not to be made without the directions of a district judge or a 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) On receiving a statement from a registrar, a district judge may either confirm that the matter be referred to a district judge or judge and give directions accordingly or may direct the registrar to proceed with the matter in accordance with such instructions as the district judge deems necessary, which may include a direction to take no further action in relation to the matter.

Part 10: Notifications

51 General

(1) Any registry may issue a notification requiring the person receiving the notification either

(a) to accept or to refuse or to take a grant in accordance with rule 53, or
(b) to give reasons why that person should not be ordered to take a grant in accordance with rule 53, or
(b) to prove a will by probate claim in accordance with rule 54.

(2) No notification shall be issued (i) while proceedings as to the validity of the will are pending or (ii) before the notifier has entered an objection in accordance with rule 55.

(3) Unless the court by order made on application otherwise directs, any objection in force at the commencement of the notification proceedings shall, unless withdrawn pursuant to rule 58, 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 objection entered by a party who had knowledge of the proceedings shall cease to have effect.

52 Evidence and procedure

(1) The facts stated in a notification, and such other information as the court may require, shall be verified by a statement of truth made by the notifier or where the court permits by the notifier's probate practitioner.

(2) Every will referred to in a notification shall be lodged in a registry before the notification is issued, except where the will is not in the notifier's possession and the court is satisfied that it is impracticable to require it to be lodged.

(3) Subject to paragraph (4) every notification shall be served personally on the person to be notified.

(4) The court may, if satisfied by evidence contained in a witness statement, that it would be just and expedient, direct that the notification may be served by some other appropriate method (including by advertisement).

(5) A person who has been served with a notification may, within eight days of being so served (inclusive of the day of such service), or at any time thereafter if no application has been made by the notifier under rule 53 (2) or rule 54 (2), acknowledge service in the registry from which the notification was issued by filing Form 5 and shall serve on the notifier a soon as practicable, a copy of Form 5 sealed with the stamp of the registry.

53 Notification to accept or to refuse or to take a grant

(1) Subject to rule 51(2), a notification to accept or to refuse or to take a grant may be issued to a person entitled to a grant at the request of any person who would be entitled to a grant in the event of the recipient renouncing the recipient's right thereto.

(2) Subject to rule 51(2), a notification to accept or to refuse or to take a grant may be issued to a person in respect of whom power to make a grant has been reserved. Such a notification may be issued at the request of executors who proved the will or the survivor of them or by executors of the last survivor of deceased executors who proved the will.

(3) Subject to rule 51(2), a notification may be issued at any time after the expiration of six months from the death of the deceased, calling on an executor who has intermeddled in the estate of the deceased to give reasons why that intermeddler should not be ordered to take a grant. Such a notification may be issued at the request of any person interested in the estate.

(4) A person receiving a notification under paragraph (1), (2) or (3) who is willing to accept or to take a grant may, after acknowledging service apply by witness statement to the registry dealing with the matter (without giving notice to any other person concerned) for an order for a grant to that person.

(5) If the time limited for acknowledging service has expired and the person receiving the notification has not acknowledged service, the notifier may –

(a) in the case of a notification under rule 53(1) apply to the court for an order for a grant to the notifier;
(b) in the case of a notification under rule 53(2) apply to the court for an order that a note be made on the grant that the executor in respect of whom power was reserved has been duly notified and has not appeared and has ceased to have any rights in respect of the executorship; or
(c) in the case of a notification under rule 53(3) apply to the court by application (which shall be served on the person receiving the notification) for an order requiring the person notified to take a grant within a specified time or for a grant to be made to the notifier or to some other person specified in the application.

(6) An application under paragraph (5) shall be supported by a witness statement showing that the notification was duly served.

(7) If the person receiving the notification has acknowledged service but has not applied for a grant under paragraph (5) or has failed to pursue his application with reasonable diligence, the notifier may –

(a) in the case of a notification under rule 53(1) make an application to the court for an order for a grant to the notifier;
(b) in the case of a notification under rule 53(2) make an application to the court for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in paragraph (5)(b); or
(c) in the case of a notification under rule 53(3) make an application to the court for an order requiring the person notified to take a grant within a specified time or for a grant to the notifier or to some other person specified in the application; and the application shall be served on the person notified.

54 Notification to have a will proved in solemn form

(1) Subject to rule 51(2), a notification to have a will proved in solemn form shall be directed to the executors named in the will and to all persons interested under it. Such a notification may be issued at the request of any person having an interest contrary to that of the executors or such other persons.

(2) If the time limited for acknowledging service has expired, the notifier may –

(a) in the case where no person has acknowledged service, apply to the court for an order for a grant as if the will were invalid and such application shall be supported by a witness statement showing that the notification was duly served; or
(b) in the case where no person who has acknowledged service proceeds with reasonable diligence to prove the will, apply to the court by application, which shall be served on every person notified who has acknowledged service, for such an order as is mentioned in paragraph (a)

Part 11: Objection to the making of a grant

55 Entry and effect of an objection

(1) An objector or a probate practitioner on the objector's behalf may enter an objection by completing and filing at any registry a notice of objection [in Form 3] setting out particulars of the objection including particulars of any contrary interest.

(2) Upon the registry receiving a completed notice of objection, the objection shall be entered in the record of objections maintained by the registry and an acknowledgement shall be sent to the objector.

(3) The court shall not allow a grant to be made (other than a collection grant or a grant under section 117 of the Act) if it has knowledge of an objection which remains effective;

56 Duration and extension of objection

(1) An objection shall have effect from the next business day following the date on which it is entered and, subject to the provisions of this rule or of rules 58, 59 and 61, shall continue to have effect for a period of twelve months.

(2) Subject to paragraph (3), an objector may seek to extend the period for which the objection has effect by making a written request to the registry dealing with the matter; any such request must be received by the registry within the last month before the objection would otherwise cease to have effect and upon receipt of the request the objection will be extended for a further period of twelve months.

(3) Where a response has been filed under rule 57 any application to extend the period for which the objection has effect must, unless the court directs otherwise, be made by application notice.

(4) Where an objection is extended on a written request under paragraph (2) or on an application under paragraph (3), the provisions of this rule and rule 55(3) shall apply to the objection so extended.

(5) Any extension shall be entered in the record of objections.

57 Response to an objection

(1) Any person who claims to have an interest in the estate and who wishes to oppose the objection must file at the registry dealing with the matter a response to the objection [in Form 4] setting out reasons for opposing the objection including particulars of any contrary interest.

(2) Upon the filing of a completed form of response, the response shall be entered in the record of objections and a copy of the response shall be sent to the objector.

(3) Any person who has filed a response in accordance with paragraph (1) may, on or after filing the response, apply to the court by application notice for a direction that the objection cease to have effect or for further directions as to the continuation of the objection.

58 Withdrawal of an objection

(1) An objection may be withdrawn without the permission of the court at any time before a response is filed under rule 57.

(2) After a response has been filed, an application to withdraw an objection may, if all the parties consent, be made by filing a written request at the registry dealing with the matter but must otherwise be made by application notice.

59 **Powers of the court**

(1) On determining an application made under rule 56(3), rule 57(3) or rule 58(2) the court may order that the objection continue to have effect or that it shall cease to have effect or may make such other orders or directions as may be appropriate, including any terms or conditions to be attached to the order.

(2) An objection which is effective when an application is made under rule 56(3), rule 57(3) or rule 58(2) shall remain effective until the determination of the application.

60 Further objection

Except with the permission of the court no further objection may be entered by an objector whose objection has been withdrawn or has ceased to have effect under these Rules or by order of the court.

Part 12: Probate claims

61 Probate claims

(1) Upon being advised by the court concerned of a probate claim, the senior district judge shall give notice of the claim to every objector other than the claimant in the claim in respect of each objection that is in force.

(2) In respect of any objection lodged after the commencement of a probate claim the senior district judge shall give notice to that objector of the existence of the claim.

(3) Unless a district judge or a judge by order made on an application otherwise directs, the commencement of a probate claim shall operate to prevent the making of a grant (other than a grant under section 117 of the Act) until an application for a grant is made by the person shown to be entitled thereto by the decision of the court in such claim.

(4) Upon such application for a grant, any objection entered by the claimant in the claim, and any objection in respect of which notice of the action has been given, shall cease to have effect.

Part 13: Amendment and revocation of grant

62 Amendment and revocation of grant

(1) Subject to paragraph (2) if the court is satisfied that a grant should be amended or revoked it 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) shall be exercised only in exceptional circumstances.

Part 14: Records, copies and searches

63 Record of grant applications

(1) The senior district judge shall maintain a record of every pending application for a grant made in any registry.

(2) Every registry in which an application is made shall cause the record to be searched and shall note the result of the search.

64 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 lodging at, or sending by post to any registry, 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 and which –

(a) was made not more than twelve months before the entry of the standing search; or
(b) is made within a period of twelve months after the entry of the standing search.

(3) Where a person who has entered a standing search wishes to extend the said period of twelve months

(a) that person or that person's probate practitioner may seek an extension by application in writing to the registry at which the standing search was entered;
(b) an application for extension must be lodged, or received by post, within the last month of the said period of twelve 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 making a further application for extension subject to the same conditions as set out in sub-paragraphs (a) and (b)

65 Inspection of copies or original wills and other documents

(1) Subject to paragraphs (2) and (3), the general rule is that an original will or other document referred to in section 124 of the Act shall be open to inspection.

(2) An original will or other document referred to in section 124 of the Act shall not be open to inspection if the President of the Family Division has made an order in accordance with paragraph (3) or paragraph (4).

(3) If the will is the will of;

(a) The Consort of a Sovereign or former Sovereign.
(b) The child of a Sovereign or former Sovereign.
(c) A member of the Royal Family who, at his or her death is the first or second in line of succession to the throne or the spouse or civil partner or child of such a person.

the President of the Family Division shall make an order that the will shall not be open to inspection.

(4) In any other case the President of the Family Division may make an order that the will shall not be open to inspection if he is satisfied that the will is a will of;

(a) a person who is the subject of arrangements made under section 82 of the Serious Organised Crime and Police Act 2005 ('protection arrangements');
(b) a person whose rights under ECHR Article 2 (right to life) may be infringed if the will is open to inspection;
(c) a person to whom an interim or a final gender recognition certificate has been issued under the Gender Recognition Act 2004.

(5) An application for an order pursuant to paragraph (3) or paragraph (4) shall be made by application notice filed at the Principal Registry and returnable in the first instance before the senior district judge.

(6) An application for an order under paragraph (3) or paragraph (4) shall be made on behalf of the estate of the deceased and the Attorney-General shall be the respondent; no other person shall be made a respondent unless the senior district judge or the President of the Family Division so directs.

(7) Any application to vary or set aside an order under paragraph (3) or (4) shall be heard by the President of the Family Division

(8) An application under paragraph (7) shall be made by application notice filed at the Principal Registry and returnable in the first instance before the senior district judge

(9) On an application under paragraph (7) the respondents shall be the

(a) the Attorney-General; and
(b) if the application is not made on behalf of the estate, the personal representatives of the deceased;
(c) any other person (if living) who was a party to the application which led to the order in question.

and no other person shall be made a respondent unless the senior district judge or the President of the Family Division so directs.

66 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 issued either as unsealed office copies or, where the copies are for the executor or administrator (or someone who can demonstrate they need a sealed copy), copies sealed with the seal of the court or copies sealed with the seal of the court certified by an authorised officer to be true copies.

Part 15: Notice of election

67 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 (if different) in the registry from which the grant issued.

(2) Where the grant was made by 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 on the record and shall be open to inspection.

Part 16: Applications and appeals

68 Applications

(1) This rule applies where:

(a) any rule or Practice Direction requires an application to be made by application notice; or
(b) the court directs that an application shall be made by application notice.

(2) Subject to rule 50(2), the court may require any application to be made to a registrar or district judge sitting in private or to a judge sitting in private or in public .

(3) Unless the court directs otherwise, any application to which this rule applies must be made by filing an application notice

(a) in the case of an application to a registrar or district judge, at the registry in which the matter is proceeding and
(b) in the case of an application to a judge, at the Principal Registry.

(4) The following persons are to be respondents to an application under this rule:

(a) any person to whom notice is required to be given under any provision of these rules or any Practice Direction;
(b) any person to whom a grant of representation has been made in respect of the estate;
(c) any person who has applied for a grant of representation in respect of the estate;
(d) any other person whom the court directs.

(5) Where an application must be made within a specified time, it is so made if the court receives the application notice within that time.

(6) An application notice must:

(a) state what order the applicant is seeking;
(b) state briefly, why the applicant is seeking the order; and
(c) be accompanied by any written evidence on which the applicant intends to rely in support

(7) Except where rule 70 applies, a copy of the application notice and any written evidence in support must be served by the applicant on each respondent at least seven days before the date fixed for the hearing of the application.

(8) A respondent who intends to rely on any written evidence at the hearing of the application must file a copy of that written evidence with the court and serve a copy on the applicant at least two days before the date fixed for the hearing.

(8) The court may at any stage, on application or of its own initiative, give directions for the conduct of the hearing, including directing a hearing by telephone.

(10) Where the applicant or any respondent fails to attend the hearing of an application, the court may proceed in the absence of that person.

(11) Where –

(a) the applicant or any respondent fails to attend the hearing of an application; and
(b) the court makes an order at the hearing,

the court may, on application or of its own initiative, re-list the application.

69 Applications which may be dealt with without a hearing

The court may deal with an application without a hearing if –

(a) the court does not consider that a hearing would be appropriate; or
(b) the parties agree as to the terms of the order sought; or
(c) the parties agree that the court should dispose of the application without a hearing and the court does not consider that a hearing would be appropriate.

70 Applications made without notice

(1) An application may be made without serving a copy of the application notice if this is permitted by a rule or Practice Direction or by the court.

(2) Where an application is made without serving a copy of the application notice and the court makes an order on the application, whether granting or dismissing the application

(a) a copy of the application notice and any evidence in support must unless the court orders otherwise be served with the order on all parties to the application; and
(b) the order must contain a statement of the right to make an application to set aside or vary the order under paragraph (3).

(3) A person who was not served with a copy of the application notice before an order was made under this rule may apply to have the order set aside or varied.

(4) An application under paragraph (3) must be made within seven days beginning with the date on which the order was served on the person making the application.

71 Transfer of applications

(1) Where an application is made to a district probate registry, the registrar may order the transfer of the application to another district probate registry or to the Principal Registry and where an application is transferred to the Principal Registry

the registrar shall state whether the application should be heard by a district judge or judge.

(2) Where an application is made to the Principal Registry or is transferred to the Principal Registry under paragraph (1) for hearing by a district judge, the district judge may order the transfer of the application to a judge or may, where the application was made to the Principal Registry, order the transfer of the application to a district probate registry.

(3) The powers referred to in paragraphs (1) and (2) may be exercised by the court of its own initiative or on the application of any party.

72 Service of application

(1) The court may direct that an application for the service of which no other provision is made by these Rules shall be served on such person or persons and in such manner as the court may direct.

(2) Where the court is satisfied that it is not practicable for an application to be served on any respondent the court may dispense with service on that respondent.

(3) An application for an order under paragraph (2) shall be made by filing a witness statement setting out the grounds on which the applicant relies and verified by statement of truth.

73 Appeals

(1) An appeal against a decision or requirement of a registrar or district judge shall be made to a judge and shall be made by filing a notice of appeal at the Principal Registry.

(2) The notice of appeal shall be filed within 21 days after the decision or requirement against which the appeal is brought, unless the court specifies a different time, and the appellant shall at the same time serve a copy of the notice of appeal on every other party to the proceedings.

(3) Any reference in Part 52 of the Civil Procedure Rules 1998 to a district judge shall be taken to include a district judge of the Principal Registry.

(4) Rule 52.3 (Permission to appeal) does not apply to an appeal under this rule.

(5) This rule does not apply to an appeal against a decision in proceedings for the assessment of costs.

(In proceedings for the assessment of costs, an appeal from the decision of a costs judge or district judge lies to a judge of the High Court under CPR Part 52 and an appeal from the decision of an authorised court officer lies to a costs judge or a district judge under CPR rr 47.21 to 47.24)

Part 17: Applications in particular cases

74 Application for leave to swear death

An application for leave to swear to the death of a person in respect of whose estate a grant is sought may be made to the court, and shall be supported by a witness statement 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 court may require.

75 Application for order to attend for examination or for witness summons 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 claim has been commenced, be made to the court and shall be served on such person as aforesaid.

(2) An application under section 123 of the Act for the issue by the court of a witness summons requiring a person to produce a will shall be supported by a statement of truth setting out the grounds of the application, and if any person served with the application denies that the will is in his possession or control that person may file a statement of truth to that effect in the court from which the witness summons issued.

76 Inventory and Account

Anyone with an interest in an estate may apply to the court for an order for an inventory and account of the administration of the estate by issuing a notice [in a form set out in a practice direction].

77 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 court otherwise directs under rule 61, be made by application to the court and notice of the application shall be served on the administrator, the surety and any co-surety.

78 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 the court, unless a probate claim has been commenced.

(2) The application shall be supported by a witness statement, 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 adversely affected, or such other person who might be adversely affected 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 court is satisfied that, subject to any direction to the contrary, notice has been given to every person mentioned in paragraph (3) and that the application is unopposed, it may order that the will be rectified accordingly.

Part 18: Costs

79 Application of Civil Procedure Rules

Parts 44, 46 and 47 of the Civil Procedure Rules 1998 shall apply to probate matters subject to the following exceptions and modifications:

(a) Every reference in Parts 44, 46 and 47 of the Civil Procedure Rules 1998 to a district judge shall be construed as referring only to a district judge of the Principal Registry

(b) Rules 44.3 to 44.7, 44.13 to 44.18 and 46.11 to 46.13 of the Civil Procedure Rules 1998 shall not apply;

(c) The definition of "authorised court officer" in rule 44.1(1) of the Civil Procedure Rules shall have effect as if paragraphs (i) and (ii) were omitted

(d) Rule 47.4(2) of the Civil Procedure Rules 1998 shall apply as if after the words " Costs Office" there were inserted ", the Principal Registry of the Family Division or such district probate registry as the court may specify".

80 The court's discretion as to costs

(1) On dealing with any application, the court has discretion as to –

(a) whether costs are payable by one party to another;

(b) the amount of those costs; and

(c) when they are to be paid.

(2) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including –

(a) the conduct of all the parties;

(b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and

(c) any admissible offer to settle made by a party which is drawn to the court's attention.

(3) The conduct of the parties includes –

(a) conduct before, as well as during, the application and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;

(b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and

(d) whether the claims made by an applicant who application was successful were, in whole or in part, exaggerated.

(4) The orders which the court may make under this rule include an order that a party must pay –

(a) a proportion of another party's costs;

(b) a stated amount in respect of another party's costs;

(c) costs from or until a certain date only;

(d) costs incurred before the application was made;

(e) costs relating to particular steps taken in the application;

(f) costs relating only to a distinct part of the application; and

(g) interest on costs from or until a certain date, including a date before judgment.

(5) Before the court considers making an order under paragraph (4)(f), it will consider whether it is practicable to make an order under paragraph (4)(a) or (c) instead.

(6) Where the court orders a party to pay costs subject to detailed assessment, it may order that party to pay a reasonable sum on account of costs.

81 Basis of assessment

(1) Where the court is to assess the amount of costs (whether by summary or detailed assessment) it will assess those costs –

(a) on the standard basis; or

(b) on the indemnity basis,

but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount.

(2) Where the amount of costs is to be assessed on the standard basis, the court will –

(a) only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and

(b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party.

(Factors which the court may take into account are set out in rule 82)

(3) Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party.

(4) Where –

(a) the court makes an order about costs without indicating the basis on which the costs are to be assessed; or

(b) the court makes an order for costs to be assessed on a basis other than the standard basis or the indemnity basis,

the costs will be assessed on the standard basis.

(5) Costs incurred are proportionate if they bear a reasonable relationship to –

(a) the sums in issue in the application;

(b) the value of any non-monetary relief in issue in the application;

(c) the complexity of the issues raised in the application;

(d) any additional work generated by the conduct of the paying party; and

(e) any wider factors involved in the application, such as reputation or public importance.

82 Factors to be taken into account in deciding the amount of costs

(1) Where the court is assessing costs on the standard basis, it will have regard to all the circumstances in deciding whether costs were -

(a) proportionately and reasonably incurred; or

(b) proportionate and reasonable in amount.

(2) Where the court is assessing costs on the indemnity basis it will have regard to all the circumstances in deciding whether costs were

(a) unreasonably incurred; or

(b) unreasonable in amount.

(3) In particular, the court will give effect to any orders which have already been made.

(4) The court will also have regard to –

(a) the conduct of all the parties, including in particular –

(i) conduct before, as well as during, the application; and

(ii) the efforts made, if any, before and during the application in order to try to resolve the dispute;

(b) the amount or value of any money or property involved;

(c) the importance of the matter to all the parties;

(d) the particular complexity of the matter or the difficulty or novelty of the questions raised;

(e) the skill, effort, specialised knowledge and responsibility involved;

(f) the time spent on the case;

(g) the place where and the circumstances in which work or any part of it was done; and

83 Procedure for assessing costs

(1) Where the court orders a party to pay costs to another party it may either –

(a) make a summary assessment of the costs; or

(b) order detailed assessment of the costs by a costs officer,

unless any rule, practice direction or other enactment provides otherwise.

(2) In this rule

(a) 'costs officer' means –

(i) a costs judge;
(ii) a district judge of the Principal Registry; or
(iii) an authorised court officer;

(b) 'detailed assessment' means the procedure by which the amount of costs is decided by a costs officer in accordance with Part 47 of the Civil Procedure Rules 1998.

(c) ‘summary assessment’ means the procedure whereby costs are assessed by the [registrar, district judge or] judge who has heard the case or application

84 Time for complying with an order for costs

(1) A party must comply with an order for the payment of costs within 14 days of –

(a) the date of the judgment or order if it states the amount of those costs;

(b) if the amount of those costs (or part of them) is decided later in accordance with Part 47 of the Civil Procedure Rules 1998, the date of the certificate which states the amount; or

(c) in either case, such other date as the court may specify.

SCHEDULE 1

Glossary (see rule 2(2))

“account” means an explanation of what has happened to the assets in the estate of a deceased person;

“assignee” is someone to whom a right or interest of another person is legally transferred (and who thereby takes the place of that other person in the order of priority for a grant of representation as set out in rule 10 or rule 11);

“assignment” is the transfer of a right or interest from one person to another. A deed of assignment is the written document by which this transfer is effected;

“attestation clause” is a statement in the will made by a witness stating that the formalities of execution have been complied with;

“bona vacantia” means property of the deceased which passes to the Crown because no-one else is entitled to it.

“clear off” is to establish why there is no applicant ranking higher in the order of priority as set out in rule 10 or rule 11;

“devisee” is a person who receives a gift of real estate i.e. land, freehold property;

“domicile” is a person’s fixed legal place of residence, their permanent home in a place that has a distinct system of law (for example England and Wales, Scotland or France) and the system of law to which they are most closely connected;

“intermeddled” is where someone appointed executor but to whom no grant has been made has acted in a way that shows that that person has assumed the role of executor such that they cannot resile from the office of executor and can be compelled to take a grant;

“inventory” is a list of the assets that comprise the estate of a deceased person;

“issue” are direct blood line descendants of a person;

“legatee” is a person who receives a gift of personal estate from the deceased i.e. money, bank accounts goods or personal belongings;

“life interest” is an interest given to a person under the will or intestacy of the deceased which interest terminates on that person’s death;

“minor” is a person under the legal age of majority (currently eighteen years of age);

“proof” of or “proving” a will or “admitting a will to proof” are references to the process by which the court satisfies itself that a will was properly executed by the deceased such that a grant can be made of probate or of administration with the will attached.

“proved in solemn form” a will proved in solemn form is a will proved in accordance with the direction of the Court in a probate claim;

“reseal” is putting the seal of the court on the probate or letters of administration granted in an authorised commonwealth country which makes the grant valid for use in the United Kingdom;

“residuary legatee” is a person left the residue of the personal estate of the deceased;

“residuary devisee” is a person left the residue of the real estate of the deceased;

“residuary legatee and devisee” is a person left the residue of the personal and real estate of the deceased;

“residuary legatee and devisee in trust” is a person to whom the residue of the personal and real estate of the deceased has been left to hold on trust (i.e. look after) for someone else.

SCHEDULE 2

[Revocations etc]