

**ORDER 97**

**NON-CONTENTIOUS PROBATE PROCEEDINGS**

***Interpretation***

1.—(1) In this Order unless the context otherwise required—

"the Order" means the Administration of Estates (Northern Ireland) Order 1979(a);

"authorised officer" means any officer of the Office or a branch office who is for the time being authorised by the Lord Chief Justice to administer any oath or take any affidavit required for any purpose connected with his duties;

"grant" means a grant of probate or administration;

"the Judge" means the Judge for the time being to whom the business of the Family Division is assigned under section 17 of the Act and any judge of the High Court exercising jurisdiction in probate causes and matters;

"the Office" means the Probate and Matrimonial Office of the Family Division;

"Master" in rules, 3, 4, 5, 7, 8, 9(1) and (2), 10, 11, 12, 13, 14, 15, 17, 18, 20(6), 26(1), 31, 32, 37, 38, 58, and 60 includes a circuit registrar in relation to an applicant for a grant made or proposed to be made at a branch office;

"personal applicant" means a person other than trust corporation who seeks to obtain a grant without employing a solicitor, and

"personal application" has a corresponding meaning.

(2) A form referred to by number means the forms so numbered in Appendix C; and such forms shall be used whenever applicable, with such variations as the Master may in any particular case direct or approve.

***Applications for grants through solicitors***

2.—(1) A person applying for a grant through a solicitor may apply by post or otherwise at the Office or any branch office.

(2) Every solicitor through whom an application for a grant is made shall give the address of his place of business within the jurisdiction.

***Personal applications***

3.—(1) A personal applicant may apply for a grant otherwise than by post at the Office or any branch office.

(2) A personal applicant may not apply through an agent, whether paid or unpaid, and may not be attended by any person acting or appearing to act as his adviser.

(3) No personal application shall be received or proceeded with if—

(a) it becomes necessary to bring the matter before the Court on motion or by action;

(b) an application has already been made by a solicitor on behalf of the applicant and has not been withdrawn;

(c) the Master otherwise directs.

(4) After a will has been deposited in the Office or any branch office by a personal applicant, it may not be delivered to the applicant or to any other person unless in special circumstances the

Master so directs.

(5) A personal applicant shall produce a certificate of the death of the deceased or such other evidence of the death as the Master may approve.

(6) A personal applicant shall supply all information necessary to enable the papers leading to the grant to be prepared in the Office or branch as the case may be, or may himself prepare such papers and lodge them unsworn.

(7) Unless the Master otherwise directs, every oath, affidavit or guarantee required on a personal application (other than a guarantee given by a corporation in accordance with rule 38), shall be sworn or executed by all the deponents or sureties before an authorised officer.

(8) No legal advice shall be given to a personal applicant by any officer of the Office or branch office and every such officer shall be responsible only for embodying in proper form the applicant's instructions for the grant.

#### ***Duty of Master on receiving application for grant***

**4.**—(1) The Master shall not allow any grant to issue until all inquiries which he may see fit to make have been answered to his satisfaction.

(2) The Master may require proof of the identity of the deceased or of the applicant for the grant beyond that contained in the oath.

(3) Except with the leave of the Master, no grant of probate or of administration with the will annexed shall issue within seven days of the death of the deceased and no grant of administration shall issue within twenty-eight days thereof.

#### ***Oath in support of grant***

**5.**—(1) Every application for a grant shall be supported by an oath in the form applicable to the circumstances of the case, which shall be contained in an affidavit sworn by the applicant, or by such other papers as the Master may require.

(2) On an application for a grant of administration the oath shall state whether, and if so, in what manner, all persons having a prior right to a grant have been cleared off.

(3) Unless otherwise directed by the Master, the oath shall state where the deceased died domiciled.

#### ***Grant in additional name***

**6.** Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the oath the true name of the deceased and shall depose that some part of the estate, specifying it, was held in the other name, or as to any other reason that there may be for the inclusion of the other name in the grant.

#### ***Marking of wills***

**7.** 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 is sworn, and shall be exhibited to any affidavit which may be required under this Order as to the validity, terms, conditions or date of execution of the will;

Provided that where the Master is satisfied that compliance with this rule might result in the loss of the will, he may allow a photographic copy thereof to be marked or exhibited in lieu of the original document.

### ***Engrossment for purposes of record***

**8.**—(1) Where the Master considers that in any particular case a photographic copy of the original will would not be satisfactory for purposes of record, he may require an engrossment suitable for photographic reproduction to be lodged.

(2) Where a will contains alterations which are not admissible to proof, 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, if it is one to which paragraph (2) of this rule applies, it shall be made book-wise on durable paper following continuously from page to page on both sides of the paper.

(4) Where any pencil writing appears on a will, there shall be lodged a copy of the will or of the pages or sheets containing the pencil writing, in which there shall be underlined in red ink those portions which appear in pencil in the original.

### ***Evidence as to due execution of will***

**9.**—(1) Where a will contains no attestation clause or the attestation clause is insufficient or where it appears to the Master that there is some doubt about the due execution of the will, he 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.

(2) If no affidavit can be obtained in accordance with the last foregoing paragraph, the Master may, if he thinks fit having regard to the desirability of protecting the interests of any person who may be prejudiced by the will, accept evidence on affidavit from any person he 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.

(3) If the Master, after considering the evidence—

(a) is satisfied that the will was not duly executed, he shall refuse probate and shall mark the will accordingly;

(b) is doubtful whether the will was duly executed, he may refer the matter to the court on motion.

### ***Execution of will of blind or illiterate testator***

**10.** 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 Master shall satisfy himself that the testator had such knowledge.

### ***Evidence as to terms, conditions and date of execution of will***

**11.**—(1) Where 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 (a), or by the re-execution of the will or by the execution of a codicil, the Master 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:

Provided that this paragraph shall not apply to any alteration which appears to the Master to be of no practical importance.

(2) If from any mark on the will it appears to the Master that some other document has been attached to the will, or 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 Master may require the document to be produced and may call for such evidence in regard to the attaching or incorporation of the document as he may think fit.

(3) Where there is doubt as to the date on which a will was executed, the Master may require such evidence as he thinks necessary to establish the date.

### ***Attempted revocation of will***

**12.** 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 Master's satisfaction.

### ***Affidavit as to due execution, terms, etc. of will***

**13.** The Master may require an affidavit from any person he may think fit for the purpose of satisfying himself as to any other 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 to the manner in which the will was executed.

### ***Wills not proved under section 9 of the Wills Act, 1837***

**14.** Nothing in rule 9, 10, 11 or 12 shall apply to any will which it is sought to establish otherwise than by reference to section 9 of the Wills Act 1837, as explained by the Wills Act Amendment Act, 1852(a), but the terms and validity of any such will shall be established to the Master's satisfaction.

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

**15.** If it appears to the Master that there is prima facie evidence that a will is one to which section 11 of the Wills Act, 1937, as amended by any subsequent statutory provision applies, the will may be admitted to proof if the Master is satisfied that it was signed by the testator or, if unsigned, that it is in the testator's handwriting.

### ***Wills of naval personnel***

**16.** Every application for a grant in respect of the estate of a person who has at any time served in the capacity to which the Navy and Marines (Wills) Act 1865(b) applies shall be supported by a certificate of the Inspector of Seamen's Wills as to the existence of any will in his custody:

Provided that no such certificate shall be required where—

- (a) the application relates to a will made after the deceased had ceased to serve in such capacity as aforesaid which revokes all previous will made by him, or
- (b) the deceased was at the date of his death in receipt of a pension in respect of his service.

### ***Evidence of foreign law***

**17.** Where evidence as to the law of any country or territory outside Northern Ireland is required on any application for a grant, the Master may accept an affidavit from any person whom, having regard to the particulars of his knowledge or experience given in the affidavit, he regards as suitably qualified, to give expert evidence of the law in question.

### ***Order of priority for grant where deceased left a will***

**18.** Where the deceased died on or after the 1st January 1956 domiciled in Northern Ireland, the person or persons entitled to a grant of probate or administration with the will annexed shall be determined in accordance with the following order of priority, namely;—

- (i) The executor;
- (ii) Any residuary legatee or devisee holding in trust for any other person;
- (iii) Any residuary legatee or devisee for life;
- (iv) The ultimate residuary legatee or devisee, or subject to paragraph (3) of rule 22 the personal representative of any such person; or where the residue is not wholly disposed of by the will, any person (other than a creditor) entitled to a grant in the event of a total intestacy according to the priority set out in rule 20 if such person has an interest in the undisposed of residue (including the nominee of Her Majesty under Article 10 of the Order when claiming bona vacantia on behalf of the Crown)

Provided that where the residue is not in terms wholly disposed of, the Master may, if he is satisfied that the testator has nevertheless disposed of the whole or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made (subject however to rule 37) to any legatee or devisee entitled to, or to a share in, the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the will;

- (v) Any specific legatee or devisee or any creditor or, subject to paragraph (3) of rule 22, the personal representative of any such person or, where the estate is not wholly disposed of by will, any person who, notwithstanding that the amount of the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an accretion thereto;
- (vi) Any legatee or devisee whether residuary or specific entitled on the happening of any contingency, or any person having no interest under the will of the deceased who would have been entitled to a grant if the deceased had died wholly intestate.

### ***Grants to attesting witnesses, etc.***

**19.** Where a gift to any person fails by reason of section 15 of the Wills Act, 1837 (which provides that gifts to attesting witnesses or their spouses shall 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.

### *Order of priority for grant in case of intestacy*

20.—(1) Where the deceased died on or after the 1st January 1956, wholly intestate and domiciled in Northern Ireland, the persons having a beneficial interest in the estate of the deceased shall be entitled to a grant of administration in the following order of priority, namely—

- (i) The surviving spouse;
- (ii) The children of the deceased (including any persons entitled by virtue of any enactment to be treated as if they were the children of the deceased born in lawful wedlock); or the issue (taking per stirpes) of any child who has died during the lifetime of the deceased;
- (iii) The father or mother of the deceased or, in the case of an illegitimate person who died before 1st January 1978 without having been legitimated, the mother;
- (iv) Brothers and sisters of the deceased (whether of the whole or half-blood); or the issue (taking per stirpes) of any deceased brother or sister (whether of the whole or half-blood) who has died during the lifetime of the deceased.

(2) If the deceased died wholly intestate leaving no spouse and if no person in any of the classes mentioned in sub-paragraphs (ii) to (iv) of paragraph (1) has survived the deceased the persons hereinafter described shall if they have a beneficial interest in the estate of the deceased, be entitled to a grant in the following order of priority, namely

- (i) Grandparents;
- (ii) Uncles and aunts (whether of the whole or half-blood); or the issue (taking per stirpes) of any uncle or aunt (whether of the whole or half-blood) who has died during the lifetime of the deceased;
- (iii) Great-grandparents;
- (iv) Grand-uncles and grand-aunts (whether of the whole or half-blood);
- (v) Great-great-grandparents;
- (vi) Great-grand-uncles and great-grand-aunts (whether of the whole or half-blood); or children of grand-uncles and of grand-aunts (whether of the whole or half-blood);
- (vii) Great-great-great-grandparents;
- (viii) Children of the children of grand-uncles and of grand-aunts (whether of the whole or half-blood); or children of great-grand-uncles and of great-grand-aunts (whether of the whole or half-blood); or uncles or aunts (whether of the whole or half-blood) or great-grandparents;
- (ix) Other next of kin of nearest degree (whether of the whole or half-blood).

(3) The personal representative of any of the persons hereinbefore mentioned shall have the same right to a grant as the person whom he represents, subject to paragraph (3) of rule 22 which provides that live interests be preferred to dead interests.

(4) Where there are conflicting claims for a grant among the members of a class entitled to administration, the nearer in kin to the deceased of that class shall be preferred to the more remote unless the Master otherwise directs.

(5) In default of any person having a beneficial interest in the estate of the deceased, the nominee of Her Majesty, under Article 10 of the Order shall be entitled to a grant.

(6) If all persons entitled to a grant under the foregoing provisions of this rule have been cleared off, a grant may be made to a creditor of the deceased, or, subject to paragraph (3) of rule 22, the personal representative of a creditor, or, if the Master so directs, 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 accretion thereto.

(7) The provisions of the Adoption of Children Act (Northern Ireland) 1967(a), shall apply in determining the title to a grant as they apply to the devolution of property on intestacy.

(8) In this rule where the deceased died on or after the 1st January 1978 illegitimate the reference to father or mother of the deceased shall have effect as if it were a reference to the natural father or mother of the deceased.

### ***Right of assignee to a grant***

**21.**—(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 anyone or more (not exceeding four) of them.

(3) In any case where administration is applied for by an assignee, a copy of the instrument of assignment shall be lodged in the Office or branch office as the case may be.

### ***Grants where two or more persons entitled in the same class***

**22.**—(1) A grant may be made to any person entitled thereto without notice to other persons entitled in the same class.

(2) A dispute between the members of a class entitled to a grant shall be brought by summons before the Master.

(3) Unless the Master otherwise directs, administration shall be granted to a living member of a class entitled thereto in preference to the personal representative of a member of such class who has died after the deceased and to a person not under disability in preference to an infant entitled in the same class.

(4) If the issue of a summons under this rule is known to the Master he shall not allow any grant to be sealed until such summons is finally disposed of.

### ***Exceptions to rules as to priority***

**23.**—(1) Nothing in rule 18,20 or 22 shall operate to prevent a grant being made to any person to whom a grant may or may require to be made under any statutory provision.

(2) The rules mentioned in the last foregoing paragraph shall not apply where the deceased died domiciled outside Northern Ireland, except in a case to which the proviso to rule 25 applies.

### ***Grants to persons having spes successionis***

**24.** When the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his right to a grant and has consented to administration being granted to the person or persons who would be entitled to his estate if he himself had died intestate, administration may be granted to such person or one or more (not exceeding four) of such persons;

Provided that a surviving spouse shall not be regarded as a person in whom the estate has vested absolutely unless he would be entitled to the whole of the estate, whatever its value may be.

### ***Grants where the deceased died domiciled outside Northern Ireland***

**25.** Where the deceased died on or after the 1st January 1956, domiciled outside Northern Ireland, a grant of administration with or without the will annexed may be made by the Master—

- (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) to the person entitled to administer the estate by the law of the place where the deceased died domiciled,
- (c) if there is no such person as is mentioned in paragraph (a) or (b) of this rule or if in the opinion of the Master the circumstances so require, to such person as the Master may direct;

Provided that:

- (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;
- (b) where the whole of the estate in Northern Ireland 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 Northern Ireland.

### ***Grants to attorneys***

**26.**—(1) Where a person entitled to a grant resides outside Northern Ireland, administration may be granted to his lawfully constituted attorney for his use and benefit, limited until such person shall obtain a grant or in such other way as the Master may direct;

Provided that where the person so entitled is an executor, administration shall not be granted to his attorney without notice to the other executors, if any, unless such notice is dispensed with by the Master.

(2) Where the Master is satisfied by affidavit that it is desirable for a grant to be made to the lawfully constituted attorney of a person entitled to a grant of administration and resident in Northern Ireland, he may direct that administration be granted to such attorney for the use and benefit of such person, limited until such person shall obtain a grant or in such other way as the Master may direct.

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

**27.**—(1) Where the person to whom a grant would otherwise be made is a minor, administration for his use and benefit until he attains the age of eighteen years shall, subject to paragraphs (3) and (4) of this rule, be granted—

(a) to the testamentary guardian of the minor or to any guardian appointed by a court of competent jurisdiction, or by or under the provisions of the Guardianship of Infants Act, 1886(a), or,

(b) if there is no such guardian able and willing to act and the minor has attained the age of sixteen years, to any next of kin nominated by the minor or, where the minor is a married

woman, to any such next of kin or to her husband if nominated by her.

(2) Any person nominated under sub-paragraph (b) of the last foregoing paragraph may represent any other minor whose next of kin he is, being a minor below the age of sixteen years entitled in the same class as the minor who made the nomination.

(3) Notwithstanding anything in this rule, administration for the use and benefit of the minor until he attains the age of eighteen years may be granted to any person assigned as guardian by order of the Master in default of, or jointly with, or to the exclusion of, any such person as is mentioned in paragraph (1) of this rule; and such an order may be made on application by the intended guardian, who shall file an affidavit in support of the application and, if required by the Master, an affidavit of fitness sworn by a responsible person.

(4) Where a minor who is sole executor has no interest in the residuary estate of the deceased, administration for the use and benefit of the minor until he attains the age of eighteen years and applies for and attains a grant shall, unless the Master otherwise directs, be granted to the person entitled to the residuary estate.

(5) A minor's right to administration may be renounced only by a person assigned as guardian under paragraph (3) of this rule and authorised to renounce by the Master.

(6) A grant to a guardian on behalf of a minor shall be made for his use and benefit until he shall attain the age of eighteen years and shall apply for and obtain a grant, and a grant on behalf of more than one minor shall be made for their use and benefit until one of them shall attain the age of eighteen years and shall apply for and obtain a grant.

(7) If under paragraph (3) of rule 22 the Master directs a grant to be given for the use and benefit of a minor notwithstanding that there is a person of full age not under disability entitled to apply for a grant, he may also direct that the grant to the guardian of the minor be further limited until such person applies for and obtains a grant.

(8) Where a grant is given for the use and benefit of a minor and there is any other minor entitled to apply for a grant for whose use and benefit a grant has not been obtained, the Master may direct that the grant be further limited until such other minor attains the age of eighteen years and applies for and obtains a grant.

(9) Before giving a grant to any guardian of a minor the Master may require to be satisfied as to his fitness to act.

#### ***Grants where minor co-executor***

**28.**—(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 of making the like grant to the minor on his attaining the age of eighteen years, and administration for the use and benefit of the minor until he attains the age of eighteen years and applies for and obtains a grant may be granted under rule 27 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.

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

#### ***Grants in case of mental or physical incapacity***

**29.**—(1) Where the Master is satisfied that a person entitled to a grant is by reason of mental or physical incapacity incapable of managing his affairs, administration for his use and benefit, limited during his incapacity or in such other way as such Master may direct, may be granted—

(a) in the case of mental incapacity, to the person authorised by an order of the Master of the Office of Care and Protection to apply for the grant, or

(b) where there is no person so authorised, or in the case of physical incapacity—

- (i) if the person incapable is entitled as executor and has no interest in the residuary estate of the deceased, to the person entitled to such estate;
- (ii) if the person incapable is entitled otherwise than as executor or is an executor having an interest in the residuary estate of the deceased, to the person who would be entitled to a grant in respect of his estate if he had died intestate;

or to such other person as the Master may by order direct.

(2) Unless the Master otherwise directs, no grant of administration shall be made under this rule unless all persons entitled in the same class as the person incapable having been cleared off.

(3) In the case of mental incapacity, notice of intended application for a grant under this rule shall be given to the Office of Care and Protection except where the person incapable is an executor with no beneficial interest in the estate.

(4) In the case of physical incapacity, notice of intended application for a grant under this rule shall, unless the Master otherwise directs, be given to the person alleged to be so incapable.

### *Grants to trust corporations*

**30.**—(1) Where a trust corporation applies for a grant through one of its officers, such officer shall lodge a certified copy of the resolution authorising him to make the application and shall depose in the oath that the corporation is a trust corporation within the meaning of Article 9 of the Order, and that it has power to accept a grant.

(2) Subject to the provisions of the succeeding paragraphs, where a trust corporation applies for a grant of administration with or without will annexed (otherwise than as attorney for some person) there shall be lodged with the application for a grant the consents of all persons entitled to a grant and of all persons interested in the residuary or undisposed-of estate of the deceased, unless the Master directs that such consents, or any of them, be dispensed with on such terms (if any) as he may think fit.

(3) Where an executor who has renounced his right to probate of a will is entitled to share in the residuary or undisposed-of estate of the deceased his consent to a trust corporation obtaining a grant must be expressly given (as such consent may not be inferred from his renunciation) unless the Master directs that such consent be dispensed with on such terms (if any) as he may think fit.

(4) To enable a grant of administration to be made to a trust corporation, all the executors named in the will must be cleared off by death, renunciation or citation: Provided, however, that if the only persons entitled to probate of the will as executors are under the age of eighteen years, a grant of administration with will annexed may be made to a trust corporation on the consent of the persons entitled to the residuary or undisposed-of estate of the deceased, unless the Master directs that such consents be dispensed with on such terms, if any, as he may think fit. Such a grant shall be limited until the executor or one of the executors attains the age of eighteen years. Where any such minor executor is entitled to share in the residuary or undisposed-of estate, consent on his behalf may be given by his statutory, testamentary or other lawfully appointed guardian.

(5) Where all the persons entitled to a grant of administration with or without will annexed and all those interested in the residuary or undisposed-of estate of a deceased are under the age of eighteen years, a grant of administration with or without will annexed may issue as of right to a trust corporation on consent of the statutory, testamentary or other already lawfully appointed guardians, but an order shall not be made by the Master assigning a guardian for the purpose of consenting to an application of a trust corporation for a grant, nor shall an election of a guardian by a minor be accepted for that purpose. If there are no guardians so qualified the issue of a grant

to a trust corporation shall lie in the discretion of the Master.

Where, however, some of the persons entitled to a grant of administration with or without will annexed, or who are interested in the residuary or undisposed-of estate of a deceased are of full age (others being minors) the consents and renunciations of those of full age will be required unless the Master directs that any such consents or renunciations be dispensed with.

A grant to a trust corporation given under this paragraph shall be limited until one of the minors entitled to apply for a grant attains the age of eighteen years and applies for and obtains a grant.

### ***Grants to corporations other than trust corporations***

**31.** 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, if the corporation has its principal place of business outside Northern Ireland, its nominee 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 Master's satisfaction, shall be lodged with the application for the grant, and the oath shall state that the corporation is not a trust corporation.

### ***Grants to nominees of certain legatees, devisees and creditors***

**32.** Where any legatee or devisee under the will of a deceased, or any creditor of a deceased - not being a corporation - is an association, society, institution, community, order or other body of persons (whether private or public), the Master may, if all persons entitled in priority to a grant have been cleared off, give a grant to the nominee of such legatee, devisee, or creditor, for the use and benefit of such legatee, devisee or creditor. The nomination of the applicant for the grant shall be made in such manner as the Master shall require.

### ***Nil estate grants***

**33.** Where a grant is given in respect of a deceased person by virtue of the provisions of Article 4(4) of the Order, it shall

- (a) in the case of an original grant be given to such person as would have been entitled thereto had the deceased died leaving assets nominal in amount in Northern Ireland; and
- (b) in the case of a de bonis non or other form of grant in respect of unadministered estate, to such person as would have been entitled thereto if there has been assets of the deceased nominal in amount unadministered in Northern Ireland at the time of making such, grant.

### ***Number of administrators***

**34.** No grant of administration shall be made jointly to more than four persons unless the Master otherwise orders.

### ***Administration de bonis non***

**35.** Where on the death of a personal representative of a deceased without having fully administered the estate, it is necessary to grant administration of the unadministered estate of the deceased, the provisions of this Order that shall apply to the ascertainment of the new grantee shall be those that apply on an application for an original grant.

### ***Renunciation of probate and administration***

**36.**—(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 other capacity unless he expressly renounces such right.

(2) Unless the Master otherwise directs, no person who has renounced administration in one capacity may obtain a grant thereof in some other capacity.

(3) A renunciation of probate or administration may be retracted at any time on the order of the Master;

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 entitled in a lower class.

### ***Notice to Crown of intended application for grant***

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

### ***Guarantee***

**38.**—(1) The Master shall not require a guarantee under Article 17 of the Order as a condition of granting administration except where it is proposed to grant it—

- (a) by virtue of rule 18(v) or rule 20(6) to a creditor of the personal representative of a creditor or to a person who has no immediate beneficial interest in the estate of the deceased but may have such an interest in the event of an accretion to the estate;
- (b) under rule 24 to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate died intestate, be entitled to his estate;
- (c) under rule 26 to the attorney of a person entitled to a grant;
- (d) under rule 27 for the use and benefit of a minor;
- (e) under rule 29 for the use and benefit of a person who is by reason of mental or physical incapacity incapable of managing his affairs;
- (f) to an applicant who appears to the Master to be resident elsewhere than in the United Kingdom; or except where the Master considers that there are special circumstances making it desirable to require a guarantee.

(2) Notwithstanding that it is proposed to grant administration as aforesaid, a guarantee shall not be required, except in special circumstances, on an application for administration where the applicant or one of the applicants is—

- (a) a trust corporation;
- (b) a solicitor holding a current practising certificate under the Solicitors (Northern Ireland) Order 1976(a);
- (c) a servant of the Crown acting in his official capacity.

(3) Where the master considers there are special circumstances under paragraphs (1) or (2) he shall give the applicant or his solicitor (where the application for a grant is made through a solicitor) an opportunity of being heard with respect to the requirement.

(4) Every guarantee entered into by a surety for the purposes of Article 17 of the Order shall be in Form No.1.

(5) Except where the surety is a corporation the signature of the surety on every such guarantee shall be attested by an authorised officer, commissioner for oaths or other person authorised by law to administer an oath.

(6) Unless the Master otherwise directs—

- (a) if it is decided to require a guarantee, it shall be given by two sureties, except where the gross value of the estate does not exceed £500 or a corporation is a proposed surety, and in those cases one will suffice;
- (b) no person shall be accepted as a surety unless he is resident in the United Kingdom;
- (c) No officer of the Office or a branch office shall become a surety, nor in any case in which a person is solicitor for the applicant for a grant shall he or his clerk or apprentice become a surety without the leave of the Master;
- (d) the limit of the liability of the surety or sureties under a guarantee given for the purposes of Article 17 of the Order shall be the gross amount of the estate as sworn on the application for the grant; (e) every surety, other than a corporation, shall justify; (f) no corporation shall be accepted as a surety unless it has been approved by the Court.

### ***Resealing under Colonial Probate Acts, 1892 and 1927***

**39.**—(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 shall be made in the Office by the person to whom the grant was made or by any person authorised in writing to apply on his behalf.

(2) On any such application—

- (a) an Inland Revenue affidavit or account shall be lodged as if the application were one for a grant in Northern Ireland;
- (b) if the Master so requires, the application shall be advertised in such manner as he may direct and shall be supported by an oath sworn by the person making the application.

(3) On an application for the resealing of a grant of administration—

- (a) the Master shall not require sureties under section 4 of the Administration of Estates Act (Northern Ireland) 1971 (a) as a condition of resealing the grant except where it appears to him that the grant is made to a person or for a purpose mentioned in paragraphs (a) to (f) of rule 38(1) or except when he considers that there are special circumstances making it desirable to require sureties;
  - (b) rule 38(2), (3), (5) and (6) shall apply with any necessary modifications; and
  - (c) a guarantee entered into by a surety for the purposes of the said section 4 shall be in Form No.2.
- (4) Except by leave of the Master, no grant shall be resealed unless it was made to such a person as is mentioned in paragraph (a) or (b) of rule 25 or to a person to whom a grant could be made under the proviso to that rule.
- (5) No limited or temporary grant shall be resealed except by leave of the Master.
- (6) 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 subsection (1) of section 2 of the Colonial Probates Act, 1892(a), does not include a copy of the will, a copy thereof shall be deposited in the

Office at the same time as the copy of the grant.

- (7) The Master shall send notice of the resealing to the Court which made the grant.
- (8) Where notice is received in the Office of the resealing of a Northern Ireland grant, notice of any amendment or revocation of the grant shall be sent to the court by which it was resealed.

### *Application for leave to sue on guarantee*

**40.** An application for leave under Article] 7(3) of the Order or under section 4(5) of the Administration of Estates Act (Northern Ireland) 1971 to sue a surety on a guarantee given for the purpose of Article 17 or section 4 shall, unless the Master otherwise directs under rule 55, be made by summons to the Master, and notice of the application shall in any event be served on the administrator, the surety and any co-surety.

### *Amendment and revocation of grant*

**41.** If the Master is satisfied that a grant should be amended or revoked he may make an order accordingly:

Provided that except in special circumstances no grant shall be amended or revoked under this rule except on the application or with the consent of the person to whom the grant was made.

### *Certificate of delivery of Inland Revenue affidavit*

**42.** Where the deceased died before March 13, 1975, the certificate of delivery of an Inland Revenue affidavit required by section 30 of the Customs and Inland Revenue Act 1881 (b), to be borne by every grant shall be in Form No.3.

### *Caveats*

**43.**—(1) Any person who wishes to ensure that no grant is sealed without notice to himself may enter a caveat either personally or by his solicitor in the Office or where the lodging of caveats is branch office business at the appropriate branch office.

(2) A caveat shall be in Form No.4 and where the caveat is entered by a solicitor on the caveator's behalf, the name of the caveator shall be stated.

(3) Except as otherwise provided by this rule, a caveat shall remain in force for six months, beginning with the date on which it is entered and shall then cease to have effect, without prejudice to the entry of a further caveat or caveats.

(4) Where a caveator within the last month of a period of six months prescribed by paragraph (3) of this rule or of any additional period of six months prescribed by this paragraph, lodges at the Office or branch office in which the caveat was entered a written application for its extension, the caveat shall (except as otherwise provided by paragraphs (9), (12) and (14) of this rule) remain in force for an additional period of six months.

(5) (a) The Master shall, immediately upon a caveat being lodged in the Office, send notice thereof to the appropriate circuit registrar if it is alleged that the deceased resided at the time of his death, or if he is known to have had a fixed place of abode at the time of his death, within the jurisdiction of the branch office;

(b) The circuit registrar shall, immediately upon a caveat being lodged in a branch office, send a copy thereof to the Master and shall state the day on which the same was lodged.

(6) The Master shall maintain an index of caveats entered in the Office or any branch office and on receiving an application for a grant in the Office, or a notice of an application for a grant made in a branch office he shall cause the index to be searched and shall notify the appropriate circuit registrar in the event of a caveat having been entered against the sealing of a grant for which application has been made in a branch office.

(7) The Master or circuit registrar shall not allow any grant to be sealed if he has knowledge of an effective caveat in respect thereof:

Provided that no caveat shall affect any grant sealed on the day on which the caveat has been lodged.

(8) A caveat may be warned by the issue from the Office of a warning in Form No.5 at the instance of any person interested (in this rule called “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 every warning or a copy thereof shall be served on the caveator.

(9) A caveator who has not entered an appearance to a warning may at any time withdraw his caveat by giving notice at the Office or branch office at which it was entered 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.

(10) A caveator having an interest contrary to that of the person warning may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if a certificate of non-appearance has not been issued under paragraph 12 of this rule, enter an appearance in Form No.6 in the Office and make an entry in the appropriate book, and shall forthwith thereafter serve on the person warning a copy of the form of appearance.

(11) A caveator having no interest contrary to that of the person warning but wishing to show cause against the sealing of a grant to that person may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if a certificate of non-appearance has not been issued under paragraph (12) of this rule, issue and serve a summons for directions, which shall be returnable before the Master.

(12) If the time limited for appearance has expired and the caveator has not entered an appearance, the person warning may file in the Office an affidavit showing that the warning was duly served and obtain a certificate of non-appearance and thereupon the caveat shall cease to have effect.

(13) Upon the commencement of a probate action the Master shall, in respect of each caveat then in force (other than a caveat entered by the plaintiff), give to the caveator notice of the commencement of the action and, upon the subsequent entry of a caveat at any time when the action is pending, shall likewise notify the caveator of the existence of the action.

(14) Unless the Master by order made on summons otherwise directs—

- (a) any caveat in force at the commencement of proceedings by way of citation or motion shall, unless withdrawn pursuant to paragraph (9) of this rule, 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;
- (b) any caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action;
- (c) the commencement of a probate action shall, whether or not any caveat has been entered, operate to prevent the sealing of a grant (other than a grant under Article 6 of the Order) until application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such action, and upon such application any caveat entered by a party who had notice of the action, or by a caveator who was given

notice under paragraph (13) of this rule, shall cease to have effect.

(15) Except with the leave of the Master, no further caveat may be entered by or on behalf of any caveator whose caveat has ceased to have effect under paragraph (12) or (14) of this rule.

(16) In this rule "grant" includes a grant made by any Court outside Northern Ireland which is produced for resealing by the High Court.

### ***Citation***

**44.**—(1) Every citation shall issue from the Office and shall be settled by the Master before being issued.

(2) Every averment in a citation, and such other information as the Master may require, shall be verified by an affidavit sworn by the person issuing the citation (hereinafter called "the citor") or, if there are two or more citors, by one of them:

Provided that the Master may in special circumstances accept an affidavit sworn by the citor's solicitor.

(3) The citor shall enter a caveat before issuing a citation.

(4) Every citation shall be served personally on the person cited unless the Master, 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 Office or a branch office before the citation is issued, except where the will is not in the citor's possession and the Master is satisfied that it is impracticable to require it to be lodged.

(6) A person who has been cited to appear may, within eight days of service of the citation upon him inclusive of the day of such service, or at any time thereafter if no application has been made by the citor under paragraph (5) of rule 45 or paragraph (2)(a) of rule 46, enter an appearance in the Office in form 5 and make an entry in the appropriate book, and shall forthwith thereafter serve on the citor a copy of the form of appearance.

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

**45.**—(1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to 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 six months from the death of the deceased;

Provided 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 apply ex parte to the master for an order for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application 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) of this rule apply to the Master for an order for a grant to himself;
- (b) in the case of a citation under paragraph (2) of this rule, apply to the Master 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) of this rule, apply to the Master by summons (which shall be served on the person cited) for an order requiring such person to take a grant within a specified time or for a grant to himself or some other person specified in the summons.

(6) An application under the last foregoing paragraph shall be supported by an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.

(7) If the person cited has entered an appearance, but has not applied for a grant under paragraph (4) of this rule, or has failed to prosecute his application with reasonable diligence, the citor may—

- (a) in the case of a citation under paragraph (1) of this rule, apply by summons to the Master for an order for a grant to himself;
- (b) in the case of a citation under paragraph (2) of this rule, apply by summons to the Master for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in sub-paragraph (b) of paragraph (5) of this rule;
- (c) in the case of a citation under paragraph (3) of this rule, apply by summons to the Master for an order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the summons;

and the summons shall be served on the person cited.

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

**46.**—(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 cited has entered an appearance, apply to the Master for an order for a grant as if the will were invalid;
- (b) in the case where no person who has entered an appearance proceeds with reasonable diligence to propound the will, apply to the Master by summons (which shall be served on every person cited who has entered an appearance) for such an order as is mentioned in paragraph (a) above.

### ***Citation to bring in a grant***

**47.** A citation against the person to whom probate or letters of administration, as the case may be, was or were granted requiring him to bring into and leave at the Office the probate or letters of administration, as the case may be, may be issued on the application of any person applying for the revocation or amendment of the grant or who desires to compel proof of the will in solemn form. Service out of jurisdiction of a citation under this rule is permissible but only

with the leave of the Court.

***Address for service***

**48.** All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

***Application for order to bring in a will or to attend for examination***

**49.**—(1) An application under Article 15 of the Order—

- (a) for the issue by the Master of a subpoena to bring a will or other testamentary paper into the Office shall be supported by an affidavit setting out the grounds of the application, or
- (b) for an order requiring any person to bring a will or other testamentary paper into the Office shall be made by summons which must be served on the person against whom the order is sought.

(2) An application under Article 16 of the Order for an order requiring any person to attend before the Court for examination shall be made by summons which must be served on the person against whom the order is sought.

(3) Any person against whom a subpoena is issued under the said Article 15, and who denies that the will or other testamentary paper referred to in the subpoena is in his possession or under his control may file an affidavit to that effect.

***Limited grants under section 1 (2) of the Administration of Estates Act (Northern Ireland) 1955***

**50.** An application for an order for a grant under section I (2) of the Administration of Estates Act (Northern Ireland) 1955(a) limited to part of an estate may be made to the Master and shall be supported by an affidavit stating—

- (a) whether the application is made in respect of the real estate only or personal estate only, or real estate together with personal estate, or in respect of a trust estate only;
- (b) whether the estate of the deceased is known to be insolvent;
- (c) that the persons entitled to a grant in respect of the whole estate in priority to the applicant have been cleared off.

***Grants of administration under discretionary powers of court, and grant ad colligenda bona***

**51.** An application for an order for—

- (a) a grant of administration under Article 5 of the Order, or
- (b) a grant of administration ad colligenda bona.

may be made to the Master and shall be supported by an affidavit setting out the grounds of the application.

### ***Applications for leave to swear to death***

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

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

**53.—**(1) An application for an order admitting to proof a nuncupative will, or a will contained in a copy, a completed draft, a reconstruction or other evidence of its contents where the original will is not available, may be made to the Master:

Provided that 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 without any such order as aforesaid.

(2) The application 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 due execution of the will;

(b) its existence after the death of the testator, and

(c) the accuracy of the copy or other evidence of the contents of the will, together with any consents in writing to the application given by any persons not under disability who would be prejudiced by the grant.

### ***Grants durante absentia***

**54.** An application for an order for a grant of special administration under Article 8 of the Order where a personal representative is residing outside Northern Ireland shall be made to the Court on motion.

### ***Power to require application to be made by summons or motion***

**55.** The Master may require any application to be made by summons to the Master or the Judge, or to the Court on motion.

### ***Notice of motion***

**56.** The notice of a motion must issue out of the Office.

### ***Application by summons***

**57.—**(1) A summons must issue out of the Office.

(2) A summons must be served not less than two clear days before the day appointed for the hearing, unless the Judge or Master, at or before the hearing, dispenses with service on such terms, if any, as he may think fit.

**58.**—(1) Office copies of wills and other documents kept in the Office and branch offices under Article 23 of the Order will not be examined against the documents of which they purport to be copies unless so required. Every copy so required to be examined, shall be certified under the hand of the Master to be a true copy.

(2) The seal of the Court shall not be affixed to an office copy of a will or other document unless the same has been certified to be a true copy.

#### *Attendances with documents*

**59.** If a will or other document filed in the Office or any branch office is required to be produced by a clerk of the Office or branch office at any place application must be made for that purpose (unless the Judge or Master gives leave to the contrary) at least twenty-four hours before the clerk, in whose charge the will or other document is to be placed, will be required to set off; provided that any such will or document required for production before the Court of Appeal or any Judge of the Supreme Court sitting in Belfast shall be transmitted to the proper officer of such Court or Judge who will give a receipt therefor and return the same to the Office as soon as may be after such production. If a will or other document so filed is required to be posted to a circuit registrar application must be made for that purpose in sufficient time to allow for making and examining a copy of such will or other document to be deposited in its place.

#### *Notices of applications for grants made to a branch office*

**60.**—(1) A circuit registrar shall send to the Office a notice of every application made in the branch office for a grant as soon as may be after the application has been made, and no grant shall be made by him until he has received from the Office a certificate that no other application appears to have been made in respect of the estate of the testator or intestate.

(2) Notices of applications for grants of probate or administration, with the will annexed, transmitted by the circuit registrar to the Office, shall contain an extract of the words of the will or codicil by which the applicant has been appointed executor, or of the words (if any) upon which he founds his claim to such administration; and shall show the day on which the application was made.

(3) Notices of application shall set forth the names and interests of all persons who would have a prior right to the applicant, and show how such prior rights is cleared off. In case the persons, or any of them, have renounced, the date of his or her renunciation must be stated. If the applicant claims as the representative of another person, the date and particulars of the grant to him must appear.

(4) Where any such notice is received from any branch office the Master shall examine all notices of applications for grants received from the other branch offices and all applications for grants made at the Office, so far as may be necessary for the purpose of ascertaining whether application for a grant in respect of the estate of the same deceased person has been made, and shall communicate with the circuit registrar as occasion may require in relation thereto.

(5) The certificate sent under paragraph (1) shall be forwarded as soon as may be to the circuit registrar, and may be issued from the Office under a stamp provided for that purpose.

(6) All notices transmitted to the Office under paragraph (1) shall be filed in the Office.

### ***List of grants made in a branch office***

**61.**—(1) A circuit registrar shall on the first and every other Thursday in the month transmit to the Office a list of the grants made by him and not included in a previous return, and also copies of the wills to which the grants relate certified by him to be correct under a stamp provided for the purpose.

(2) Every such list of grants furnished by the circuit registrar shall include the full name of every person in respect of whose estate a grant has been made, and the name of the county or town in which he resided.

### ***Amendment of grants in branch office***

**62.**—(1) No grants of probate or letters of administration shall be amended by the circuit registrar, without an order of the Judge or Master having been previously obtained. In case the name of the testator or intestate requires amendment notice of an application to amend must be given, and the amendment ordered is not to be made by the circuit registrar until the usual certificate on such notice has been received from the Office.

(2) Whenever in the branch office any amendment is made in a grant, or a renunciation is filed, notice of such amendment or renunciation shall, without delay, be forwarded by the circuit registrar to the Master.

(3) Where any alteration is made in a grant which was issued from a branch office, or where any such grant is revoked, and the volume of the printed calendar containing the entry of such grant has been forwarded to the circuit registrar, notice of such alteration or revocation shall without delay be forwarded by the Master to the circuit registrar.

### ***Order of priority for grant where the deceased died before the 1st day of January 1956***

**63.** Where the deceased died before the 1st January 1956, the right to a grant shall, subject to any statutory provision, be determined by the principles and rules in accordance with which the Court would have acted at the date of the death.

S. R. 2007 No. 189

**The Rules of the Supreme Court (Northern Ireland) (Amendment) 2007**

Coming into operation

16th April 2007

**Amendments to the Rules of the Supreme Court (Northern Ireland) 1980**

14. In Order 97—

(a) in rule 1(1) –

(i) for the words “Family Division”, wherever they appear, substitute “Chancery Division” and;

(ii) for “Probate and Matrimonial Office” substitute “Chancery Office”;

(b) in rule 20(1)(i) after “spouse” insert “or civil partner”;

(c) in rule 20(2) after “spouse” insert “or civil partner”; and

(d) in rule 24 after “spouse” insert “or civil partner”.