

**ORDER 76**

**CONTENTIOUS PROBATE PROCEEDINGS**

***Application and interpretation***

1.—(1) This Order applies to probate causes and matters, and the other provisions of these Rules apply to those causes and matters subject to the provisions of this Order.

(2) In these Rules “probate action” means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for the decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business.

(3) In this Order—

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

"the Office" means the Probate and Matrimonial Office;

"will" includes a codicil.

[E.r. 1]

***Requirements in connection with issue of writ***

2.—(1) A probate action must be begun by writ, issued out of the Office.

(2) Before a writ beginning a probate action is issued it must be indorsed with a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the action relates.

[E.r. 2]

***Parties to action for revocation of grant***

3. Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of his will or letters of administration of his estate shall be made a party to any action for revocation of the grant.

[E.r. 3]

***Lodgment of grant in action for revocation***

4.—(1) Where, at the commencement of an action for the revocation of a grant or probate of the will or letters of administration of the estate of a deceased person, the probate or letters of administration as the case may be, have not been lodged in the Office, then—

(a) if the action is commenced by a person to whom the grant was made, he shall lodge the probate or letters of administration in the Office within 7 days after the issue of the writ;

(b) if any defendant to the action has the probate or letters of administration in his possession or under his control he shall lodge it or them in the Office within 14 days after the service of the writ upon him.

(2) Any person who fails to comply with paragraph (1) may, on the application of any party to the action, be ordered by the Court to lodge the probate or letters of administration in the Office within a specified time; and any person against whom such an order is made shall not be entitled to take any step in the action without the leave of the Court until he has complied with the order.

[E.r. 4]

### ***Affidavit of testamentary scripts***

5.—(1) Unless the Court otherwise directs, the plaintiff and every defendant who has entered an appearance in a probate action must swear an affidavit—

- (a) describing any testamentary scripts of the deceased person whose estate is the subject of the action of which he has any knowledge or, if such be the case, stating that he knows or no such script, and
- (b) if any such script of which he has knowledge is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or, if such be the case, stating that he does not know the name and address of that person.

(2) Any affidavit required by this rule (together with any testamentary script referred to therein which is in the possession or under the control of the deponent) must be filed in the Office within 14 days after the entry of appearance by a defendant to the action or, if no defendant enters an appearance therein and the Court does not otherwise direct, before the plaintiff sets down the action.

(3) Where any testamentary script required by this rule to be filed or any part thereof is written in pencil, then, unless the Court otherwise directs, a facsimile copy of that script, or of the page or pages thereof containing the part written in pencil, must also be filed and the words which appear in pencil in the original must be underlined in red ink in the copy.

(4) Except with the leave of the Court, a party to a probate action shall not be allowed to inspect an affidavit filed, or any testamentary script filed by any other party to the action under this rule, unless and until an affidavit sworn by him containing the information referred to in paragraph (1) has been filed.

(5) In this rule "testamentary script" means a will or draft thereof, written instructions for a will made by or at the request or under the instructions of the testator and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed.

[E.r. 5]

### ***Default of appearance***

6.—(1) Order 13 shall not apply in relation to a probate action.

(2) Where any of several defendants to a probate action fails to enter an appearance, the plaintiff upon filing an affidavit proving due service of the writ, or notice of the writ, on the defendant may, after the time limited for appearing, proceed with the action as if that defendant had entered an appearance.

(3) Where the defendant, or all the defendants, to a probate action, fails or fail to enter an appearance, then, unless on the application of the plaintiff the Court orders the action to be discontinued, the plaintiff may after the time limited for appearing by the defendant set down the action for trial.

(4) Before setting down the action for trial the plaintiff must file an affidavit proving due service of the writ, or notice of the writ, on the defendant and, if no statement of claim is indorsed on the writ, he must lodge a statement of claim in the Office.

[E.r. 6]

### ***Service of statement of claim***

7. The plaintiff in a probate action must, unless the Court gives leave to the contrary or unless a statement of claim is indorsed on the writ, serve a statement of claim on every defendant who enters an appearance in the action and must do so before the expiration of 6 weeks after entry of appearance by that defendant or of 8 days after the filing by that defendant of an affidavit under rule 5, whichever is the later.

[E.r. 7]

### ***Counterclaim***

**8.**—(1) Notwithstanding anything in Order 15, rule 2(1), a defendant to a probate action who alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person which is the subject of the action must add to his defence a counterclaim in respect of that matter.

(2) If the plaintiff fails to serve a statement of claim, any such defendant may, with the leave of the Court, serve a counterclaim and the action shall then proceed as if the counterclaim were the statement of claim.

[E.r. 8]

### ***Contents of pleadings***

**9.**(1) Where the plaintiff in a probate action disputes the interest of a defendant he must allege in his statement of claim that he denies the interest of that defendant.

(2) In a probate action in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in his pleading that if the allegations made therein are proved he would be entitled to an interest in the estate.

[E.r. 9]

### ***Default of pleadings***

**10.**—(1) Order 19 shall not apply in relation to a probate action,

(2) Where any party to a probate action fails to serve on any other party a pleading which he is required by these Rules to serve on that other party, then, unless the Court orders the action to be discontinued or dismissed, that other party may, after the expiration of the period fixed by or under these rules for service of the pleading in question, set down the action for trial.

[E.r. 10]

### ***Discontinuance and dismissal***

**11.**—(1) Order 21 shall not apply in relation to a probate action.

(2) At any stage of the proceedings in a probate action the Court may, on the application of the plaintiff or of any party to the action who has entered an appearance therein, order the action to be discontinued or dismissed on such terms as to costs as otherwise as it thinks just, and may further order that a grant of probate of the will or letters of administration of the estate, of the deceased person, as the case may be, which is the subject of the action, be made to the person entitled thereto.

(3) An application for an order under this rule may be made by summons.

[E.r. 11]

### ***Compromise of action: trial on affidavit evidence***

**12.** Where, whether before or after the service of the defence in a probate action, the parties to the action agree to a compromise, the Court may order the trial of the action on affidavit evidence.

[E.r. 12]

***Application for order to bring in will, etc.***

**13.**—(1) Any application in a probate action under Article 15 of the Order for—

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

(2) 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.

[E.r. 14]

***Administration pendente lite***

**14.**—(1) An application under Article 6 of the Order for an order for the grant of administration may be made by summons.

(2) Where an order for a grant of administration is made under the said Article 6, Order 30, rules 2, 4 and 6 and (subject to paragraph (3) of the said Article) rule 3, shall apply as if the administrator were a receiver appointed by the court.

[E.r. 15]

***Probate counterclaim in other proceedings***

**15.**—(1) In this rule "probate counterclaim" means counterclaim in any action other than a probate action by which the defendant claims any such relief as is mentioned in rule 1(2).

(2) Subject to the following paragraphs, this Order shall apply with the necessary modifications to a probate counterclaim as it applies to a probate action.

(3) A probate counterclaim must contain a statement of the nature of the interest of the defendant and of the plaintiff in the estate of the deceased to which the counterclaim relates.

[(a)...]

(5) Unless an application under Order 15, rule 5(2) is made within 7 days after the service of a probate counterclaim for the counterclaim to be struck out and the application is granted, the Court shall, if necessary of its own motion, order the transfer of the action to the Family Division.

[E.r. 16]

S. R. 2008 No. 401

**The Rules of the Supreme Court (Northern Ireland) (Amendment No.2) 2008**

Coming into operation      3rd November 2008

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

2. The Rules of the Supreme Court (Northern Ireland) 1980 are amended as follows:—

(2) In Order 76, rule 1(3) for “Probate and Matrimonial Office” substitute “Chancery Office”.