



NORTHERN IRELAND

**COURT
SERVICE**

PROBATE OFFICE

APPLICATIONS TO THE MASTER

**Non-Contentious
Probate Business
Notes**

June 2009

APPLICATIONS TO THE MASTER

PREFACE

The notes and the example summonses and affidavits in this booklet give initial informal help with the preparation of documents needed in various types of non-contentious probate applications to the Master. The contents do not cover every type of application or every circumstance but should give a useful base from which to work.

The established textbooks which include “Probate Practice Notes” by Margaret Aiken, “Succession Law in Northern Ireland” by Sheena Grattan and “Tristram & Coote’s Probate Practice” may provide more details about the different types of application.

The relevant Practice Directions and Probate Guidance Notes, available online through the Northern Ireland Court Service website at www.courtsni.gov.uk, should be followed to ensure applications are properly prepared and correctly presented to the court office. In particular, Practice Direction 5/2005 sets out the requirements for the preparation and layout of affidavits and exhibits.

Fee amounts shown in this booklet are those prescribed by the Supreme Court (Non-Contentious Probate) Fees (Amendment) Order (Northern Ireland) 2007 which came into operation on 24 September 2007. The fees may be subject to change by any further Orders coming into effect at later dates. Fees are payable to “Northern Ireland Court Service”.

The original text of this booklet in electronic format is available online through the Probate page of the Court Service website.

APPLICATIONS TO THE MASTER

TYPES OF APPLICATIONS

Applications – by Affidavit - ex parte (no hearing normally required)

1. Application to be Appointed Guardian
2. Application to Amend a Grant

Applications – by Summons and Affidavit

3. Application to Prove Copy / Reconstructed Will
4. Application under Article 5 of the Administration of Estates (NI) Order 1979
5. Application to Swear to the Death of a Person
6. Application for *Ad Colligenda Bona* Order
7. Application for *Pendente Lite* Order
8. Application to Revoke and Cancel a Grant
9. Application to Impound a Grant

REFERENCES

Rules of the Supreme Court (Northern Ireland) 1980

- Order 97 rule 27 – Grants on behalf of minors
- Order 97 rule 41 – Amendment and revocation of grant
- Order 97 rule 51 – Grants of administration under discretionary powers of court, and grant ad colligenda bona
- Order 97 rule 52 – Applications for leave to swear to death
- Order 97 rule 53 – Grants in respect of nuncupative wills and copies of wills

Administration of Estates (Northern Ireland) Order 1979

- Article 5 – Discretionary power to appoint administrator in certain cases
- Article 6 – Administration pendente lite

APPLICATION TO MASTER

1. APPLICATION TO BE APPOINTED GUARDIAN

An application to be appointed Guardian to enable a suitable person to extract a Grant of Representation on behalf of a minor may be made to the Master under Order 97 rule 27 of the Rules of the Supreme Court (Northern Ireland) 1980.

This is an ex parte application and does not normally require a hearing before the Master.

(The form of Petition at page 74 of Aiken's "Probate Practice Notes" has fallen into disuse as it did not include the level of detail appropriate in an application after The Children (NI) Order 1995 came into effect.)

DOCUMENTS REQUIRED

1. **Grounding Affidavit with prayer by the applicant stating -**

- (a) the relationship of the applicant to the child/ren;
- (b) who has custody of the child/ren (consent is required if the applicant is not the person with custody);
- (c) whether the parents of the child/ren ever cohabited;
- (d) details of the death of the deceased;
- (e) the reason for the grant – e.g. litigation purposes;
- (f) confirmation of the marital / civil status of the deceased at date of death;
- (g) confirmation as to whether the deceased had any other children.

2. **Affidavit of fitness**

- (a) this must be made by someone who has known the applicant for a period of time and can confirm him or her to be a fit person to be appointed Guardian of the child/ren – e.g. GP, clergyman, or other person who may countersign a passport application;
- (b) the affidavit must state the name and the position that the person holds, how long he/she has known the applicant and that he/she can confirm the applicant to be a fit person to administer funds on behalf of the minor.

3. **Certified copy of birth certificate of child/ren**

If the father is not named on the birth certificate further proof of parentage will be required e.g. an affidavit from one of his family members confirming that the child/ren is/are issue of that person, or copy of a Child Support Agency assessment.

4. **Any relevant Court orders in respect of the child/ren**

5. **Fee of £50.00**

1. APPLICATION TO BE APPOINTED GUARDIAN

Example Affidavit of Applicant

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION
CHANCERY OFFICE (PROBATE)

IN THE ESTATE OF *(insert name of deceased)* DECEASED

I *(insert name)*, *(insert occupation)*, of *(insert address)*, aged 18 years and upwards, do hereby make Oath and say as follows: -

1.
2.
3.
4.
5.
6.
7.

Save as where otherwise appears I depose to the foregoing facts from within my own personal knowledge.

Sworn at *(insert place)*
by *(insert name of deponent)*
this day of 20 , *(insert date)*
before me

.....
(signature of deponent)

.....
a Solicitor/Commissioner empowered to
administer Oaths for the Supreme Court of
Judicature in Northern Ireland.

This Affidavit was filed on behalf of the above named deponent by
(insert name of Solicitors), of (insert address)

Solicitor's Reference:

1. APPLICATION TO BE APPOINTED GUARDIAN

Example Affidavit of Fitness

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION
CHANCERY OFFICE (PROBATE)

IN THE ESTATE OF *(insert name of deceased)* DECEASED

I *(insert name)*, *(insert occupation)*, of *(insert address)*, aged 18 years and upwards, do hereby make Oath and say as follows: -

1. I have known *(insert name of applicant)*, of *(insert address)* for *(insert number of years)*, in my capacity as *(insert capacity)*.
2. To the best of my personal knowledge, I confirm that the said *(insert name of applicant)* is of general good fitness and I also confirm that in my personal opinion he/she would be a fit person to administer the estate of *(insert name of deceased)*, and I also consider *(insert name of applicant)* to be a fit person to apply for the guardianship of *(insert name of child/ren)*, a minor(s), for the purposes of extracting a Grant, and to administer funds on behalf of such minor(s).

Save as where otherwise appears I depose to the foregoing facts from within my own personal knowledge.

Sworn at *(insert place)*
by *(insert name of deponent)*
this day of 20 *(insert date)*
before me

.....
(Signature of deponent)

.....
a Solicitor/Commissioner empowered to
administer Oaths for the Supreme Court of
Judicature in Northern Ireland.

This Affidavit was filed on behalf of the above named deponent by
(insert name of Solicitors), of *(insert address)*

Solicitor's Reference:

Following the granting of the application a copy of the Master's Order will be sent to the lodging solicitors.

Reference to the Master's Order should be included in the Oath document prepared subsequently for the application for the grant of representation. A copy of the Order should be included with the documents lodged with that application.

APPLICATION TO MASTER

2. APPLICATION TO AMEND A GRANT

(See also “8. Application to Revoke and Cancel a Grant”, also under Order 97 rule 41.)

If a grant has been issued and it later transpires that the information stated on the grant on the basis on the facts stated in the sworn Oath is incorrect, an ex parte application (normally no hearing required) may be made to the Master for leave to have the grant amended. Amendment (as opposed to revocation) is the remedy for comparatively minor errors in names, dates and wording. The Master will decide whether to allow amendment or whether revocation followed by a new grant is necessary.

DOCUMENTS REQUIRED

1. **Grounding Affidavit** with prayer from Solicitor or executor/administrator stating:

- (a) the date of the issue of the grant.
- (b) the error that has been made
- (c) the amendment that is required.

2. **Original Grant**

Any sealed and certified copies of the grant should also be returned with the original grant.

3. **Certified copy of death certificate**

Only if the amendment is a correction of the date of death.

4. **IHT205 Return of Estate Information or IHT421 Probate Summary**

Only if the amendment relates to the gross and net values of the estate.

The application needs to include the appropriate tax form to support the change requested.

5. **Fee of £50.00**

An additional fee will be payable after the Master has granted an application to amend the estate values if the corrected net value moves from the ‘Not exceeding £10,000’ fee band to the ‘Exceeding £10,000’ fee band.

2. APPLICATION TO AMEND A GRANT

Example Affidavit

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION
CHANCERY OFFICE (PROBATE)

IN THE ESTATE OF *(insert name of deceased)* DECEASED

I *(insert name)*, *(insert occupation)*, of *(insert address)*, aged 18 years and upwards, do hereby make Oath and say as follows: -

1. that a grant of Probate of the Will of the said, deceased, was issued forth of theon theday of 20..., to me the sole Executor therein named.
2. that in applying for said grant of Probate I believed and swore that said deceased died on the day of 20..., which date appears in said grant, but I have since discovered that the said deceased did not die on that date, but died on the day of 20....,
3. that I therefore wish to have the said grant of Probate amended by the alteration of the date of death of said deceased from theday of 20.... , to the day of 20....

Save as where otherwise appears I depose to the foregoing facts from within my own personal knowledge.

Sworn at *(insert place)*
by *(insert name of deponent)*
this day of 20 *(insert date)*
before me

.....
(Signature of deponent)

.....
a Solicitor/Commissioner empowered to
administer Oaths for the Supreme Court of
Judicature in Northern Ireland.

This Affidavit was filed on behalf of the above named by
(insert name of Solicitors), of *(insert address)*.

Solicitor's Reference:

Following the granting of the application a copy of the Master's Order and the amended original grant will be sent to the lodging solicitors.

APPLICATION TO MASTER

3. APPLICATION TO PROVE COPY / RECONSTRUCTED WILL

Where a will or codicil has been lost or accidentally destroyed without intention to revoke it an application by summons may be made to the Master for an Order admitting the will or codicil to proof as contained in a copy or draft or reconstructed copy.

This type of application requires a hearing before the Master and should be by summons.

DOCUMENTS REQUIRED

1. **Summons** – signed and dated.
2. **Solicitor's Affidavit** – this should state:
 - (a) the facts relating to the identity and circumstances of the person last having possession of the will;
 - (b) details of all searches and advertisements conducted to find the will;
 - (c) whether the original will existed at the death of the testator and detail as to whether or not the testator could have intentionally destroyed it.
3. **Copy of the Will as exhibit to affidavit**
4. **Affidavit of Attesting Witness** – this should state that the will was executed properly and that the witness has compared the copy and original.
5. **Fee of £115.00**

The persons entitled on intestacy should be put on notice of the application.

If the will was in the possession of the testator the presumption is that it has been destroyed, but this can be rebutted.

The original summons and affidavit(s) should be lodged with the fee, together with a sufficient number of copies of the documents for service.

3. APPLICATION TO PROVE COPY / RECONSTRUCTED WILL

Example Summons

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION
CHANCERY OFFICE (PROBATE)

IN THE ESTATE OF *(insert full name of the deceased)* DECEASED

LET ALL PARTIES CONCERNED ATTEND before the Master in Chambers,
Royal Courts of Justice, Chichester Street, Belfast
on day the day of 20 , at am / pm
upon the hearing of an application on behalf of *(Insert name(s) of Executor(s))*,
for an Order under **Order 97 rule 53 of the Rules of the Supreme Court (Northern Ireland)**
1980, to admit a Copy Will / Reconstructed Will to Probate.

Dated this day of 20 . *(insert date)*

..... *(signed by Solicitors)*

Name of Solicitors

Address of Solicitors

Solicitor's Reference:

To:
*(Insert names and addresses of persons to be served with summons,
i.e. those who would benefit on intestacy).*

Following the hearing of the application a copy of the Master's Order will be sent to the lodging solicitors.

Reference to the Master's Order should be included in the Oath document prepared subsequently for the application for the grant of representation.

The Oath needs to refer to a certified copy of the (reconstructed, if appropriate) last will instead of the original will. A copy of the Order should be included with the documents lodged in the application for a grant.

APPLICATION TO MASTER

4. APPLICATION UNDER ARTICLE 5

Article 5 of the Administration of Estates (Northern Ireland) Order 1979 gives relatively wide discretion to the Master to grant administration of the estate of a deceased where circumstances render it “necessary” or “expedient”. Generally, where an applicant for a grant is not entitled under the normal rules as provided for under Article 4 of the Order, the applicant may seek leave of the Master to apply for a grant under the provisions of Article 5.

This type of application may be used for example where the executor of a proving executor now deceased is unwilling to act in the administration of an earlier estate, or where in intestacy the intending applicant is in a class with lower priority than the person normally entitled to a grant.

Because of the width of the discretion this a useful provision for dealing with some of the potential situations which arise in modern family life, for example estranged untraceable spouses, etc.

This type of application requires a hearing before the Master.

DOCUMENTS REQUIRED

1. **Summons** - signed and dated.
2. **Affidavit** should include particulars as appropriate to the facts. For example, in a case where a person entitled to a grant has gone missing:
 - (a) The name, last address, date of death, marital/civil status of the deceased.
 - (b) The person entitled to the grant under the Rules and his or her last known whereabouts.
 - (c) The steps taken to trace the person entitled e.g. newspaper advertisements - these should also be exhibited.
 - (d) Details of any letters to relatives and any replies - these should also be exhibited.
 - (e) Written consent to the issue of the grant, by any other persons who would be entitled, should also be exhibited.
3. **Fee of £115.00**

The original summons and affidavit should be lodged with the fee, together with a sufficient number of copies of the documents for service.

4. APPLICATION UNDER ARTICLE 5

Example Summons

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION
CHANCERY OFFICE (PROBATE)

IN THE ESTATE OF *(insert full name of the deceased)* DECEASED

LET ALL PARTIES CONCERNED ATTEND before the Master in Chambers,
Royal Courts of Justice, Chichester Street, Belfast
on day the day of 20 , at am / pm
upon the hearing of an application on behalf of *(insert name of applicant)*
for an Order under **Article 5 of the Administration of Estates (Northern Ireland) Order 1979**,
on the grounds that

Dated this day of 20 . *(insert date)*

..... *(signed by Solicitors)*

Name of Solicitors

Address of Solicitors

Solicitor's Reference:

To: *(Insert names and addresses of persons to be served with summons,
namely executors and beneficiaries entitled under any existing will or on intestacy)*

Following the hearing of the application a copy of the Master's Order will be sent to the lodging solicitors.

Reference to the Master's Order should be included in the Oath document prepared subsequently for the application for the grant of representation. A copy of the Order should be included with the documents lodged in that application.

APPLICATION TO MASTER

5. APPLICATION FOR LEAVE TO SWEAR TO THE DEATH

Where direct evidence of the death of any person is unobtainable and a grant is required, application must be made to the Court.

The Court will not presume the death of a 'missing' person but will give the Applicant leave to swear to the death not positively but to the best of his information and belief for the purposes of obtaining a grant. This application is used in circumstances such as suspected suicides by drowning, missing persons or dangerous foreign expeditions and in the circumstances of "the Disappeared".

This application is by summons and affidavit to the Master.

DOCUMENTS REQUIRED

1. **Summons** – signed and dated.
2. **Affidavit** which should contain the following information:-
 - (a) Relationship of Applicant/Deponent to the deceased.
 - (b) When the deceased was last heard of.
 - (c) The age of the deceased.
 - (d) The belief of the Applicant that the person is now dead and the grounds of such belief.
 - (e) Whether any advertisements in respect of the deceased have been inserted anywhere, if so with what success. Copies of the newspaper/magazine should also be exhibited.
 - (f) Details of any letters which have been received from the deceased; if any exist these should also be exhibited.
 - (g) Whether the life of the deceased was insured. If so, give particulars of all policies, including the name of the beneficiary, and whether notice of the application has been given to the insurance company; any reply from the insurance company should be lodged.
 - (h) Whether the deceased died testate or intestate (a copy of any will should also be exhibited), and stating who are the persons, if any, entitled to share in the estate in the event of intestacy.
 - (i) The value and particulars of the estate of the deceased, and whether his/her bank accounts, if any, have been operated since his/her disappearance. (Relevant correspondence from any bank etc should also be exhibited.)
 - (j) If possible supporting affidavits from some of the deceased's family should also be lodged.
 - (k) Any relevant police or rescue reports – to be exhibited.
 - (l) Relevant newspaper articles – also to be exhibited.
3. **Fee of £115.00**

The original summons and affidavit should be lodged with the fee, together with a sufficient number of copies of the documents for service.

5. APPLICATION FOR LEAVE TO SWEAR TO THE DEATH

Example Summons

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION
CHANCERY OFFICE (PROBATE)

IN THE ESTATE OF *(insert full name of the deceased)* DECEASED

LET ALL PARTIES CONCERNED ATTEND before the Master in Chambers,
Royal Courts of Justice, Chichester Street, Belfast
on day the day of 20 , at am / pm
upon the hearing of an application on behalf of for an Order
giving leave to swear to the death of presumed deceased,
pursuant to **Order 97 rule 52 of the Rules of the Supreme Court (Northern Ireland) 1980.**

Dated this day of 20 . *(insert date)*

..... *(signed by Solicitors)*

Name of Solicitors

Address of Solicitors

Solicitor's Reference:

To: *(Insert names and addresses of persons to be served with summons)*

Following the hearing of the application a copy of the Master's Order will be sent to the lodging solicitors.

Reference to the Master's Order should be included in the Oath document prepared subsequently for the application for the grant of representation. A copy of the Order should be included with the documents lodged in that application.

APPLICATION TO MASTER

6. APPLICATION FOR *AD COLLIGENDA BONA* ORDER

(Latin 'ad colligenda bona' – to collect the goods.)

A grant of Letters of Administration ad colligenda bona may be appropriate in circumstances of urgency when it is necessary to obtain an interim grant in order to protect assets of an estate which could otherwise be endangered by delay. The following may be examples of appropriate circumstances: -

- (i) to harvest crops or sell livestock;
- (ii) to preserve a liquor licence or continue trade;
- (iii) to protect premises from vandalism, planning blight or lease lapse;
- (iv) to continue operation of a professional practice.

It should be stressed that this is an emergency step in circumstances where it is not possible to apply for a full grant in the usual manner in time to protect the assets. An example would be when the sole executor/administrator has been posted overseas and is not able to attend to the business of obtaining a full grant.

The grant is a grant of 'Letters of Administration ad colligenda bona' and will normally be limited for the purpose of collecting, getting in and receiving the estate and until further representation is granted.

Normally the disposal of any asset covered by the interim grant requires leave of the Master.

This application should normally be by summons and affidavit.

DOCUMENTS REQUIRED

1. **Summons** – signed and dated.
2. **Affidavit** setting out the grounds of the application, including:–
 - (a) why the grant is required urgently;
 - (b) why the full grant cannot now be taken;
 - (c) the reasons for the temporary grant;
 - (d) the nature of the estate requiring urgent administration;
 - (e) the values of the estate to pass under the grant;
 - (f) the interest of the applicant(s) in the estate.
3. **'No objection' letter from HMRC IHT**
4. **Fee of £115.00**

The original summons and affidavit should be lodged with the fee, together with a sufficient number of copies of the documents for service.

6. APPLICATION FOR AD COLLIGENDA BONA ORDER

Example Summons

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION
CHANCERY OFFICE (PROBATE)

IN THE ESTATE OF *(insert full name of the deceased)* DECEASED

LET ALL PARTIES CONCERNED ATTEND before the Master in Chambers,
Royal Courts of Justice, Chichester Street, Belfast
on day the day of 20 , at am / pm
upon the hearing of an application on behalf of for an Order pursuant to
Order 97 rule 51 of the Rules of the Supreme Court (Northern Ireland) 1980,
for a Grant of Administration ad colligenda bona.

Dated this day of 20 . *(insert date)*

..... *(signed by Solicitors)*

Name of Solicitors

Address of Solicitors

To *(Insert names and addresses of persons to be served with summons)*

Following the hearing of the application a copy of the Master's Order will be sent to the lodging solicitors.

Reference to the Master's Order should be included in the Oath document prepared subsequently for the application for the grant of representation. A copy of the Order should be included with the documents lodged in that application.

On the issue of a full grant the authority of the limited grant ceases. Where there is a will it is not proved until that application for a full grant is made.

APPLICATION TO MASTER

7. APPLICATION FOR *PENDENTE LITE* ORDER

(Latin 'pendente lite' – pending the law suit.)

A Grant of Letters of Administration Pendente Lite is a grant limited pending the outcome of a probate action so that the estate is managed and preserved for the benefit of those found to be entitled to it.

Reference

Article 6(1) of the Administration of Estates (Northern Ireland) 1979 (permitting the High Court to make such a grant where there are any legal proceedings “touching the validity of the will or for obtaining or revoking any grant”).

This application should normally be by summons and affidavit. Legal proceedings must actually have been commenced; eg a caveat or citation will not be enough of itself.

DOCUMENTS REQUIRED

1. **Summons** – signed and dated.
2. **Affidavit** setting out the grounds of the application, including:-
 - (a) why the grant is required urgently;
 - (b) why the full grant cannot now be taken;
 - (c) the reason for the temporary grant - identify the pending suit;
 - (d) the nature of the estate requiring urgent administration;
 - (e) the values of the estate to pass under the grant;
 - (f) the interest of the applicants in the estate.
3. **'No objection' letter from HMRC IHT**
4. **Fee of £115.00**

The original summons and affidavit should be lodged with the fee, together with a sufficient number of copies of the documents for service.

On the issue of a full grant the authority of the limited grant ceases.

7. APPLICATION FOR *PENDENTE LITE* ORDER

Example Summons

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION
CHANCERY OFFICE (PROBATE)

IN THE ESTATE OF *(insert full name of the deceased)* DECEASED

LET ALL PARTIES CONCERNED ATTEND before the Master in Chambers,
Royal Courts of Justice, Chichester Street, Belfast
on day the day of 20 , at am / pm
upon the hearing of an application on behalf of
for an Order under **Article 6 of the Administration of Estates (Northern Ireland) Order 1979**,
for a Grant of Administration pendente lite.

Dated this day of 20 . *(insert date)*
..... *(signed by Solicitors)*

Name of Solicitors

Address of Solicitors

To *(Insert names and addresses of persons to be served with summons)*

Following the hearing of the application a copy of the Master's Order will be sent to the lodging solicitors.

Reference to the Master's Order should be included in the Oath document prepared subsequently for the application for the grant of representation. A copy of the Order should be included with the documents lodged in that application.

APPLICATION TO MASTER

8. APPLICATION TO REVOKE AND CANCEL A GRANT

(See also “2. Application to Amend a Grant”, also under Order 97 rule 41.)

Generally an application to revoke and cancel a grant should be made by summons and affidavit, and is the subject of a hearing, though occasionally the Court on its own motion pursuant to Article 11 of the Administration of Estates (Northern Ireland) Order 1979 may recall or revoke any grant, e.g. where the grant ought not to have been made or it contains an error.

A grant can only be revoked and cancelled by the Master if the application is on consent by all parties or in exceptional circumstances. A contentious application to revoke and cancel a grant must be made on foot of a writ.

Among the most common circumstances for revocation are: -

1. where a will has been discovered following a grant of Letters of Administration; and
2. where a more recent will has been found following a grant of Probate.

DOCUMENTS REQUIRED

1. **Summons** – signed and dated.
2. **Affidavit** stating the facts.
3. **Original grant**
4. **Consent** - if the present or former Grantee is not the person making the application some clear expression or indication of his/her consent to the application should be included.
5. **Fee of £115.00**

The original summons and affidavit should be lodged with the fee, together with a sufficient number of copies of the documents for service.

8. APPLICATION TO REVOKE AND CANCEL A GRANT

Example Summons

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION
CHANCERY OFFICE (PROBATE)

IN THE ESTATE OF *(insert full name of the deceased)* DECEASED

LET ALL PARTIES CONCERNED ATTEND before the Master in Chambers,
Royal Courts of Justice, Chichester Street, Belfast
on day the day of 20 , at am / pm
upon the hearing of an application on behalf of *(insert name of applicant)*
pursuant to **Order 97 rule 41 of the Rules of the Supreme Court (Northern Ireland) 1980**,
for an Order to revoke and cancel the Grant of Probate/Letters of Administration issued to
(insert name of grantee) on *(insert date Grant issued)*.

Dated this day of 20 . *(insert date)*

..... *(signed by Solicitors)*

Name of Solicitors

Address of Solicitors

Solicitor's Reference:

To: *(Insert names and addresses of persons to be served with summons,
to include all potentially interested parties.)*

8. APPLICATION TO REVOKE AND CANCEL A GRANT

Example Affidavit

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION
CHANCERY OFFICE (PROBATE)

IN THE ESTATE OF *(insert full name of the deceased)* DECEASED

I *(insert name)*, *(insert occupation)*, of *(insert address)*, aged 18 years and upwards, do hereby make Oath and say:-

1. a grant of _____ of the said AB deceased was issued forth to me the sole Executor/Administrator on _____ .
2. In applying for the grant I swore an Oath and lodged with the application what I believed to be the last will and testament of the said deceased. I have since discovered that the deceased made a later will dated _____ , and I therefore wish to have the said grant of Probate revoked and cancelled in order that I may apply for a fresh grant of Probate with the last will and testament of the deceased.

Sworn at *(insert place)*
by *(insert name of deponent)*
this _____ day of _____ 20 _____ *(insert date)*
before me

.....
(Signature of deponent)

.....
a Solicitor/Commissioner empowered to administer Oaths for the Supreme Court of Judicature in Northern Ireland.

This Affidavit was filed on behalf of the above named by
(insert name of Solicitors), of *(insert address)*.

Solicitor's Reference:

Following the hearing of the application a copy of the Master's Order and the revoked and cancelled grant will be sent to the lodging solicitors.

Reference to the Master's Order should be included in the Oath document prepared subsequently for any other application for the grant of representation in this estate. A copy of the Order should be included with the documents lodged in that application.

APPLICATION TO MASTER

9. APPLICATION TO IMPOUND A GRANT

If a grant has been issued to a sole executor, a sole surviving executor or a sole administrator and that person becomes incapable of managing their affairs, the grant is impounded (instead of being revoked) and a 'de bonis non' grant may be issued limited for his use and benefit and during his incapacity. In particular:

1. in the case of a sole executor or a sole surviving executor becoming incapable the grant will be given to the person who would have been entitled to the grant if the executor had been incapable at the date the grant issued.
2. if one executor has reserved his rights and the grant issued to the other executor, and the proving executor becomes incapable, the grant will be impounded and a grant of Double Probate may be issued to the other executor who originally reserved his rights.
3. in the case of a sole administrator the grant is impounded and the de bonis non grant may be issued to a person who would have been equally entitled when the first grant issued.

An exception to the above arrangements exists in the case of a grant made to a person authorised by the Office of Care and Protection - the previous grant is not impounded but remains at large.

When the previous grantee becomes capable the impounded grant may be released.

Application to impound grant is made by summons and affidavit to the Master.

DOCUMENTS REQUIRED

1. **Summons** – signed and dated.
2. **Affidavit** stating the facts.
3. **Documentary evidence** of the incapacity should also be lodged (e.g. copy of the Office of Care and Protection Order).
4. **Original Grant**
5. **Fee of £115.00**

The original summons and affidavit(s) should be lodged with the fee, together with a sufficient number of copies of the documents for service.

Order 97 rule 27 of the Rules of the Supreme Court (Northern Ireland) 1980

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 obtains 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.

(a) 1886 c. 27

Order 97 rule 41 of the Rules of the Supreme Court (Northern Ireland) 1980

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.

Order 97 rule 51 of the Rules of the Supreme Court (Northern Ireland) 1980

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.

Order 97 rule 52 of the Rules of the Supreme Court (Northern Ireland) 1980

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.

Order 97 rule 53 of the Rules of the Supreme Court (Northern Ireland) 1980

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.

Article 5 of the Administration of Estates (Northern Ireland) Order 1979

Discretionary power to appoint administrator in certain cases

5.—(1) Where—

(a) a person has died, and

(b) by reason of any circumstances it appears to the High Court necessary or expedient to appoint an administrator under this Article,

the High Court may grant administration of the deceased person's estate, appointing as administrator such person as the High Court in its discretion thinks fit.

(2) Administration under this Article—

(a) may be granted whether the deceased person died before or after the end of the year 1955;

(b) may be limited as the High Court thinks fit.

(3) On administration being granted under this Article no person shall be or become entitled to administer the estate of the deceased person by virtue of the chain of representation.

Article 6 of the Administration of Estates (Northern Ireland) Order 1979

Administration pendente lite

6.—(1) Where any legal proceedings are pending touching the validity of the will of a deceased person, or for obtaining or revoking any grant, the High Court may grant administration of the estate of the deceased to an administrator, who shall have all the rights and powers of a general administrator, other than the right of distributing the estate of the deceased.

(2) Every person to whom administration is so granted shall be subject to the immediate control of the High Court and act under its direction.

(3) The High Court may, out of the estate of the deceased person, assign to an administrator appointed under this Article such reasonable remuneration as the High Court thinks fit.

(4) This Article does not prejudice the power of a county court judge to grant limited administration under Article 16 of the County Courts (Northern Ireland) Order 1980 (death of a person concerning whose property proceedings are pending in a county court).