

Government Circular No. 1988/0166



*Administration of Estates Act 1960*

## **PROBATE RULES 1988<sup>1</sup>**

*Coming into Operation: 1 October 1988*

In exercise of the powers conferred on the Deemsters by section 53 of the Administration of Estates Act 1960<sup>1</sup>, and of all other enabling powers, the following Rules are hereby made: —

**Editorial Note:** This instrument, made under the Administration of Estates Act 1960, is continued by virtue of section 16 of the Interpretation Act 1976.

### **1 Citation and commencement**

These Rules may be cited as the Probate Rules 1988 and shall come into operation on the 1st October 1988.

### **2 Interpretation**

(1) In these Rules —

“the Act” means the Administration of Estates Act 1960;

“the Court”, subject to rule 3, means the Common Law Division (Testamentary Jurisdiction) of the High Court;

“gross value”, in relation to an estate, means the value of the estate without any deduction for debts, incumbrances or funeral expenses;

“statutory guardian” means a surviving parent of a minor who is the guardian of the minor by virtue of section 2 of the Guardianship of Infants Act 1953<sup>2</sup>;

“testamentary guardian” means a person appointed by deed or will to be guardian of a minor under section 3 of the said Act;

“will” includes a nuncupative will and any testamentary document or copy or reconstruction thereof.

<sup>1</sup> XIX p.76

<sup>2</sup> XVIII p.186

- (2) In these Rules a form referred to by number means the form so numbered in the Schedule and such forms shall be used wherever applicable, with such variations as the Court may in any particular case direct or approve.
- (3) References in these Rules to the Treasury shall be construed, in relation to the estate of a person dying before the 1st July 1986, as references to the Department of Highways, Ports and Properties.

### **3 Exercise of powers of Court**

- (1) Any application to the Court under these Rules may be heard and determined by a Deemster in chambers.
- (2) Except as otherwise provided by these Rules, any power of the Court under these Rules may be exercised by the Chief Registrar, subject to any directions given either by the Deemsters generally or by a Deemster in the particular case.
- (3) The Chief Registrar may, and if so directed under paragraph (2) shall, seek the directions of a Deemster in relation to any matter.

### **4 Application for grant**

- (1) Every application for a grant of probate or letters of administration shall be made in form 1, and shall contain –
  - (a) an oath sworn by the applicant and verifying the facts stated in the application; and
  - (b) an undertaking by the applicant to perform the duties imposed by section 24 of the Act.
- (2) Every application for a grant shall be accompanied by –
  - (a) a certificate of the death of the deceased, unless the Court otherwise directs; and
  - (b) such other papers as the Court may require;
- (3) Every application for a grant of administration shall state –
  - (a) in the case of an intestacy, the names and addresses of all persons within the Island who take beneficially under Part III of the Act;
  - (b) where the deceased left a will, the capacity in which the applicant applies;
  - (c) whether a minority interest arises under the will or intestacy.
- (4) Unless the Court otherwise directs, the application shall state where the deceased died domiciled.

## **5 Procedure on receipt of application for grant**

- (1) The Court shall not allow any grant to issue until all inquiries which it may see fit to make have been answered to its satisfaction.
- (2) The Court may require proof of the identity of the deceased or of the applicant for the grant.
- (3) Except with the leave of the Court, no grant of probate or of administration with the will annexed shall issue within 7 days of the death of the deceased, and no grant of administration shall issue within 14 days thereof.
- (4) The Court shall not require a guarantee as a condition of granting administration to any person without giving that person or, where the application for the grant is made through an advocate, the advocate an opportunity of being heard with respect to the requirement.

## **6 Grant in additional name**

Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the application shall state the true name of the deceased and that some part of the estate specifying it was held in the other name, or any other reason for the inclusion of the other name in the grant.

## **7 Marking of will**

- (1) Every will in respect of which an application for a grant is made shall be marked by the signatures of the applicant and the person before whom the oath required by rule 4(1) is sworn, and shall be exhibited to any affidavit 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 the will to be marked or exhibited instead of the original document.

## **8 Engrossments for purpose of record**

- (1) Where the Court considers that in any particular case a facsimile copy of the original will would not be satisfactory for purposes of record, it may require an engrossment suitable for facsimile reproduction to be lodged,
- (2) Where a will —
  - (a) contains alterations which are not to be admitted to proof or
  - (b) has been ordered to be rectified under section 20(1) of the Wills Act 1985<sup>3</sup>,

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<sup>3</sup> 1985 c.11

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

- (3) Any engrossment 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.

## **9 Evidence as to due execution**

- (1) Subject to paragraphs (2) and (3) where a will contains no attestation clause or the attestation clause is insufficient or where it appears to the Court that there is some doubt about the due execution of the will, it shall, before admitting it to proof, require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the will was executed; and if the Court, having considered the evidence, is satisfied that the will was not duly executed, it shall refuse probate and shall mark the will accordingly.
- (2) If no affidavit can be obtained in accordance with paragraph (1), the Court may accept evidence on affidavit from any person it may think fit to show that the signature on the will is in the handwriting of the deceased, or of any other matter which may raise a presumption in favour of the due execution of the will; and may if it thinks fit require that notice of the application be given to any person who may be prejudiced by the will.
- (3) The Court may accept a will for proof without evidence as aforesaid if it is satisfied that the distribution of the estate is not thereby affected.

## **10 Execution of will of blind testator etc.**

Before admitting to proof a will which appears to have been signed by a blind or illiterate testator or by another person by direction of the testator, or which for any other reason gives rise to doubt as to the testator having had knowledge of the contents of the will at the time of its execution, the Court shall satisfy itself that the testator had such knowledge.

## **11 Evidence as to terms etc. of will**

- (1) Where there appears in a will any obliteration, interlineation or other alteration which is not authenticated in the manner prescribed by section 3 of the Wills Act 1985, or by the re-execution of the will or by the execution of a codicil, the Court shall require evidence to show 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) does 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 terms which suggest that it ought to be incorporated in the will, the Court may require the document to be produced, and may call for such evidence in regard to the incorporation of the document as it may think fit.
- (4) Where there is doubt as to the date on which a will was executed, the Court may require such evidence as it thinks necessary to establish the date.

## **12 Attempted revocation of will**

Any appearance of attempted revocation of a will by burning, tearing or otherwise, and every other circumstance leading to a presumption of revocation by the testator shall be accounted for to the satisfaction of the Court.

## **13 Affidavit as to due execution etc.**

The Court may require an affidavit from any person it thinks fit for the purpose of satisfying itself as to any of the matters referred to in rules 10, 11 and 12, and in any such affidavit sworn by an attesting witness or other person present at the time of the execution of a will the deponent shall depose as to the manner in which the will was executed.

## **14 Wills not proved under section 3 of Wills Act 1985**

- (1) Rules 9 to 12 apply only to a will that is to be established by reference to section 3 of the Wills Act 1985.
- (2) A will that is to be established otherwise than by reference to the said section 3 may be so established upon the Court being satisfied as to its terms and validity, and includes (without prejudice to the generality of the foregoing) —
  - (a) any will to which rule 15 applies, and
  - (b) any will which, by virtue of sections 21 and 22 of the Wills Act 1985, is to be treated as properly executed if executed according to the internal law of the territory or state referred to in the said section 21.

## **15 Wills of persons on military service and seamen**

If it appears to the Court that there is *prima facie* evidence that a will is one to which section 6 of the Wills Act 1985 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.

## 16 Evidence of foreign law

Where evidence as to the law of any country or territory outside the Island and England and Wales is required on any application for a grant, the Court may accept —

- (a) an affidavit from any person whom, having regard to the particulars of his knowledge or experience given in the affidavit, it 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.

## 17 Grant where deceased left a will

Where the deceased died on or after the 5th July 1961 —

- (a) the person entitled to apply for a grant of probate shall be the executor;
- (b) the person entitled to apply for a grant of letters of administration with the will annexed shall be —
  - (i) a person who has any interest under the will;
  - (ii) any creditor of the deceased;
  - (iii) any person having no interest under the will who would have been entitled to apply for a grant if the deceased had died wholly intestate.

## 18 Grants to attesting witnesses etc.

Where a gift to any person fails by reason of section 4 of the Wills Act 1985, 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.

## 19 Grant in case of intestacy

- (1) Where the deceased died on or after the 5th July 1961 wholly intestate, an application for a grant of letters of administration shall, unless the Court otherwise directs, be made with notice to all persons within the Island who take beneficially under section 45 of the Act.
- (2) In default of any person having a beneficial interest in the estate, the Attorney General shall be entitled to apply for a grant if he claims *bona vacantia* on behalf of the Treasury.
- (3) A creditor of the deceased or any person who, notwithstanding that he has no immediate beneficial interest in the estate, may have a beneficial interest in the event of an accretion thereto, may apply for a grant with

notice, unless the Court otherwise directs, to all persons within the Island having a beneficial interest in the estate.

- (4) The personal representative of a person entitled beneficially under section 45 of the Act, or of a creditor, shall have the same right to apply for a grant as the person whom he represents.

## **20 Exceptions to rules 17 and 19**

- (1) Nothing in rule 17 or 19 prevents a grant being made to any person to whom a grant may or is required to be made under any enactment.
- (2) Rules 17 and 19 do not apply where the deceased died domiciled outside the Island, except in a case to which rule 24(2) applies.

## **21 Grant where power is to be reserved**

- (1) Subject to paragraphs (2) and (3), 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, the application shall state that notice thereof has been given to the executor or executors to whom power is to be reserved.
- (2) Where power is to be reserved to partners of a firm, notice for the purposes of paragraph (1) may be given to the partners by sending it to the firm at its principal or last known place of business.
- (3) 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.

## **22 Right of assignee to grant**

- (1) Where all the persons entitled to the estate of the deceased (whether under a will or an intestacy) have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall replace the assignor as the applicant.
- (2) Where there are 2 or more assignees, administration may be granted with the consent of the others to any one or more (not exceeding 4) 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 it shall be lodged in the General Registry.

## **23 Additional personal representatives**

- (1) An application under section 12(2) of the Act to add a personal representative shall be supported by an affidavit by the applicant, the

consent of the person proposed to be added as personal representative and 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 may revoke the grant or make such other order as the circumstances of the case may require.

## **24 Grants where deceased died domiciled outside the Island**

- (1) Subject to paragraph (2), where the deceased died domiciled outside the Island, the Court may order that a grant issue —
  - (a) to the person entrusted with the administration of the estate by the court having jurisdiction at the place where the deceased died domiciled;
  - (b) if there is no such person, 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 the Court the circumstances so require, to such person as the Court may direct.
- (2) Without an order under paragraph (1) —
  - (a) probate of any will which is admissible to proof may be granted —
    - (i) if the will is in the English language, to the executor named therein;
    - (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; and
  - (b) where the whole of the estate in the Island consists of immovable property, a grant limited thereto may be made in accordance with the law which would have been applicable if the deceased had died domiciled in the Island.

## **25 Grants to attorneys**

- (1) Subject to paragraphs (2) and (3), the lawfully constituted attorney of a person to whom a grant would otherwise be made 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) is mentally incapable and the attorney is acting under an enduring power of attorney, the application shall be made in accordance with rule 29.

## **26 Grants on behalf of minors**

- (1) Where the person to whom grant would otherwise be made is a minor, administration for his use and benefit limited until he attains the age of 18 years shall, unless otherwise directed and subject to paragraphs (2) and (3), be granted to both parents of the minor jointly or to the statutory or testamentary guardian of the minor or to any guardian appointed by the Court.
- (2) 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.
- (3) The Court may by order appoint any person as guardian of the minor, and the guardian may obtain administration for the use and benefit of the minor limited as aforesaid, in default of or jointly with or to the exclusion of any person mentioned in paragraph (1).
- (4) In this Rule “the Court”, in relation” to the appointment of a guardian of a minor, means the Chancery Division of the High Court.

## **27 Grants where minor is co-executor]**

- (1) Where one of two or more executors is a minor, probate may be granted to the other executor or executors not under disability, with power reserved to the minor who shall be entitled to apply for probate on attaining the age of 18 years.
- (2) Administration for the use and benefit of the minor may be granted under rule 26 if and only if the executors who are not under disability renounce or, on being cited to accept or refuse a grant, fail to make an effective application therefor.

## **28 Renunciation by a minor**

A minor executor's right to probate on attaining the age of 18 years may not be renounced by any person on his behalf.

## **29 Grants in case of mental incapacity**

- (1) Where the Court is satisfied that a person to whom a grant would otherwise be made is by reason of mental incapacity incapable of managing his affairs, administration for his use and benefit, limited during

his incapacity or in such other way as the Court may direct, may be granted —

- (a) to the receiver of the incapable person appointed under section 75 of the Mental Health Act 1974<sup>4</sup>, or such other person as may be authorised by the judge to apply for a grant;
  - (b) where there is no person so authorised, to the lawful attorney of the incapable person acting under a registered enduring power of attorney;
  - (c) where there is no such attorney entitled to act, or if the attorney renounces administration, to the person entitled to the residuary estate of the deceased.
- (2) Notice of an intended application for a grant under this rule shall be given to the judge.
  - (3) In this rule “the judge” has the same meaning as in Part VII of the Mental Health Act 1974.

### **30 Grants to trust corporations etc.**

- (1) An application for a grant to a trust corporation shall be made through one of its officers, who shall lodge a certified copy of the resolution authorising him to make the application and shall state in the application that the corporation is a trust corporation and that it has power to accept a grant.
- (2) It shall not be necessary under paragraph (1) to lodge a certified copy of the resolution —
  - (a) where the trust corporation has filed in the General Registry a certified copy thereof identifying the authorised person or persons by the position held and it is stated in the application that the resolution is still in force; or
  - (b) where the trust corporation holds an official position and the person through whom the application is made is included in a list filed in the General Registry of persons authorised to make such applications.
- (3) Where a corporation (not being a trust corporation) would, if an individual, be entitled to a grant, administration for its use and benefit, limited until further representation is granted, may be granted to its nominee or or lawfully constituted attorney, and a copy of the resolution appointing the nominee or, as the case may be, the power of attorney, sealed by the corporation or otherwise authenticated to the satisfaction of the Court, shall be lodged with the application for the grant, and the affidavit shall state that the corporation is not a trust corporation.

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<sup>4</sup> 1974 c.34

**31 Renunciation of probate**

- (1) Renunciation of probate by an executor shall not operate as renunciation of any right he may have to apply for a grant of administration in some other capacity unless he expressly renounces that right.
- (2) A renunciation of probate may be retracted at any time with the leave of the Court:

Provided that only in exceptional circumstances may leave be given to an executor to retract a renunciation of probate after a grant has been made to some other person.

**32 Notice to Attorney General of intended application**

In any case in which it appears that the Treasury is or may be interested beneficially in the estate of a deceased person, notice of intended application for a grant shall be given by the applicant to the Attorney General, and the Court may direct that no grant shall issue within a specified time after the notice has been given.

**33 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) No grant shall be amended or revoked under this rule except —
  - (a) on the application or with the consent of the person to whom the grant was made; or
  - (b) by direction of a Deemster.

**34 Caveats**

- (1) Any person who wishes to show cause against the issue of a grant may enter a caveat in the General Registry.
- (2) Any person wishing to enter a caveat (“the caveator”) may do so by completing a notice in form 2 and lodging it in the General Registry; and the Chief Registrar shall provide an acknowledgement of entry.
- (3) Except as otherwise provided by this rule, a caveat shall remain in force for the period of 6 months beginning with the date on which it is entered.
- (4) Where a caveator, within the last month of a period of 6 months prescribed by paragraph (3) or this paragraph, lodges at the General Registry a written application for its extension, the caveat shall - except as otherwise provided by this rule) remain in force for an additional period of 6 months.

- (5) The Chief Registrar shall maintain an index of caveats entered under this rule, and on receiving an application for a grant he shall cause the index to be searched.
- (6) The Court shall not allow any grant (other than a grant *ad colligenda bona* or a grant of administration pending suit) if a caveat is in force in respect of it:  
  
Provided that no caveat shall operate to prevent the making of a grant on the day on which the caveat is entered.
- (7) A caveat may be warned by the issue from the General Registry of a warning in form 3 at the instance of any person interested (“the person warning”) which shall state his interest and, if he claims under a will, the date of the will, and shall require the caveator to give particulars of any contrary interest which he may have in the estate of the deceased; and a copy of every warning shall be served on the caveator.
- (8) A caveator who has not entered an appearance to a warning may at any time withdraw his caveat by giving notice at the General Registry and the caveat shall thereupon cease to have effect and, if it has been warned, the caveator shall forthwith give notice of withdrawal of the caveat to the person warning.
- (9) A caveator having an interest contrary to that of the person warning may, within 8 days of service of the warning upon him (inclusive of the day of service), or at any time thereafter if no affidavit has been filed under paragraph (11), enter an appearance in the General Registry by filing form 4 in duplicate, and shall forthwith thereafter serve on the person warning a copy thereof.
- (10) A caveator having no interest contrary to that of the person warning but wishing to show cause against the making of a grant to that person may, within 8 days of service of the warning on him (inclusive of the day of service), or at any time thereafter if no affidavit has been filed under paragraph (11) apply to a Deemster for directions, and shall forthwith thereafter serve a copy of the application on the person warning, and on the hearing of the application the Deemster may direct that the caveat cease to have effect.
- (11) If no appearance has been entered by the caveator and no application has been made by him under paragraph (10), the person warning may, at any time after 8 days of service of the warning on the caveator (inclusive of the day of service), file in the General Registry an affidavit as to such service, and thereupon the caveat shall cease to have effect unless there is a pending application under paragraph (10).

- (12) Unless the Court by order otherwise directs, any caveat in respect to which an appearance to a warning has been entered shall remain in force until the commencement of a probate action.
- (13) Except with the leave of the Court, no further caveat may be entered by or on behalf of any caveator whose caveat is either in force or has ceased to have effect under paragraph (10) or (11) or rule 35(4) or 36(3).

### **35 Probate actions**

- (1) Upon the commencement of a probate action the Chief Registrar shall give notice of the action to every caveator (other than the plaintiff) in respect of each caveat then in force.
- (2) Upon the subsequent entry of caveat at any time when the action is pending, the Chief Registrar shall likewise notify the caveator of the existence of the action.
- (3) The commencement of a probate action shall, whether or not any caveat has been entered, operate to prevent the issue of a grant (other than a grant of administration pending suit) until application for a grant is made by the person shown to be entitled thereto by the decision of the Court in the action.
- (4) Upon such application any caveat entered by the plaintiff, or in respect of which notice of the action has been given, shall cease to have effect.

### **36 Citations**

- (1) Every citation shall issue from the General Registry and shall be settled by the Court before being issued.
- (2) Every averment in a citation, and such other information as the Court may require, shall be verified by an affidavit sworn by the person issuing the citation ("the citor") or, if the Court in special circumstances so directs, by the citor's advocate.
- (3) The citor shall enter a caveat before issuing a citation and any caveat in force at the commencement of citation proceedings shall, unless withdrawn pursuant to rule 34(8), remain in force until an 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 caveat entered by a party who had notice of the proceedings shall cease to have effect.
- (4) Every citation shall be served personally on the person cited unless the Court, on cause shown by affidavit directs some other mode of service, which may include notice by advertisement.

- (5) Every will referred to in a citation shall be lodged in the General Registry before the citation is issued, except where the will is not in the citor's possession and the Court is satisfied that it is impracticable to require it to be lodged.
- (6) A person who has been cited to appear may, within 8 days of service of the citation on him (inclusive of the day of service), or at any time thereafter if no application has been made by the citor under rule 37(5) or rule 38(2), enter an appearance in the General Registry by filing form 4 in duplicate, and shall forthwith thereafter serve on the citor a copy thereof.

### **37 Citation to accept or refuse or to take a grant**

- (1) A citation to accept or refuse a grant may be issued at the instance of any person, who would be entitled to apply for a grant in the event of the person cited renouncing his right thereto.
- (2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the will or of the executors of the last survivor of deceased executors who have proved.
- (3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of 6 months from the death of the deceased, except that no citation to take a grant shall issue while proceedings as to the validity of the will are pending.
- (4) A person cited who is willing to accept or take a grant may after entering an appearance, apply ex parte to the Court for an order for a grant to himself.
- (5) If the time limited for appearance has expired and the person cited has not entered an appearance the citor may —
  - (a) in the case of a citation under paragraph (1), apply to the Court for a grant to himself;
  - (b) in the case of a citation under paragraph (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 cited and has not appeared and that all his rights in respect of the executorship have wholly ceased;
  - (c) in the case of a citation under paragraph (3), apply to the Court for an order requiring the person cited to apply for a grant within a specified time or for a grant to himself or to some other person specified in the application.

- (6) An application under paragraph (5) shall be supported by an affidavit showing that the citation was duly served.
- (7) If the person cited has entered an appearance but has not applied for a grant under paragraph (4) or has failed to prosecute his application with reasonable diligence, the citor may —
  - (a) in the case of a citation under paragraph (1), apply to the Court for a grant to himself;
  - (b) in the case of a citation under paragraph (2), apply to the Court for an order striking out the appearance and for the endorsement on the grant of the note mentioned in paragraph (5)(b);
  - (c) in the case of a citation under paragraph (3), apply to the Court for an order requiring the person cited to apply for a grant within a specified time or for a grant to himself or to some other person specified in the application.
- (8) A copy of an application under paragraph (7) shall be served on the person cited.

### **38 Citation to propound a will**

- (1) A citation to propound a will shall be directed to the executors named in the will and to all persons interested thereunder and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.
- (2) If the time limited for appearance has expired the citor may —
  - (a) in the case where no person has entered an appearance, apply for a grant as if the will were invalid;
  - (b) in the case where no person who has entered an appearance proceeds with reasonable diligence to propound the will apply to the Court for an order for a grant as if the will were invalid.
- (3) An application under paragraph (2)(a) shall be supported by an affidavit showing that the citation was duly served.
- (4) Notice of an application under paragraph (2)(b) shall be served on every person cited who has entered an appearance.

### **39 Application for leave to swear to death**

An application for leave to swear to the death of any person in whose estate a grant is sought shall be supported by an affidavit setting out the grounds of the application and containing particulars of all policies of insurance effected on the life of the presumed deceased.

**40 Grants in respect of nuncupative wills and copies of wills**

- (1) An application for an order admitting to proof a nuncupative will, or a will contained in a copy or reconstruction thereof where the original will is not available, shall be supported by an affidavit setting out the grounds of the application and by such evidence on affidavit as the applicant can adduce as to —
  - (a) 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;
  - (b) in respect of a nuncupative will, the contents of that will; and
  - (c) in respect of the reconstruction of a will, the accuracy of that reconstruction.
- (2) The Court may require additional evidence in the circumstances of a particular case as to the due execution of the will or as to the accuracy of the copy will, and may direct that notice be given to persons who would be prejudiced by the application.
- (3) Where a will is not available owing to its being retained in the custody of a foreign court or official, a duly authenticated copy may be admitted to proof without any order.

**41 Application for rectification of a will**

- (1) An application for an order that a will be rectified by virtue of section 20 of the Wills Act 1985 may not be made if a probate action has been commenced.
- (2) An application for such an order shall be supported by an affidavit setting out the grounds of the application, together with such evidence as can be adduced as to the testator's intentions and whichever of the following matters are in issue —
  - (a) in what respects the testator's intentions were not understood;
  - (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 prejudiced by the rectification applied for and any comments in writing by any such person shall be exhibited to the affidavit in support of the application.
- (4) An application under this rule shall be heard and determined by a Deemster.



**42 Forms of application and affidavit**

- (1) Every application under these Rules shall be made in writing and addressed to the Chief Registrar.
- (2) Every affidavit under these Rules shall be in the form required by the Rules of the High Court of Justice 1952<sup>5</sup> in the case of affidavits to which those Rules apply.

**43 Address for service**

Every application, caveat, citation, warning and appearance under these Rules shall contain an address for service in the Island.

**44 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 by leaving it at, or by sending it by registered post or by recorded delivery to, that person's address for service or if he has no address for service, his last known address.

**45 Time**

Order 47 of the Rules of the High Court of Justice 1952 applies to the computation, enlargement and abridgement of time under these Rules, except that nothing in that Order prevents time running in the long vacation.

**46 Application to pending proceedings**

Subject in any particular case to the directions of the Court, these Rules apply to any proceeding which is pending on the date when they come into operation as well as to proceedings commenced on or after that date.

**47 Revocation**

The Non-Contentious Probate Rules 1961<sup>6</sup> and the Non-Contentious Probate (Amendment) Rules 1983<sup>7</sup> are revoked.

MADE 17 JUNE 1988

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<sup>5</sup> Dated 7<sup>th</sup> January 1952

<sup>6</sup> Dated 30<sup>th</sup> June 1961

<sup>7</sup> G.C.256/83



**SCHEDULE**

Rule 2(2)

**FORMS**

**FORM 1**

**APPLICATION FOR GRANT**

IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN

COMMON LAW DIVISION

TESTAMENTARY JURISDICTION

IN THE ESTATE OF .....DECEASED

To the Chief Registrar

General Registry

1. I/We.....of .....

and.....of .....

apply for [probate of the will] [administration of the estate] of the above-named deceased (with the will annexed)].

2. The deceased late of .....

died on .....19 .....

at .....

domiciled in ..... and entitled to estate

in the Isle of Man

A certificate of the death of the deceased accompanies this application.

3. The deceased left a will dated .....19 .....

[with codicils] dated .....19 .....[and ..... 19..... whereby he appointed .....

[and .....executor (..... thereof or]

3. The deceased died intestate or as the case may be



4. I am (the son of the deceased and) the executor named in the said will. or

4. I am [the lawful wife] [one of the children of the deceased] and one of the persons now entitled to the estate of the deceased. Or as the case may be\*

[5...[No] [A] minority interest arises under the [said will (intestacy) ]

[6. Notice of this application is intended to be given to the following —

.....of .....

.....of .....

being all the persons within the Isle of Man who take beneficially on intestacy under section 45 of the Administration of Estates Act 1960.

[7. The gross value of the estate of the deceased in the Isle of Man does not exceed .....]

DATED.....19 .....

I/We.....of .....

[and ..... of .....]

MAKE OATH and say that the particulars set out in this application are true [and that the paper writing(s) hereto annexed and marked by me/us contain(s) the last will [with codicil(s) ] of the above-named deceased]

I/We UNDERTAKE to collect and get in the real and personal estate of the deceased and administer it according to law and, when required to do so by the Court —

- (a) to exhibit on oath in the Court a full inventory of the estate; and
- (b) to render an account of the administration of the estate to the Court.

SWORN & c.

This application is lodged by

Whose address for service is

[Advocates for the applicant] (In person)

*Full name of deceased*

*Full name, address and description of every applicant*



*Address and description of the deceased*

*State relationship of applicant; to the deceased (if any) and nature of claim to a grant*

*Complete in case of application for administration*

*Complete in case of intestacy*

*Insert appropriate ceiling for calculation of probate fees, or else omit,*

**FORM 2**

**CAVEAT**

(Heading as in form 1)

LET no grant be made in the estate of .....

late of .....deceased, who died on .....

19..... at ....., without notice to

DATED 19 .....

(Signed)

Whose address for service is

[Advocate for the said .....[In person]



**FORM 3**

**WARNING TO CAVEATOR**

(Heading as in form 1)

To .....of .....

Who has entered a caveat in the estate of .....  
deceased

1. YOU ALL HEREBY WARNED within 8 days of service hereof on you (inclusive of the day of service) —

- (a) to enter an appearance either in person or by an advocate in the General Registry of the Isle of Man, stating what interest you have in the estate of the deceased contrary to that of the party at whose instance this warning is issued; or
- (b) if you have no contrary interest but wish to show cause against the making of a grant on the application of such party, to make and serve an application for directions by the Court.

2. IN DEFAULT of your so doing the Court may proceed to issue a grant of probate or administration in the said estate notwithstanding your caveat.

DATED .....19.....

Chief Registrar

ISSUED at the instance of

Whose address for service is

(Advocate for ) [In person]

State also interest of person warning (with date of will, if any),

**FORM 4**

APPEARANCE TO WARNING OR CITATION

(Heading as in form 1)

[Caveat No.....] (Citation) dated ..... 19  
.....

Full name and address of deceased:

Full name and address of [person warning] [citor]:

Full name and address of Caveator] [person cited]:

ENTER an appearance for the above-named [caveator] [person cited] in this matter.

DATED ..... 19 .....

(Signed)

Whose address for service is

[Advocate for the said .....] [in person]





## ENDNOTES

### Table of Endnote References

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<sup>1</sup> The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.