4.135 The district judge or registrar may give permission for a facsimile copy of the will and any codicil to be exhibited in lieu of the original (r 10(2)). Application for such permission should be made in advance to the district probate registrar. The facsimile copy is supplied by the applicant.

4.136 Where permission has been given for a copy to be marked, the executor's application statement of truth should recite that the document is 'a facsimile copy of the true and original last will and testament'. Both the original will and the copy must be lodged with the papers to lead the grant.

4.137 The will must not be physically attached to the application statement of truth or other papers by pins, paperclips or other fastening as this may call for evidence of plight and condition to explain the condition of the will.

Name of testator. Alias

4.138 A grant should always issue in the true name of the deceased. The inclusion of one or more alternative names (known as alias names) may be necessary because the deceased held assets in a name other than the true full name, or for some other sufficient reason.

> 'Where it is sought to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the application the true name of the deceased and shall specify some part of the estate which was held in the other name, or give any other reason for the inclusion of the other name in the grant.' (r 9)

Change of name

4.139 In the absence of evidence of a change of name, or of any discrepancy in the papers lodged, it is assumed that the name of the deceased given in the application is the true name. A surname may, however, be abandoned, and another adopted or assumed, in various ways; eg by succession or elevation to a title of nobility, by change of name by Royal Licence, or simply by constant use and repute. Subject to any statutory restriction, the law of this country allows any person to assume and use any name, provided that its use is not calculated to deceive and inflict pecuniary loss[1].

[1] *Fendall v Goldsmid* (1877) 2 PD 263; *Cowley (Earl) v Countess of Cowley* [1901] AC 450, 70 LJP 83, HL.

4.140 The effect of a Deed Poll is merely to record a change of name in a solemn form which will tend to perpetuate the evidence of the change. A change of name by an adult must involve a conscious decision on his part that he wishes to change his name and be generally known by the new name[1].

[1] Dictum of Buckley J, in *Re T (otherwise H) (an infant)* [1963] Ch 238, [1962] 3 All ER 970, in which case he was dealing with a mother's attempt to change her infant child's surname without the knowledge or consent of the father: see also *Y v Y* [1973] Fam 147, [1973] 2 All ER 574, as to change of child's surname in similar circumstances.

4.141 Where a testator has changed his name since making the will and the change has been recorded by a Deed Poll, he should be described in the executor's application statement of truth in the text box at section 2.7 as 'AB, formerly changed his name from CD to AB by Deed Poll dated [date]'. The Deed Poll should be produced.

4.142 In the case of a change by use and repute where there has been no Deed Poll, the application statement of truth should show when the name was changed and establish that the change was complete and final, and amounted to a total abandonment of the former name and the permanent acquisition of the new name for all purposes. In cases of doubt whether there has been such a complete abandonment of the former name, it is considered in probate practice that the true name remains that in which the birth was registered or, in the case of the surname of a married woman, that of her husband, and the grant should issue in that name, the reputed name being shown as an alias, where necessary.

Will in incorrect name

4.143 If the heading of the will does not give the true full name, in order to deal with the discrepancy the application statement of truth should state that the true name of the deceased was AB, but that he made (and, if it be so, executed) his will in the name of CD.

4.144 Where the heading of a will gives the true and full name of the testator, but the signature omits names or initials, the grant is issued in the true name alone, unless it is shown in the application statement of truth or by affidavit or witness statement that an alias is required (eg for the purpose of administration of assets standing in another name).

4.145 If, apart from any question of such omission, the actual names or initials differ, the true name should be specifically stated in box 2.1 of the application statement of truth and confirm in box 2.7 that the signature is the usual signature of the testator or the discrepancy otherwise accounted for.

4.146 In each of the foregoing cases, the application statement of truth must state specifically which is the true name[1].

[1] Registrar's Direction (1931) 27 March.

Alias name required in grant

4.147 In cases, whether of testacy or intestacy, where the deceased held property standing in a name other than his true full name, an alias may be included in the grant to facilitate the administration. The application statement of truth should state to the true name and any alias name in which an asset is held (NCPR SI 1987/2024 r 9). While this is no longer insisted upon it is useful to identify the estate that the deceased held in the alternative name or names: at least one item of property in each alternative name should be given. If the inclusion of an alias is desired for some other reason, this must be stated.

Confirmation of death in the application statement of truth

4.148 In all instances where the deceased died in the United Kingdom and the death has been recorded in the Register of Deaths:

(1) the names and dates of birth and death of the deceased as recorded in the Register shall be included in the application; and

Order on summons

4.193 When an order on summons has been made, the following wording should be used:

> 'That by order of Mr Justice (*or* District Judge *or* Mr District Probate Registrar) of this Division dated the day of 20 , it was ordered that. . . . . .'

County court judge's order

4.194 When a probate claim has been determined in a county court, the county court sends a certificate of the judgment to the Principal Registry or a district probate registry. The particulars and effect of the judgment should be recited in the application statement of truth in box 2.16.

4.195 The order of the county court judge is not recited in the grant but the grant is noted 'By order of the County Court at dated the day of 20 . . . . . .'

Order for omission of part of will

4.196 If a judgment or order directs the omission from probate of part of the will, a typewritten copy thereof, omitting such part, must be lodged at the registry for the fiat of the district judge or registrar to be written in the margin or the foot of the copy—'Let the will (and codicil) be proved in accordance with this copy in pursuance of judge's [or district judge's or registrar's] order dated 20 ', and signed by the probate officer or district probate registrar before photography. A copy of the judgment or order must be lodged with the papers, and is filed with the will[1].

[1] *Practice Direction* [1968] 2 All ER 592, [1968] 1 WLR 987.

4.197 As to orders for omission of part of a will, see paras **3.267–3.290**.

Relationship of the applicant

4.198 Except in cases where the relationship of the applicant to the deceased is relevant to the question of the former's identity or entitlement to a grant, it need not be stated in the application statement of truth.

4.199 Thus, if the full correct name of the executor or beneficiary appears in the appointment in the will it is normally unnecessary to state his relationship to the deceased.

4.200 The following are examples of the circumstances in which the applicant's relationship to the deceased must be stated:

(a) where the appointment of the executor (or beneficiary) is by relationship and not by name (eg 'I appoint my son as sole executor'; or 'I leave all my estate to my wife (without naming her)');

(b) where there is some discrepancy or possible ambiguity in the appointment, and inclusion of the relationship assists in establishing the identity of the applicant;

(c) in cases where the applicant's title to a grant depends entirely on his relationship, ie where application for administration (with will) is made by a person entitled to the estate undisposed of by the will. Thus, in a case where a will appoints no executor and there is no gift of the residuary estate, the widow/civil partner of the deceased must depose that she is 'the lawful widow/civil partner of the deceased and the only person now entitled to the undisposed-of estate', or as the case may be.

But see para **4.117** above concerning the effect of the Gender Recognition Act 2004 on the title of an executor who has acquired, or is applying for, a gender recognition certificate.

4.201 If a testator appoints 'my wife' an executor, and does not name her in any part of the will, an addition should be made to the application statement of truth, stating that the applicant was the lawful wife of the testator at the date of the will and remained so until the date of his death. If this has been omitted from the statement of truth, the registry will accept a certificate by the solicitor or probate practitioner if it includes a statement that he has seen the marriage certificate, and that it confirms the claim of marriage. This applies, with necessary modification, in the case of the appointment of 'my husband' or 'my civil partner'.

4.202 Where a title is dependant on kinship described in the appointment clause in the will, the relationship should be confirmed in boxes 2.16 and 4.3.

Executor: capacity in which application made

4.203 The 'capacity' in which proving executors claim the grant is worded, in the application statement of truth, in the manner shown in the following list:

When one executor only appointed	'The sole executor.'
When one executrix only appointed	'The sole executrix.'
When executors are all males or all female	'The executors.'
[The term executrixes for females is no longer used]	
When some are male and some female	'The executors.'
When one or more of executors appointed has died	'The surviving executor(s)'[1].
When one or more of executors appointed renounces	'One (*or two etc*) of the executors'[2].
When power is reserved to any executors (*see para* 4.56 *as to notice to the executor or executors to whom power is reserved and the recital in the statement of truth*)	'One (*or two etc*) of the executors.'
When an executor is appointed on attaining the age of [21] years[3]	'The said A. B. having attained the age of [21] years.'
An appointment during life or widowhood, there being also a general executor.	'But as to the said A. B. during life or widowhood.'
When powers of executor are limited to dealing with English property	'The executor for England.'
When an executor is appointed during life, and on his death another is appointed, the latter is described as	'The executor substituted.'
When there is no limitation, for life or otherwise, in the appointment of an executor but other executors are substituted on death, the first-named executor, if he applies is described as	'An executor named in the said will'[4].

actually predeceased the intestate. This was the true construction of s 47(1)(i) of the Administration of Estates Act 1925[1].

[1] *Re DWS (deceased), Re EHS (deceased), TWGS (a child) v JMG* [2001] Ch 568, [2001] 1 All ER 97.

Deaths after 31 January 2012

5.195 The decision in *Re DWS (deceased)*[1] in part gave rise to a Law Commission Consultation Paper: The Forfeiture Rule and the Law of Succession [2003] No 172 to consider the apparent unintentional effect of the intestacy rules in the Administration of Estates Act 1925 which excluded not only a person who murdered his parent from inheriting from that parent's estate but also excluded the murderer's children. Similar problems arose where a killer forfeited his rights under a will. In its subsequent report [2005] No 295 the Law Commission concluded that a 'statutory deemed predecease' solution be applied to the killer. It recommended that there should be a statutory rule that, where a person forfeits the right to inherit from an intestate through having killed that intestate, the rules of intestate succession, as laid down in ss 46 and 47 of the Administration of Estates Act 1925 (as amended) should be applied as if the killer had died immediately before the intestate.

[1] *Re DWS (deceased), Re EHS (deceased), TWGS (a child) v JMG* [2001] Ch 568, [2001] 1 All ER 97.

5.196 The Law Commission recommended the same solution where:

(a) the potential heir of an intestate disclaimed any interest in the estate;
(b) a minor potential heir of an intestate dies leaving issue without having attained majority or married;
(c) the deceased left a will and the potential heir (whether a relative or not) is excluded because he or she has killed the deceased (unless the will contains a contrary provision); or
(d) the deceased left a will and the potential heir (whether a relative or not) has disclaimed any interest in the estate.

The effect of a disclaimer or the forfeiture rule where the deceased died intestate on or after 1 February 2012 or died on or after that date testate but whose undisposed of estate fall to be distributed under an intestacy is discussed further in Chapter 6.

5.197 The Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011[1] gives effect to the Law Commission's recommendations. Where a testator dies on or after 1 February 2012, s 2 of the Act which deals with disclaimer or forfeiture of a gift under a will amends the Wills Act 1837 by inserting a new s 33A. This provides in part that where the forfeiture rule precludes a person from taking a devise or bequest made in a will that person is, unless a contrary intention is expressed in the will, to be treated as having died immediately before the testator. Accordingly such person should be cleared off in the statement of truth to lead the grant of letters of administration (with will) by setting out the facts and the details of the conviction of murder or manslaughter and confirming that: the conviction remains in force, no appeal is pending nor in the case of manslaughter was an

application made within three months from the date of conviction to modify the effect of the forfeiture rule. For form of title for the application statement of truth, see No 101 (**A6.106**) which may be adapted to suit the circumstances of the application. An official copy of the conviction certificate should be filed with the probate papers.

[1] See para A1.689.

5.198 Section 33A of the Wills Act 1837 is as follows:

> '(1) This section applies where a will contains a devise or bequest to a person who–
> (a) disclaims it, or
> (b) has been precluded by the forfeiture rule from acquiring it.
> (2) The person is, unless a contrary intention appears by the will, to be treated for the purposes of this Act as having died immediately before the testator.
> (3) But in a case within subsection (1)(b), subsection (2) does not affect the power conferred by section 2 of the Forfeiture Act 1982 (power of court to modify the forfeiture rule).
> (4) In this section "forfeiture rule" has the same meaning as in the Forfeiture Act 1982'.

In addition s 33(3) of the Wills Act which contains the provision that no issue with a parent alive at the testator's death may inherit is also amended so that this provision is now subject to s 33A.

Persons entitled to share in undisposed-of estate

Where deceased left a surviving spouse or (after 5 December 2005) surviving civil partner

5.199 In considering who is entitled to a grant under this provision, if the deceased left a surviving spouse or surviving civil partner (after 5 December 2005), regard must be had to the provisions of the Administration of Estates Act 1925 (as amended by the Intestates' Estates Act 1952 and the Family Provision Act 1966 and Civil Partnership Act 2004)[1]. Where all dispositions in a will fail, the residuary estate is distributed as on a total intestacy (see paras 6.43 ff), but where the will effectively disposes of part of the estate, the provisions of the Administration of Estates Act 1925 apply as modified by s 49 thereof[2].

[1] See para A1.617 (Sch 4 Pt 2).
[2] See para A1.124 and fn 1, para 5.134.

5.200 The statutory legacy in favour of the surviving spouse or surviving civil partner on intestacy varies according to the date of death of the deceased and whether the deceased left issue surviving.

5.201 In 2005 the Department for Constitutional Affairs, now the Ministry of Justice, carried out a full public consultation on the statutory legacy. This review was prompted by complaints from Members of Parliament, lawyers and the public about the current levels of the statutory legacy which was last increased to its current levels in 1991. The outcome of the consultation resulted in a proposal to increase the lower level of the statutory legacy (where issue survive) to £250,000 and the upper level (no issue survive) to £450,000.

To trustee in bankruptcy or under a deed of arrangement

5.259 A right to a grant of administration of the estate of an intestate is not a right which passes to the trustee in bankruptcy of the beneficiary[1].

[1] *Re Turner's Goods* (1886) 12 PD 18.

5.260 A trustee in bankruptcy of a beneficiary under a will (or an intestacy) has no title under the probate rules to a grant as such. He cannot be regarded as a trust corporation for the purpose of administering the estate of the deceased (s 3 of the Law of Property (Amendment) Act 1926 being limited to his duties 'in relation to the property of the bankrupt'). He may, however, in proper cases obtain an order under s 116 of the Senior Courts Act 1981 (see paras **14.1** ff) for a grant to himself as an individual.

5.261 Such orders and grants will be in the form: 'to AB of (*address and occupation*), the trustee of the property of XY a bankrupt, limited to such period as he shall remain trustee of the said property.'

5.262 Where an Official Receiver is acting as trustee, his official title (eg the Senior Official Receiver, *or* the Official Receiver, *or* the Assistant Official Receiver of the High Court of Justice, *or* the Official Receiver of the County Court District of) should be stated in the statement of truth.

5.263 A trustee under a deed of arrangement may, if the terms of the deed and the circumstances of the case permit, be able to establish title to a grant under NCPR SI 1987/2024 r 24 (ie as assignee of the only person entitled to the estate). Failing this, he may apply for an order under s 116 of the Senior Courts Act 1981 (see paras **14.1** ff). In either event, the grant should describe him as trustee under the deed and be limited to such period as he shall remain trustee.

[1] Registrar's Direction (1956) 24 July.

5.264 The Chancery Division in its bankruptcy jurisdiction has no power to make an order for administration of a deceased bankrupt's estate until a personal representative has been constituted[1].

[1] *Re a Debtor (No 1035 of 1938)* [1939] Ch 594, [1939] 2 All ER 56.

Other grants of administration (with will)

5.265 For the practice in obtaining a grant for the use and benefit of a minor or a person who lacks capacity to manage his or her affairs within the meaning of the Mental Capacity Act 2005, or to the attorney of the person entitled to a grant, see Chapter 11; grants in cases where the deceased died domiciled out of England and Wales, see Chapter 12; grants in the exercise of the discretionary power of the Court, see Chapter 14; grants de bonis non and cessate grants, see Chapter 13.

Death before 1 January 1926

5.266 *Where the death occurred before 1 January 1926 the right to a grant is still determined, subject to the provisions of any enactment, by the principles and rules in accordance with which the court would have acted at the date of death (NCPR SI 1987/2024 r 23).*

5.267 *The order of priority of right to a grant of administration (with will) is as follows:*

Class 1. *Residuary legatees and devisees in trust.*
Class 2. *Residuary legatees and devisees; a residuary legatee or devisee substituted.*
Class 3. *The personal representatives of residuary legatees or devisees who survived the deceased but have since died.*

If the residuary estate is wholly disposed of by the will:

Class 4. *The husband or widow (or, if cleared off, the next-of-kin) of the deceased; and legatees, devisees or creditors. No other person is entitled if the residue is fully disposed of.*

If the residuary estate is not wholly disposed of, or the residuary gift has lapsed, the order, after Class 3, is as follows:

Class 4. *The husband or widow (or, if cleared off, the next-of-kin) of the deceased.*
Class 5. *The heir-at-law (if there is real estate and the death occurred after 1897). On clearing real estate, the personal representative of the husband.*
Class 6. *Persons entitled in distribution, not being next-of-kin.*
Class 7. *The personal representative of the widow, or of the next-of-kin, or of a residuary legatee as to an unlapsed moiety, or of the heir-at-law (where the deceased left real estate and the death was after 1897), or of other persons entitled in distribution.*
Class 8. *Legatees, devisees or creditors.*
Class 9. *The Crown (Treasury Solicitor, Duchy of Lancaster or Duchy of Cornwall).*

5.268 *Where the residuary estate is not wholly disposed of, or part of a residuary gift has lapsed, the person entitled under the effective disposition and those entitled to the lapsed or undisposed-of residue are equally entitled to a grant.*

5.269 *Where the deceased left no real estate the right of the heir-at-law, or of his personal representative, should be cleared off in the statement of truth, where necessary, by the statement that the deceased died not possessed of real estate.*

REQUIREMENTS ON OBTAINING ADMINISTRATION (WITH WILL)

Practice as to will

5.270 The Non-Contentious Probate Rules define 'statement of truth' as a statement made for purposes of confirming the truthfulness of statements made in the application for a grant and the true nature of any documents served in support of the application. The practice as to proof of the will and

- the estate comprises only property which passes by will or intestacy, by nomination, or by survivorship in joint tenancy;
- not more than £50,000[3] consists of property situated outside the United Kingdom; and
- the deceased died domiciled in the United Kingdom having made simple lifetime transfers such as cash or quoted securities not exceeding £75,000,

then the estate is an excepted estate and applicants for a grant of representation are not required to deliver an account or to swear to the exact value of the estate to obtain a grant. Instead they are required to swear in the oath as to the limits within which the estate falls. For the purposes of these limits, it is the value of the deceased's beneficial interest, and not the entirety value, of survivorship property which falls to be taken into account. It should be noted that an estate would not be an excepted estate if the deceased had an interest in settled property or had made lifetime transfers which became chargeable with tax by reason or his or her death within seven years thereafter, or (on or after 18 March 1986) had gifted property subject to a reservation which subsisted up to, or within seven years before, the date of death.

[1] Estate for this purpose has the extended meaning as for inheritance tax and capital transfer tax.

[2] £200,000 in the case of a death before 6 April 2000; £180,000 in the case of a death before 6 April 1998; £145,000 in the case of a death before 6 April 1996; £125,000 in the case of a death before 6 April 1995; £115,000 in the case of a death before 1 April 1991; £100,000 in the case of a death before 1 April 1990; £70,000 in the case of a death before 1 April 1989; £40,000 in the case of a death before 1 April 1987; £25,000 in the case of a death before 1 April 1983.

[3] £30,000 in the case of a death before 6 April 1998; £15,000 in the case of a death before 6 April 1996; £10,000 in the case of a death before 1 April 1989; £2,000 in the case of a death before 1 April 1987; £1,000 in the case of a death before 1 April 1983.

8.17 The foregoing procedure may be used in any case where the criterion of an excepted estate is wholly met—not only in the case of first grants which are not limited in nature but also in cases, for example, of applications for grants de bonis non or where a fresh grant is to be made following revocation of an original grant. The Commissioners of Her Majesty's Revenue and Customs retain the right to call for an account by giving notice in writing within 35 days of the date of issue of the first grant other than a limited grant. If a person, having obtained a grant without delivery of an account, later discovers that the estate is not in fact an excepted estate he or she must deliver an account of all the property comprised in the estate within six months of making that discovery. The amendments contained under paras **8.74–8.96** below relate to interim and second grants. A clearance letter will not be issued by HMRC Trusts and Estates, Inheritance Tax on excepted estates as no Inheritance Tax is payable. An excepted estate is automatically discharged from any liability at the end of the prescribed period, currently 35 days from the issue of a Grant, unless it is discovered that an incorrect return has been made. If an instrument of variation is made on an excepted estate, it does not need to be referred to HMRC Trusts and Estates, Inheritance Tax provided the estate continues to qualify as an excepted estate. See also para **8.167**.

INHERITANCE TAX AND CAPITAL TRANSFER TAX

Introduction

8.18 The Finance Act 1986, s 100 provided that after its Royal Assent the tax charged under the Capital Transfer Tax Act 1984 should be known as inheritance tax, that that Act be cited accordingly, and that all references to capital transfer tax in contemporaneous or earlier enactments have effect as references to inheritance tax. A liability arising before 25 July 1986 therefore remains a liability for capital transfer tax.

8.19 The Capital Transfer Tax Act had received its Royal Assent on 31 July 1984 and had been enacted to consolidate the legislation contained in successive Finance Acts from 1975. Statutory references in this chapter will henceforth be to 'the IHTA 1984' followed in square brackets by the appropriate reference to earlier provisions prior to consolidation. Inheritance tax and capital transfer tax will be referred to simply as 'tax' unless the context requires otherwise. The following text is of necessity no more than a summary of the more commonly encountered provisions which can apply in connection with the death of an individual. Practitioners are referred in cases where more detailed explanation is required to a standard work such as *Dymond's Capital Taxes*.

Scope of the tax

8.20 The efficacy of the tax depends upon a tree of concepts at the root of which is the—undefined—'disposition'. A liability for tax becomes a possibility if a disposition is a 'transfer of value': that is to say it is made by a person and, as a result, the estate of that person is less than it otherwise would have been[1]. The amount by which the value of the estate is so decreased is known as the 'value transferred'[2]. Most dispositions are transfers of value but some are specifically provided not to be. Moreover no account is taken of 'excluded property'[3]. If a transfer of value is made by an individual (as distinct from a person) and is not an 'exempt transfer'[4] or a potentially exempt transfer[5] then it is a 'chargeable transfer' and tax is chargeable[6] upon the value transferred[7]. The 'exempt transfer' needs no elaboration here; but a 'potentially exempt transfer' would become a chargeable transfer upon the death of the transferor within seven years thereafter.

[1] See fn 1 to para **8.16** as to the meaning of 'estate'.
[2] IHTA 1984, s 3(1) [FA 1975, s 20(2)].
[3] IHTA 1984, s 3(2) [FA 1975, s 20(3)]; IHTA 1984, s 6 [FA 1975, s 24(2) and Sch 7, paras 3(1), 5(1) and 6)].
[4] IHTA 1984, ss 18 ff [FA 1975, Sch 6].
[5] IHTA 1984, s 3A in relation to events on and after 18 March 1986.
[6] IHTA 1984, s 2 [FA 1975, s 20].
[7] IHTA 1984, s 1 [FA 1975, s 19] (see para **A1.756**).

8.21 As a result of the changes introduced by s 156 and Sch 20 to the Finance Act 2006, for lifetime transfers made on or after 22 March 2006, a transfer of value will only qualify as a potentially exempt transfer (PET) when it is a transfer to:

otherwise have parental responsibility for the child, also make an order under s 4ZA giving her that responsibility.

11.170 Under NCPR SI 1987/2024 r 32(1)(aa), as amended with effect from 14 September 1998 a person who has, or is deemed to have parental responsibility for a minor by virtue of s 12(2) of the Children Act 1989 now has a right to a grant for the use and benefit the minor until he has attained he age of 18 years. Such person has an equal right to the other persons or local authority mentioned in NCPR SI 1987/2024 r 32(1).

11.171 Section 12 of the Children Act 1989 is amended by the Human Fertilisation and Embryology Act 2008 by inclusion of sub-s (1A) to allow the court making a residence order in favour of woman who is a parent of the minor by virtue of s 43 of the Human Fertilisation and Embryology Act 2008. Section 12(2) of the Children Act 1989 provides further that where the court makes a residence order in respect of a minor in favour of any person who is not a parent or guardian of the minor, that person shall have parental responsibility for the minor while the order remains in force. The Children Act 1989, s 8 defines 'residence order' as an order settling the arrangements to be made as to the person with whom the child is to live.

Application statement of truth (PA1P/PA1A) and supporting evidence

11.172 The applicant's statement of truth should include details of the residence order and of parental responsibility for the minor. A copy of the order must be produced with the application statement of truth together with any will to be proved. If there is no parent, step-parent, guardian, special guardian or local authority with parental responsibility competent and willing to join in the application the applicant may nominate a fit and proper person to act jointly with him unless a district judge or registrar otherwise directs[1].

[1] NCPR SI 1987/2024 r 32(3).

11.173 For form of title for box 2.16 of the application statement of truth (PA1A), see Form Nos 164–170 (**A6.169–A6.175**).

Step-parent

11.174 Section 4A of the Children Act 1989 (see para **A1.440**) was inserted by the Adoption and Children Act 2002, s 112 and amended by the Civil Partnership Act 2004, s 75 so that with effect from 30 December 2005 a step-parent acquires parental responsibility for a minor either if he or she and the minor's parents who have parental responsibility have made and recorded an agreement in the prescribed form mentioned in s 4 or by order of the court made on the application of the step-parent. The Parental Responsibility Agreement (Amendment) Regulations 2005 (SIs 2005/2808 and 2009/2026; see para **A2.118**) sets out the agreement in From C(PRA2). A step-parent may be either the spouse or civil partner of a parent of the minor.

11.175 The agreement is recorded by filing it in the Principal Registry of the Family Division together with sufficient copies for each party to the agreement.

A sealed copy is returned to each party. The agreement may be brought to an end by order of the court on the application of any person who has parental responsibility s 4A(3a)) of the Act or of the minor himself (s 4A(3b)).

11.176 NCPR SI 1987/2024 r 32(1)(ab) gives a step-parent with parental responsibility an equal right to a grant for the use and benefit of the minor along with the other persons or bodies referred to in the sub-rule.

Application statement of truth (PA1A) and supporting evidence

11.177 The step-parent's statement of truth (see Form No 167 (**A6.172**)) should include details of the parental responsibility agreement or of the court order and confirm that the agreement or order is still subsisting. A sealed copy of the agreement or of the order should be submitted with the application. Where the step parent is the only person able and willing to take a grant he may nominate a co-administrator under NCPR SI 1987/2024 r 32(3).

Guardians

11.178 The whole of the Guardianship of Minors Act 1971 was repealed, as from 14 October 1991, by the Children Act 1989, s 108(7), Sch 15.

11.179 Under NCPR SI 1987/2024 r 32, as amended, with effect from 14 September 1998 a guardian of a minor who is appointed, or deemed to have been appointed, in accordance with s 5 of the Children Act 1989 or in accordance with paras 12, 13 or 14 of Sch 14 to that Act has a right to administration for the use and benefit of the minor limited until he attains the age of 18 years, equal to the right of a parent or other person or local authority each of whom have parental responsibility for the minor.

11.180 Where the guardian has been appointed in accordance with s 5 of the Children Act 1989 (see para **A1.441**) the statement of truth must state that he or she is a guardian of the minor having parental responsibility by virtue of:

(a) an order made under s 5 of the Children Act 1989; or
(b) an appointment made by 'AB a parent having parental responsibility for the minor by will' (or 'by deed' as appropriate); or
(c) an appointment made by 'CD a duly appointed guardian having parental responsibility for the minor by will' (or 'by deed' as appropriate).

11.181 Under s 5(1) of the Children Act 1989, where an application with respect to a child is made to the court by any individual, the court may by order appoint that individual to be the child's guardian if:

(a) the child has no parent with parental responsibility for him; or
(b) a residence order has been made with respect to the child in favour of a parent or guardian of his who has died while the order was in force.

or capital transfer tax[1] and also for the purpose of confirming the validity of the will (if any) and the right to the grant.

[1] As to the notional domicile in the United Kingdom which applies under s 267 of the Inheritance Tax Act 1984 (replacing s 45 of the Finance Act 1975) (para **A1.775**) in certain circumstances in relation to inheritance tax or capital transfer tax, see Chapter 8. This notional domicile has no application to questions of the validity of a will or entitlement to a grant of representation: for these purposes, it is the actual domicile of the deceased that is relevant.

Domicile of origin

12.2 The general rule is that the domicile of origin of a legitimate child is the domicile of its father; of an illegitimate child, that of its mother. It is involuntary, and cannot be changed, being the creation of law. If the father's domicile changes during the child's minority, its domicile of origin remains the father's domicile at the time of its birth[1].

[1] *Henderson v Henderson* [1967] P 77, [1965] 1 All ER 179.

12.3 However, s 4 of the Domicile and Matrimonial Proceedings Act 1973[1] provides an exception to this rule. If the parents of a minor are living apart and the minor has his home with his mother his domicile is that of the mother. Such domicile, once acquired, is retained even though his home is no longer with his mother, or if she dies, so long as he has not since had his home with his father. Section 3 of this Act[2] provides (subject to a transitional modification) that a minor may have an independent domicile from the age of 16 or from the date of marriage if he marries while under age. This Act came into force on 1 January 1974.

[1] See para **A1.232**.
[2] See para **A1.231**.

12.4 A person can acquire a domicile of choice, and while this is retained the domicile of origin is in abeyance, but not extinguished. When the domicile of choice is abandoned the domicile of origin revives[1]. On appeal, the Court upheld a decision that a person whose domicile of origin was India and who decided to go to there because of illness did not abandon his English domicile of choice. His decision to remain in India was forced on him because of illness and impending death. It would not be a decision as to where to live indefinitely because, for all practical purposes, there was sadly no life left remaining to be lived by him[2].

[1] *Udny v Udny* (1869) LR l Sc & Div 441. See also *Re Flynn, Flynn v Flynn* [1968] 1 All ER 49, [1968] 1 WLR 103 (given a physical departure from the country of one's domicile of choice, the ending of the intention to return there, as distinct from the forming of a positive intention not to return, is sufficient to bring that domicile to an end: accordingly the domicile of origin revives until ousted by the acquisition of another domicile of choice).
[2] *Kohli v Proles* [2019] EWHC 193 (Ch), [2019] WTLR 623.

12.5 The domicile of a fatherless minor does not necessarily change with a change of the domicile of its mother; but only where she exercises the power vested in her of changing the child's domicile for the latter's benefit[1].

[1] *Re Beaumont* [1893] 3 Ch 490.

Domicile of choice

12.6 By Rule 10 of *Dicey and Morris on the Conflict of Laws* 'every independent person can acquire a domicile of choice by the combination of residence and intention of permanent or indefinite residence, but not otherwise'.

12.7 Residence in a country is not, of itself alone, sufficient to create a domicile of choice without evidence of volition to change domicile[1]. A domicile of choice is not acquired merely by accepting and holding a post of employment in a country[2]. A person whose residence in England is illegal is not barred thereby from acquiring a domicile of choice here[3].

[1] *IRC v Bullock* [1976] 3 All ER 353, [1976] 1 WLR 1178, CA.
[2] *Bowie (or Ramsay) v Liverpool Royal Infirmary* [1930] AC 588; *Cooney v Cooney* (1950) 100 L Jo 705.
[3] *Mark v Mark* [2005] UKHL 42, [2006] 1 AC 98, [2005] 3 All ER 912.

12.8 A declaration by a testator in a will that he did not intend to relinquish his English domicile does not operate to prevent a finding that there has been a change of domicile where the physical fact of residence in another country and the intention to reside there permanently are proved[1].

[1] *Re Liddell-Grainger's Will Trusts, Dormer v Liddell-Grainger* [1936] 3 All ER 173.

12.9 A domicile of choice, having been abandoned, can be reacquired only by the fulfilment of the same conditions of intention and residence as those by which the domicile of choice was previously acquired[1].

[1] *A-G v Yule and Mercantile Bank of India* (1931) 145 LT 9, CA.

Domicile generally

12.10 Under s 1 of the Domicile and Matrimonial Proceedings Act 1973, the domicile of a married woman as at any time after the coming into force of that section (ie 1 January 1974) is, instead of being the same as that of her husband by virtue only of her marriage, to be ascertained by reference to the same factors as in the case of any other individual capable of having an independent domicile.

12.11 But where, immediately before this section came into force, a married woman has her husband's domicile by dependence she is treated as retaining that domicile (as a domicile of choice if it is not also her domicile of origin) unless and until she changes it by the acquisition or revival of some other domicile on or after 1 January 1974[1].

[1] Domicile and Matrimonial Proceedings Act 1973, s 1(2): para **A1.230**; and *IRC v Duchess of Portland* [1982] Ch 314, [1982] 1 All ER 784.

12.12 The law of the testator's domicile governs the foreign movable assets of his estate for the purpose of succession and enjoyment. For the purpose of legal representation, though the person entrusted with administration by the court of the domicile is generally recognised by the foreign court as entitled to be appointed, this is not always and necessarily the case; and in administering the estate it is necessary to give foreign creditors priority as regards foreign assets.

16.17 If an alteration has been made in a grant by an unauthorised person after its issue, the probate service will in no case adopt such alteration. The grant will be impounded, and a duplicate grant must be obtained, which will then be amended, by district judge's or registrar's order, in the usual course. If the alteration is extensive or of a serious character, the grant will be revoked.

Date of will rectified after probate

16.18 The court will order a memorandum to be endorsed on a probate after it has been issued, showing the true date of a will[1], the affidavit or witness statement in support being filed with the will.

[1] *Re Allchin's Goods* (1869) LR 1 P & D 664.

Probate of codicil subsequent to that of will

16.19 If a codicil is found after probate of a will has been granted, a separate probate of that codicil may, in certain circumstances, be granted, and the first probate undergoes no alteration or amendment whatever. In order to obtain probate of the codicil, an application statement of truth (PA1P) must be drawn up, identifying the codicil and reciting the particulars of the grant of probate of the will. The grant must be sent to the registry from which the first grant issued. The probate of the will, or an office copy thereof, should be lodged. A further HMRC account may also be required (see Chapter 8). This practice is liable to change under current modernisation plans.

16.20 If, however, the appointment of the executors under the will is annulled or varied by the codicil, the probate must be brought in and revoked, and a new grant will be made annexing both the will and the codicil.

16.21 See also paras **3.170–3.183**.

Settled land

16.22 A general grant may in certain circumstances be amended to exclude settled land but it would no longer be appropriate to amend a general grant to include settled land. See para **10.133**. Form of affidavit or witness statement, No 24 (**A6.29**).

Official errors

16.23 As to the procedure when a grant contains an official error, see para **2.75**.

Practice in applications for amendment

16.24 An affidavit or witness statement of the facts is required from the grantee, or grantees, showing the nature of the error, the necessity for its

alteration, and the nature of the amendment required. Form of affidavit or witness statement, No 23 (**A6.28**).

16.25 The affidavit or witness statement and the grant are sent by post to the registry from which the grant issued. At the Principal Registry the documents should be lodged with, or sent to, the probate department.

16.26 If the district judge or registrar is satisfied, he will make an order, and the amendment will be made in the grant and signed by the district judge or registrar or other authorised officer. The amendment of any grant is updated in the probate records kept at the Probate Records Centre.

16.27 No fee is payable in respect of the amendment of a grant.

Error in probate copy of will

16.28 Where a mistake has been made in an engrossment of a will, an order is required for the amendment. The grant should be sent to the probate department (Principal Registry) or district registry, where a district judge's or registrar's order will be drawn up for the correction of the copy in accordance with the original will.

NOTATION OF GRANTS

Undertaking by Public Trustee to administer an estate

16.29 As to notation of grants where an undertaking by the Public Trustee to administer an estate under s 3 of the Public Trustee Act 1906 is filed, see para **9.67**.

Executor permitted to retract renunciation

16.30 As to notation on an existing grant of a subsequent grant of probate to an executor who had previously renounced, but has been allowed to retract his renunciation and prove the will, see para **15.69**.

Notation of domicile

16.31 For the practice as to notation of domicile after the issue of a grant, see para **18.24**.

Addition of a further personal representative

16.32 When an order is made under s 114(4) of the Senior Courts Act 1981[1], for the addition of a personal representative, the grant is lodged at the probate department of the Principal Registry, or the district registry from which the grant issued, as the case may be; the appointment of the additional personal

(m) A mother of an intestate spinster had obtained a grant, though there was a natural child of the intestate. The grant was revoked notwithstanding the death of the mother[8].

1 *Re Morris' Goods* (1862) 2 Sw & Tr 360.
2 Comyn's Digest: title 'Administration'.
3 *Lord Trimlestown v Lady Trimlestown* (1830) 3 Hag Ecc 243 at 248.
4 *Re Napier's Goods* (1809) 1 Phillim 83; *Re March* (1940) (testator found to be a prisoner of war).
5 See eg *Re Bloch's Estate* [1959] CLY 1251.
6 *Re Moore's Goods* (1845) 3 Notes of Cases 601. In such a case it is unnecessary to allege that the grant was obtained by fraud: it is sufficient for the person claiming revocation to establish his title to the grant (*Re Evon's Estate, Evon v Stevenson* (1963) 107 Sol Jo 893).
7 *Re Bergman's Goods* (1842) 2 Notes of Cases 22.
8 *Re Ayling* (January 1949, unreported).

Cases for revocation under second head

Death of grantee before sealing

17.12 A grant sealed by the registry after the party or any of the parties applying has died must be revoked. As to the moment when a grant is deemed to have been sealed, and for the practice in cases where the grantee dies before the sealing of the grant, see paras **2.77–2.82**.

One of two or more grantees subsequently lack capacity to manage his affairs

17.13 Where one of two or more grantees subsequently lacks capacity to manage his affairs within the meaning of the Mental Capacity Act 2005, the grant must be revoked.

17.14 If application for a new grant is made by persons all of whom had a right equal to that of the grantee who lacks capacity (whether they were the other grantees or not) a general grant may be made to them.

17.15 If there is no one with equal title, the new grant will be in accordance with NCPR SI 1987/2024 r 35(4) (see para **11.245** ff) for the use and benefit of the person who lacks capacity and limited until further representation be granted.

One of several executors subsequently lacks capacity to manage his affairs

17.16 When two executors prove a will, but one subsequently lacks capacity to manage his affairs within the meaning of the Mental Capacity Act 2005, probate is revoked and a new grant made to the capable executor, power being reserved to the executor who lacks capacity of taking probate again on recovering his capacity[1].

1 *Re Sowerby's Goods* (1891) 65 LT 764; *Re Shaw's Estate* [1905] P 92.

One of several administrators (with or without will) subsequently lacks capacity to manage his affairs

17.17 Where administration (or administration with will annexed) has been granted to two or more persons, of whom one subsequently lacks capacity to

manage his affairs within the meaning of the Mental Capacity Act 2005[1], the grant is revoked and a fresh grant made to the capable administrator. If any minority or life interest subsists the further grant will normally be made to not less than two individuals, or to a trust corporation with or without an individual.

1 *Re Newton's Goods* (1843) 3 Curt 428; *Re Phillips' Goods* (1824) 2 Add 335. In the latter case, the committees of the person and estate of the incapable administrator consented. Notice of the application for revocation should now be given to any deputy appointed for the administrator who lacks capacity.

17.18 If the grantee who lacks capacity had a superior title to that of the capable grantee, the former's right to a grant on recovering his capacity must be reserved by a limitation in the new grant.

17.19 For the practice when the sole grantee subsequently lacks capacity, see paras **17.64** ff below.

Both executors subsequently lack capacity to manage their affairs

17.20 Where there was the clearest evidence that both the surviving executors were of advanced age and suffering from such a degree of physical and mental infirmity as made continuance of their duties impossible, the court revoked the grant of probate and granted letters of administration (with will) de bonis non to a great-nephew of the testator[1].

1 *Re Galbraith's Goods* [1951] P 422, [1951] 2 All ER 470n.

Grantee wishing to be relieved of duties

17.21 Application is occasionally made for revocation on the ground that the grantee, though not incapable, wishes to be relieved of his responsibility for some reason, such as increasing age. Such an application is allowed only by express direction of a district judge or registrar, which is not readily given. Where leave is given it may be subject to confirmation that the retiring grantee has provided an inventory and properly accounted for the administration of the estate.

Disappearance of grantee

17.22 Where a creditor, after taking a grant of administration, had paid himself his debt, and left the country, the court revoked the grant[1].

1 *Re Jenkin's Goods* (1819) 3 Phillim 33.

17.23 Where a creditor, having recovered her debt, wished to retire from the administration of the estate, the court, upon proof of these facts, and:

> 'that there were no actions or suits at law or in equity touching or concerning the estate and effects of the deceased, and the grantee's administration thereof depending between her and any other person,'

17.52 If one of the grantees lacks capacity to manage his property and affairs within the meaning of the Mental Capacity Act 2005, evidence of his lack of mental capacity is required. The district judge or registrar will normally accept a certificate or affidavit or witness statement by the Responsible Medical Officer in the form set out in para **11.267**, or a certificate by the patient's doctor. If the Responsible Medical Officer or doctor is unable to give such a certificate, the matter should be referred to the district judge or registrar for his directions[1].

1 *Practice Note* [1962] 2 All ER 613, [1962] 1 WLR 738; Registrar's Direction (1969) 31 January.

District judge's or registrar's order

17.53 The order for revocation is drawn up and signed by the district judge or registrar. The grant is revoked by defacing and filed in the registry.

17.54 No fee is payable for the revocation of a grant.

New grant

17.55 Except as stated in para **17.57**, the executor or administrator who is to take the new grant following upon the revocation should not prepare the application statement of truth and the papers to lead to the grant until after the revocation of the former grant has been effected.

17.56 On application for the further grant, a 'plain' copy of the revoked grant (see para **21.21**) bearing the note of revocation on it must be lodged with the papers. Forms of title for box 2.16 in the application statement of truth (PA1A or PA1P), Nos 74 and 163 (**A6.79** and **A6.168**).

Combined application for revocation of probate and new grant

17.57 Where a grant of probate has issued to two or more executors, one of whom subsequently lacks mental capacity to manage his affairs, and it is proposed to revoke it and obtain a new grant of probate to the remaining original grantee or grantees, one sufficient application statement of truth may be used both to lead the order for revocation and to serve as the statement of truth on which the new grant issues. The will may be referred to as that already proved and in the custody of the court and need not be annexed. No further HMRC Inheritance Tax account need be lodged.

17.58 All necessary papers should be submitted to the probate department at the Principal Registry or at the district probate registry, as the case may be. Revocation of the grant will be effected, after which the new grant will be issued.

17.59 This procedure may be applied only to cases strictly within the terms of para **17.57**[1], or on revocation of a grant of probate because of the death of an

executor before its issue: see para **2.78** ff. In all other cases the procedure in the preceding paragraphs must be followed.

1 Secretary's Circular, 6 September 1956.

CASES WHERE COURT WILL NOT REVOKE

17.60 The court has refused to revoke a grant obtained by the administrator on the suggestion that he was the sole person entitled to the estate, though other parties interested were afterwards discovered, and though all parties interested consented that the grant should be revoked and a new grant made to another party interested[1]. Similarly, it is unnecessary for a grant to a trust corporation based on the erroneous statement that certain persons are 'the only persons entitled to share in the estate' to be revoked in order to give to other beneficiaries the shares to which they are entitled as a matter of law[2].

1 *Re Heslop's Goods* (1846) 1 Rob Eccl 457.
2 *Re Ward, National Westminster Bank Ltd v Ward* [1971] 2 All ER 1249, [1971] 1 WLR 1376.

17.61 A grant limited to proceedings in the Chancery Division will not be revoked before the probate claim has been disposed of, merely in order to enable a general grant to issue[1]. Nor will the court revoke such a grant on the application of the executor of a will, unless he can show that inconvenience will result from the continuance of the limited administration.

1 *Re Brown's Goods* (1872) LR 2 P & D 455.

17.62 Where the ultimate object of an application to revoke administration de bonis non was to preserve the right to sue after twenty years, the application was refused as frivolous and vexatious[1].

1 *Willis v Earl Beauchamp* (1886) 11 PD 59.

17.63 The court will not revoke a grant merely on the ground that the administrator has not disclosed all the assets of the deceased, and has failed to furnish satisfactory answers to requests for particulars of the estate[1].

1 *Re Cope's Estate* [1954] 1 All ER 698, [1954] 1 WLR 608.

LACK OF MENTAL CAPACITY OF SOLE GRANTEE

17.64 Where a sole grantee, or sole surviving grantee, subsequently lacks capacity to manage his affairs, a new grant may be made without revocation of the existing grant. The former practice of impounding the old grant in these circumstances has been abandoned[1].

1 Registrar's Direction (1985) 9 July.

17.65 The new grant, whether made to a person equally entitled or, in accordance with NCPR SI 1987/2024 r 35 (see paras **11.245** ff), to some other person, will be a grant de bonis non and for the use and benefit of the grantee who lacks capacity, limited while he lacks capacity—see para **17.71**: except that if the new grantee is an executor to whom power had been reserved, an

Fee No		
(c)	Where a search of the index is required, in addition to (a) or (b) above, for each period of four years	£4

Production at other courts of documents filed in Probate Registries

21.32 Section 136 of the Senior Courts Act 1981 enables rules to be made for providing that documents filed in, or in the custody of, any office of the Supreme Court, and required to be produced to any court or tribunal sitting elsewhere than at the Royal Courts of Justice may be produced to the court or tribunal by sending them to that court or tribunal with a covering certificate.

21.33 Rules have been made applying this procedure to documents filed in the Central Office of the Supreme Court, but not so far to documents filed in, or in the custody of, the probate registries.

21.34 When it is necessary to produce an original will, oath or other document in the custody of a probate registry at the hearing of a probate claim the relevant office as defined in CPR 57.1(1)(b) will send a notice to Leeds District Probate Registry requesting all testamentary documents, grants of representation and other relevant documents relating to the claim which are currently held by any registry (CPR Pt 57 PD 57 para 2.3). These documents are returned to Leeds District Probate Registry when the probate claim is discontinued or a final order is made.

21.35 From time to time requests are made to the probate registries for a proved original will to be produced for the purposes of court proceedings other than in a probate claim (eg criminal proceedings in a magistrates' court or a Crown Court). In such a case, unless production of the original will is requested as a matter of urgency, it is usually transmitted by Document Exchange post to the probate registry or sub-registry most conveniently situated to the court in which the proceedings are being brought so that an officer of that registry may attend the court with it. As all proved original wills which are under the control of the High Court are required to be deposited and preserved (s 124 of the Senior Courts Act 1981), the officer attending the court with an original will must arrange to retrieve it at the determination of the proceedings and return it to the registry. Should it be necessary to leave the will with the court for the duration of the proceedings, the officer will obtain a written receipt for the will including an undertaking for its return from the appropriate court official[1]. This practice may be adapted to meet the changing situation where probate registries may not have the resources to allow for personal attendance at the magistrates' or Crown Court.

[1] Registrar's Circular, 13 November 1978.

Production of original will for inspection and examination

21.36 Occasionally a request is made to a probate registry for a proved original will to be made available for inspection and forensic examination. Normally, such a request is made by or on behalf of the police authorities.

Sometimes, however, the request is made by a solicitor or probate practitioner, acting on behalf of his client in contemplation of bringing a probate claim, or exceptionally a researcher. Where the request is made by a solicitor or probate practitioner or researcher, it will be referred to the district judge or registrar for consideration. Subject to his approval and to such further conditions or restrictions which the district judge or registrar may see fit to impose, it is considered appropriate that any such examination shall normally take place only in a probate registry and that the examination of the will shall be conducted in the presence of a registry official in order that the official may ensure that the will is preserved in its original state and condition. If appropriate, the will may be transmitted by registered post or through the Document Exchange to another probate registry to enable the examination to be made[1]. Exceptionally the district judge or registrar may permit the will to be inspected in the office of a forensic expert subject to an undertaking by the expert not to physically damage or physically interfere with the testamentary paper other than by visual inspection under microscope, photography, photo-copy, scanning or application of non-adhesive and non-staining dry sub-stances. The practitioner further undertakes to pay the cost of travel and subsistence of the registry official taking the will to that office or, alternatively, the practitioner arranging for transmission and return of the document by courier and paying of courier fee. A fee of £20 is payable for the inspection[2].

[1] Registrar's Circular, 13 November 1978.
[2] Non-Contentious Probate Fees Order 2004 (SI 2004/3120) (as amended), Fee 7.

Wills proved before 1858

Place of deposit

21.37 Wills and testamentary papers in connection with grants made by the ecclesiastical and other courts before the establishment of the probate registries in 1858 have been transferred to County Record Officers or to certain of the principal libraries, etc, under the authority of s 124 of the Senior Courts Act 1981[1] (or the earlier provision contained in s 170 of the Supreme Court of Judicature (Consolidation) Act 1925) and s 8(5) of the Public Records Act 1958[2]. No pre-1858 records now remain at the probate registries[3].

[1] See para A1.344.
[2] See para A1.166.
[3] For a complete list of the places of deposit of pre-1858 wills and records of grants etc, reference should be made to 'Wills and their Whereabouts' by Anthony J Cramp, BA.

Literary searches

21.38 Special regulations apply in the case of persons wishing to search the records of the probate registries for purposes of research and literary enquiry. Information as to the conditions under which permission is given for such literary enquiry may be obtained from the probate department at the Principal Registry. NC Probate Fees Order 2004, r 6(3) provides:

> 'Fee 7 [for inspection] shall not be taken where a search is made for research or similar purposes by permission of the President of the Family Division for a document over 100 years old filed in the principal registry or a district registry or another authorised place of deposit.'

who were notified by the registry of the existence of the claim (see paras 23.16 and 23.17), cease to have effect[1].

[1] NCPR SI 1987/2024 r 45(4).

Appearance after time limited

23.58 A caveator who has an interest contrary to that of the person warning the caveat/*stop* may enter an appearance after the time limited by the warning provided that no affidavit or witness statement of service of the warning has been filed in accordance with NCPR SI 1987/2024 r 44(12)[1].

[1] NCPR SI 1987/2024 r 44(10).

23.59 If such affidavit or witness statement has been filed the leave of a district judge is necessary before the caveator may enter a further caveat (see paras **23.31–23.33**).

How entered

23.60 To enter his appearance, a caveator may either attend in person or by his probate practitioner at the Leeds District Probate Registry and complete a form of memorandum of appearance, which may be obtained at the registry, or he may send at his own risk the completed form of appearance by post to that registry. Form of appearance, No 39 (**A6.44**).

23.61 No fee is payable on the entry of an appearance.

23.62 In the form of appearance, the party must state his name and address in full, and his interest in the estate, giving the date of the will (if any) under which such interest arises. He must give an address for service within the jurisdiction (NCPR SI 1987/2024 r 49). The party entering the appearance must serve a sealed copy of the appearance forthwith on the person warning the caveat: see NCPR SI 1987/2024 r 44(10).

Who may appear

23.63 A person seeking to enter an appearance to a warning must have an interest contrary to that of the person who issued the warning (NCPR SI 1987/2024 r 44(10)). Details of the contrary interest must be included in the appearance.

23.64 An appearance by an executor, legatee or devisee, the personal representative of a legatee or devisee, or any other person claiming an interest under a will or codicil must state the date of such will or codicil.

23.65 An appearance by a person claiming to be entitled to share in, or interested in, the estate of the deceased on his intestacy or partial intestacy, or as the personal representative of any such person, must set forth the relationship of such person to the deceased.

23.66 The person who warned the caveat/*stop* may apply by summons to a district judge of the Principal Registry to strike out any appearance which does not comply with the above provisions.

Caveator having no contrary interest

23.67 A caveator who has no interest contrary to that of the person warning the caveat, but wishes to show cause against the issue of a grant to that person, may within 14 days of service of the warning upon him (inclusive of the day of service) or at any time thereafter before a step in default has been taken by the person warning (ie the filing of an affidavit or witness statement showing that the warning was duly served), issue and serve a summons for directions returnable before a district judge of the Principal Registry or a district probate registrar (NCPR SI 1987/2024 r 44(6)).

23.68 It is provided by NCPR SI 1987/2024 r 27(6) that a dispute between persons entitled in the same degree to a grant is to be brought by summons before a district judge or registrar (see paras **14.10–14.15** and **25.205** ff). The district probate registrar of the district probate registry to which the application for the grant has been made or is to be made is the registrar who has jurisdiction to hear the summons. The registry which issues the summons notes the computer index of pending applications (NCPR SI 1987/2024 r 27(7)).

23.69 Upon the issue of a summons under r 27(6) noted in the index, the district judge or registrar must not allow any grant to be sealed until the summons is finally disposed of (NCPR SI 1987/2024 r 27(8)). There is similar provision in relation to a summons for directions under r 44(6). Notice of the issue of such a summons must be notified forthwith to the nominated registry (r 44(9)). The life of the caveat/*stop* is extended beyond the normal period of six months until either the summons is disposed of. The district judge or registrar directs, on the hearing of the summons that the caveat/*stop* ceases to have effect (r 44(8)), unless the caveat/*stop* is previously withdrawn under r 44(11). In the event of a caveat/*stop* being withdrawn before such a summons has been finally disposed of, no grant will be sealed without reference to a district judge or registrar[1].

[1] Registrar's Circular, 12 June 1967.

Appearance by persons under disability

23.70 If it is desired to enter an appearance for a minor or other person under disability or who lacks capacity to manage his or her affairs within the meaning of the Mental Capacity Act 2005, the practice is, broadly speaking, similar to that which is adopted in order to appear on behalf of such persons to a claim[1].

[1] Registrar's Direction (1922) 21 February and see RSC Ord 80 as applied by NCPR SI 1987/2024 r 3.

are answered to his satisfaction[3]. This may include giving notice of the application to any person whose interest may be affected.

[1] See *Re White's Goods* (1882) 7 PD 65 and the cases there cited; *Re Bramley's Goods* [1902] P 106; *Re Lupton's Estate* [1905] P 321; *Re Wilde's Goods* (1887) 13 PD 1; *Re Pool's Goods* (1866) LR 1 P & D 206; *Re M'Auliffe's Goods* [1895] P 290; *Re Last* [1958] P 137, [1958] 1 All ER 316.

[2] *Re Vines' Estate, Vines v Vines* [1910] P 147; *Re Hugo's Goods* (1877) 2 PD 73; *Re Mayd's Goods* (1880) 6 PD 17; see also *Re Spratt's Goods* [1897] P 28; *Re O'Connor's Estate* [1942] 1 All ER 546; *Re Hope Brown's Goods* [1942] P 136.

[3] NCPR SI 1987/2024 r 6(1).

25.9 Matters such as those mentioned above are usually referred to the district judge or registrar in an informal way by the probate department of the Principal Registry, or probate manager of the district registry, as the case may be. In applications which are made at a district probate registry the district registrar may, in cases of doubt or difficulty, obtain the directions of a district judge of the Principal Registry[1].

[1] NCPR SI 1987/2024 r 7; President's Direction (1953) 11 June.

25.10 Where doubt exists, it is advisable for the practitioner to obtain a decision of the registrar or probate department manager prior to lodging the papers to lead the grant. At the Principal Registry, application for any such decision must be made in the first instance to the probate department.

APPLICATIONS WITHOUT NOTICE

25.11 The following types of application, which are dealt with in other parts of this work in the paragraphs indicated, may be made without notice subject to any requirement to the contrary by the district judge or registrar:

Refusal of probate of a will: paras **3.143–3.148**.

Uncontested applications for omission of words from probate or for rectification or interpretation of a will: paras **3.267–3.289**.

Application for joinder of a co-administrator having an interior, or no, title: paras **7.17–7.19**.

Preference of 'dead' interest to living interest, or of guardians of an infant to a person of full age: paras **5.131, 6.7–6.10** and **11.130–11.132**.

Grant where the deceased died domiciled out of England and Wales: paras **12.125–12.134**.

Appointment of persons to obtain administration (with or without will) for use and benefit of minors: paras **11.228–11.235**.

Appointment of grantees on behalf of person who lacks capacity to manage his property and affairs within the meaning of the Mental Capacity Act 2005: paras **11.295–11.322**.

Direction for grant to person representing person who lacks capacity to manage his property and affairs within the meaning of the Mental Capacity Act 2005 where a person equally entitled is sui juris: paras **11.241–11.243**.

Amendment or revocation of grant: paras **16.1–16.28** and **17.1–17.59**.

Application for appointment of additional personal representative after issue of grant: paras **7.40–7.42**.

Application for leave to retract a renunciation: paras **15.62–15.75**.

25.12 The following types of application are dealt with later in the present chapter:

Application for leave to swear to death: paras **25.19–25.46**.

Application for admission of will as contained in a copy etc: paras **25.50–25.94**.

Application for a grant under s 116(1) of the Senior Courts Act 1981: paras **25.97–25.109**.

Application for grant to part only of an estate: paras **25.170–25.180**.

Application for grant ad colligenda bona (*collection grant*): paras **25.182–25.192**.

Application for the issue of a subpoena (*witness statement*) to bring in a testamentary document: paras **25.197** and **25.198**.

25.13 The above applications are made to the registry at which the application for the grant is being made or from which the grant issued.

25.14 A district judge or registrar may direct that any of the applications mentioned above be made by summons either to a district judge or registrar in chambers or to a judge in chambers or open court[1].

[1] NCPR SI 1987/2024 r 61(1).

Application for grant after citation

25.15 Where a person has been cited to accept or refuse a grant but has not entered an appearance, or has appeared and wishes to take a grant, an application without notice must be made to the district judge or registrar where the citation issued for the requisite order. For the practice on such applications, see paras **24.76** and **24.80**.

25.129 For practice in cases where the missing person would, if alive, be beneficially entitled to the whole estate, and the applicant has no title which would enable him to extract a citation, see para **14.5**.

25.130 To the nominee of assignees of residuary legatees (*Re Campion's Goods* [1900] P 13, 69 LJP 19).

25.131 To a person having an inferior right, where the person primarily entitled was shown to have been of bad character and had not been heard of for some time (*Re Stevens' Goods* [1898] P 126; *Re Frost's Estate* [1905] P 140).

25.132 Where the administrator of an intestate had disappeared and the remaining next of kin refused to renounce or apply, the original grant was revoked and a new one issued at the instance of a creditor (*Re French's Estate* [1910] P 169, 79 LJP 56)[1].

[1] See also *Re Loveday's Goods* [1900] P 154, 69 LJP 48 (where widow had disappeared), and *Re Colclough's Goods* [1902] 2 IR 499, 36 ILTR 39.

25.133 To a specific legatee, where, after payment of debts and legacies, there remained no residue, without citing the residuary legatee, resident overseas, who had taken no notice of letters sent to him suggesting his renunciation in the circumstances (*Re Wilde's Goods* (1887) 13 PD 1).

(c) Direct grants, 'quasi per saltum' (ie in spite of the possible existence of a person with a prior right)

25.134 Where a person had not been heard of for seven years, and his sole next of kin died within the seven years, administration of his estate was granted direct to the person who was next of kin at the end of the seven years (*Re Peck's Goods* (1860) 2 Sw & Tr 506; *Re Harling's Goods* [1900] P 59).

25.135 To a grandson of the deceased, the son who was sole next of kin having disappeared for over 25 years. The applicant was allowed to say in his oath 'he believed that he was sole next-of-kin' (*Re Callicott's Goods* [1899] P 189; following *Re Reed's Goods* (1874) 29 LT 932. See also *Re Moore's Goods* [1891] P 299; *Re Shoosmith's Goods* [1894] P 23; *Re Pridham's Goods* (1889) 61 LT 302; *Re Harper's Goods* [1899] P 59; *Re Chapman's Goods* [1903] P 192, 72 LJP 62; *Re Byrne's Goods* (1901) 84 LT 570, 72 LJP 62; *Re Jackson's Goods* (1902) 47 Sol Jo 93, 87 LT 747).

(d) Grants in cases of urgency

25.136 To the person authorised by a power of attorney to manage the property of a party who was abroad and was interested in the deceased's estate, and where it was not known when she would return (*Re Escot's Goods* (1858) 4 Sw & Tr 186).

25.137 To the father-in-law of the person entitled, who was in Australia, for the use and benefit of the latter (*Re Jones' Goods* (1858) 1 Sw & Tr 13. See also *Re Cholwill's Goods* (1866) LR 1 P & D 192).

25.138 See also 'Grant ad colligenda bona', paras **25.182** ff, for an alternative procedure.

(e) Grants in pursuance of agreement

25.139 Where there were two claimants to the estate as next of kin, and the kinship of one was doubtful, and the parties agreed to divide the estate, and that the one whose kinship was doubtful should take the grant. Administration decreed to the latter (*Re Minshull's Goods* (1889) 14 PD 151).

(f) Where person entitled is unfit

25.140 Where a sole executor was in prison and refused to renounce, the court passed him over and issued the grant to a residuary legatee (*Re Drawmer's Estate* (1913) 108 LT 732).

25.141 Where the widow had unsuccessfully propounded a will found to be a forgery, she was passed over in favour of her daughter (*Re Paine's Estate* (1916) 61 Sol Jo 116, 115 LT 935).

25.142 Where a woman had been murdered by her husband, letters of administration of her estate were granted under this section (on the ground of public policy) to her next of kin, passing over the husband's personal representative (*Re Crippen's Estate* [1911] P 108, 80 LJP 47). In *Re Hall's Estate, Hall v Knight and Baxter* [1914] P 1, 83 LJP 1, this rule was held to apply in cases of manslaughter. But a murderer found to be insane at the time of the murder retains his rights (*Re Pitts, Cox v Kilsby* [1931] 1 Ch 546, 145 LT 116; *Re Houghton, Houghton v Houghton* [1915] 2 Ch 173); *Re Batten's Will Trusts* (1961) 105 Sol Jo 529: there is no distinction on this point between cases of intestacy and testacy. (The findings of a coroner's jury at an inquest are not admissible as evidence in the High Court (*Re Sigsworth, Bedford v Bedford* [1935] Ch 89, 152 LT 329; *Re Rendell* (1937) motion; *Bird v Keep* [1918] 2 KB 692). Under s 11 of the Civil Evidence Act 1968, proof of the conviction of a person for an offence by any court in the United Kingdom or by a court martial is sufficient proof, in any civil proceedings where it is relevant, that he committed such offence, unless the contrary is proved. Properly authenticated copies of certificates of conviction are admissible in evidence.) Where a man killed his wife and then killed himself, and there was no evidence as to his state of mind at the moment when he killed her, no claim on her estate by the husband's representatives was allowed (*Re Pollock, Pollock v Pollock* [1941] Ch 219, [1941] 1 All ER 360). The presumption (rebuttable by admissible evidence of the fact and of the state of mind of the killer) is that the killer was of sound mind (*R v Huntbach, ex p Lockley* [1944] KB 606, [1944] 2 All ER 453). The burden is on his representative to prove there was no felonious intent (*Hollington v F Hewthorn & Co Ltd* [1943] KB 587, [1943] 2 All ER 35).

25.143 The standard of proof that one person feloniously killed another, where both died from gas poisoning, is not that of the criminal law: if the evidence leads to no other conclusion, this is sufficient to disqualify such person, and those taking through him or her, from benefiting under the

Grant 'ad colligenda bona' (collection grant)

25.182 Application may be made for a grant of administration ad colligenda bona defuncti (literally, collecting the goods of the deceased, *a collection grant*), owing to the impossibility, in the special circumstances of the case, of the court constituting a general personal representative in sufficient time to meet the necessities of the estate. It is now more usual, in appropriate cases, to obtain wider powers by invoking the powers conferred upon the court by s 116 of the Senior Courts Act 1981 (see paras **25.97** ff).

25.183 A grant ad colligenda bona (*collection grant*) may be made not only to a person whom the court considers suitable, but also to the persons who are entitled to a full grant[1] or to entire strangers who have been brought into connection with the matter[2]. An application by a person entitled in his own right to a full grant must satisfy the court that the interests of the estate cannot await the issue of a grant to the whole estate.

1 *Re Clarkington's Goods* (1861) 2 Sw & Tr 380.
2 *Re Gudolle's Goods* (1835) 3 Sw & Tr 22; *Re Wyckoff's Goods* (1862) 3 Sw & Tr 20.

25.184 The application must be supported by an affidavit or witness statement setting out the grounds and urgency of the application, and provided that it is not opposed should be made without notice at the registry at which the application for the grant is to be made[1]. A district probate registrar may, if he considers it necessary, obtain the directions of a district judge of the Principal Registry on any application made to him[2].

1 NCPR SI 1987/2024 rr 2(1), 52(b); see also *Ghafoor v Cliff* [2006] EWHC 825 (Ch), [2006] 2 All ER 1079, [2006] 1 WLR 320.
2 NCPR SI 1987/2024 r 7.

25.185 In *Ghafoor v Cliff* [2006] EWHC 825 (Ch), [2006] 2 All ER 1079, [2006] 1 WLR 3020 which concerned a grant of administration ad colligenda bona the court reiterated the principles which apply in appropriate cases where there is a significant level of dispute. These may be summarised as follows:

(a) there is no requirement that an application, still less a grant, should be made without notice;
(b) the registrar may require any application to be made by summons (r 61(1));
(c) the registrar may direct service of the summons on such person as he may direct (r 66(1));
(d) the registrar may require the application to be made to judge (r 61(1)); and
(e) no grant should be made by the registrar where it appears to him that it ought not to be made without the directions of a district judge (r 7(1)(b)).

25.186 If the urgency was such that even informal notice cannot be given any order made should be subject to a further hearing on notice within a short period and subject to the requirement that the applicant gives immediate notice of the order and supplies copies of all materials relied upon to obtain the order and a note of the hearing.

25.187 The usual limitation included in the order, which is made under no special section of the Act, is: 'limited for the purpose only of collecting and getting in and receiving the estate and doing such acts as may be necessary for the preservation of the same and until further representation be granted'. The limitation may include particular acts for which the application is being made such as the sale of specified property or stocks and shares. This limitation is included in the *grant ad colligenda bona* and helps to facilitate the collection of the estate.

25.188 The necessity for an ad colligenda grant usually involves a degree of urgency to safeguard and protect the estate from waste. However, at the time of publication of this work the current arrangement for workflow in the probate registries does not always lend itself to a timely and expeditious disposal of all applications. It is therefore incumbent upon the practitioner to follow up the application by telephone or email contact with the registry.

25.189 Ad colligenda bona (*collection*) grants are always grants of letters of administration despite the existence of a valid will which is ultimately proved later on. In all cases the statement of truth in support of the grant application (see Form No 185 (**A6.190**)) need not include any statement whether a will exists or whether the deceased died intestate, nor contain any of the usual clearings. It will always, however, be necessary to consider the existence of life or minority interests. Every (*collection*) grant ad colligenda bona is silent as to the will or the intestacy and is limited 'until further representation be granted'[1]. The question as to whether any life or minority interest arises in the estate of the deceased should be dealt with in the affidavit in support of the application for the order.

1 Registrar's Direction (1979) 12 October.

25.190 The ad colligenda bona (*collection*) grant ceases when a grant to the whole estate by either letters of administration or probate is granted to the person entitled.

25.191 Where there are no known kin of an intestate entitled to take a grant, and where the Treasury Solicitor or the Solicitor for the Duchy of Lancaster is of opinion that an immediate grant should issue in order to preserve the estate, application for a similar grant of administration may be made, supported by a statement of the facts.

25.192 Grants of administration ad colligenda bona have been made as follows:

(a) To a creditor, limited to collecting the personal estate of the deceased, to giving receipts for his debts on the payment of the same, and to renewing the lease of his business premises which would expire before a general grant could be made (*Re Clarkington's Goods* (1861) 2 Sw & Tr 380; *Re Stewart's Goods* (1869) LR 1 P & D 727).
(b) To a creditor, where the deceased had died without any known relation, and it was impossible to ascertain whether, if ever married, her husband had survived her, upon the affidavit of the solicitor of the creditor that he was informed and believed that she died a widow and intestate (*Re Ashley's Goods* (1890) 15 PD 120).

Supplemental

A1.397

49 Modifications of Part II in relation to countries comprising territories having different systems of law

(1) In relation to a country comprising territories in which different systems of law are in force in matters of divorce, annulment or legal separation, the provisions of this Part mentioned in subsections (2) to (5) below shall have effect subject to the modifications there specified.

(2) In the case of a divorce, annulment or legal separation the recognition of the validity of which depends on whether the requirements of subsection (1)(b)(i) or (ii) of section 46 of this Act are satisfied, that section and, in the case of a legal separation, section 47(2) of this Act shall have effect as if each territory were a separate country.

(3) In the case of a divorce, annulment or legal separation the recognition of the validity of which depends on whether the requirements of subsection (1)(b)(iii) of section 46 of this Act are satisfied—

(a) that section shall have effect as if for paragraph (a) of subsection (1) there were substituted the following paragraph—

'(a) the divorce, annulment or legal separation is effective throughout the country in which it was obtained;'; and

(b) in the case of a legal separation, section 47(2) of this Act shall have effect as if for the words 'is effective under the law of that country' there were substituted the words 'is effective throughout the country'.

(4) In the case of a divorce, annulment or legal separation the recognition of the validity of which depends on whether the requirements of subsection (2)(b) of section 46 of this Act are satisfied, that section and section 52(3) and (4) of this Act and, in the case of a legal separation, section 47(2) of this Act shall have effect as if each territory were a separate country.

(5) Paragraphs (a) and (b) of section 48(2) of this Act shall each have effect as if each territory were a separate country.

A1.398

50 Non-recognition of divorce or annulment in another jurisdiction no bar to remarriage

Where, in any part of the United Kingdom—

(a) a divorce or annulment has been granted by a court of civil jurisdiction, or

(b) the validity of a divorce or annulment is recognised by virtue of this Part,

the fact that the divorce or annulment would not be recognised elsewhere shall not preclude either party to the marriage from [forming a subsequent marriage or civil partnership in that part of the United Kingdom or cause the subsequent marriage or civil partnership of either party (wherever it takes place) to be treated as invalid in that part].

Words from 'forming a subsequent' to 'in that part' in square brackets substituted by the Civil Partnership Act 2004, s 261(1), Sch 27, para 125. Date in force: 5 December 2005: see SI 2005/3175, art 2(2).

A1.399

51 Refusal of recognition

(1) Subject to section 52 of this Act, recognition of the validity of—

(a) a divorce, annulment or judicial separation granted by a court of civil jurisdiction in any part of the British Islands, or

(b) an overseas divorce, annulment or legal separation,

may be refused in any part of the United Kingdom if the divorce, annulment or separation was granted or obtained at a time when it was irreconcilable with a decision determining the question of the subsistence or validity of the marriage of the parties previously given (whether before or after the commencement of this Part) by a court of civil jurisdiction in that part of the United Kingdom or by a court elsewhere and recognised or entitled to be recognised in that part of the United Kingdom.

(2) Subject to section 52 of this Act, recognition of the validity of—

(a) a divorce or judicial separation granted by a court of civil jurisdiction in any part of the British Islands, or

(b) an overseas divorce or legal separation,

may be refused in any part of the United Kingdom if the divorce or separation was granted or obtained at a time when, according to the law of that part of the United Kingdom (including its rules of private international law and the provisions of this Part), there was no subsisting marriage between the parties.

(3) Subject to section 52 of this Act, recognition by virtue of section 45 of this Act of the validity of an overseas divorce, annulment or legal separation may be refused if—

(a) in the case of a divorce, annulment or legal separation obtained by means of proceedings, it was obtained—

(i) without such steps having been taken for giving notice of the proceedings to a party to the marriage as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken; or

(ii) without a party to the marriage having been given (for any reason other than lack of notice) such opportunity to take part in the proceedings as, having regard to those matters, he should reasonably have been given; or

(b) in the case of a divorce, annulment or legal separation obtained otherwise than by means of proceedings—

(i) there is no official document certifying that the divorce, annulment or legal separation is effective under the law of the country in which it was obtained; or

(ii) where either party to the marriage was domiciled in another country at the relevant date, there is no official document certifying that the divorce, annulment or legal separation is recognised as valid under the law of that other country; or

(c) in either case, recognition of the divorce, annulment or legal separation would be manifestly contrary to public policy.

(4) In this section—

"official", in relation to a document certifying that a divorce, annulment or legal separation is effective, or is recognised as valid, under the law of any country, means issued by a person or body appointed or recognised for the purpose under that law;

"the relevant date" has the same meaning as in section 46 of this Act;

["judicial separation" includes a separation order under the Family Law Act 1996;]

and subsection (5) of that section shall apply for the purposes of this section as it applies for the purposes of that section.

(5) Nothing in this Part shall be construed as requiring the recognition of any finding of fault made in any proceedings for divorce, annulment or separation or of any maintenance, custody or other ancillary order made in any such proceedings.

Sub-s (2): words ", or civil partners of," in square brackets inserted by SI 2019/1458, reg 13(1), (2). Date in force: 2 December 2019: see SI 2019/1458, reg 1(2).

Sub-s (2ZA): inserted by the Inheritance and Trustees' Powers Act 2014, s 5; for transitional provision see s 12(4). Date in force: 1 October 2014: see SI 2014/2039, art 2.

Sub-s (2A): inserted by the Human Fertilisation and Embryology Act 2008, s 56, Sch 6, Pt 1, para 25(1), (2). Date in force: 6 April 2009: see SI 2009/479, art 6(1)(d).

Sub-s (3): words "section 50(1) of the Administration of Estates Act 1925" in square brackets substituted by the Human Fertilisation and Embryology Act 2008, s 56, Sch 6, Pt 1, para 25(1), (3). Date in force: 6 April 2009: see SI 2009/479, art 6(1)(d).

A1.420

19 Dispositions of property

(1) In the following dispositions, namely—

(a) dispositions inter vivos made on or after the date on which this section comes into force; and

(b) dispositions by will or codicil where the will or codicil is made on or after that date,

references (whether express or implied) to any relationship between two persons shall be construed in accordance with section 1 above.

(2) It is hereby declared that the use, without more, of the word 'heir' or 'heirs' or any expression [purporting to create] an entailed interest in real or personal property does not show a contrary intention for the purposes of section 1 as applied by subsection (1) above.

(3) In relation to the dispositions mentioned in subsection (1) above, section 33 of the Trustee Act 1925 (which specifies the trust implied by a direction that income is to be held on protective trusts for the benefit of any person) shall have effect as if any reference (however expressed) to any relationship between two persons were construed in accordance with section 1 above.

(4) Where under any disposition of real or personal property, any interest in such property is limited (whether subject to any preceding limitation or charge or not) in such a way that it would, apart from this section, devolve (as nearly as the law permits) along with a dignity or title of honour, then—

(a) whether or not the disposition contains an express reference to the dignity or title of honour; and

(b) whether or not the property or some interest in the property may in some event become severed from it,

nothing in this section shall operate to sever the property or any interest in it from the dignity or title, but the property or interest shall devolve in all respects as if this section had not been enacted.

(5) This section is without prejudice to section 42 of the Adoption Act 1976 [or section 69 of the Adoption and Children Act 2002] (construction of dispositions in cases of adoption).

(6) In this section 'disposition' means a disposition, including an oral disposition, of real or personal property whether inter vivos or by will or codicil.

(7) Notwithstanding any rule of law, a disposition made by will or codicil executed before the date on which this section comes into force shall not be treated for the purposes of this section as made on or after that date by reason only that the will or codicil is confirmed by a codicil executed on or after that date.

Sub-s (2): words in square brackets substituted by the Trusts of Land and Appointment of Trustees Act 1996, s 25(1), Sch 3, para 25; for savings in relation to entailed interests created before the commencement of that Act, and savings consequential upon the abolition of the doctrine of conversion, see s 25(4), (5) thereof.

Sub-s (5): words 'or section 69 of the Adoption and Children Act 2002' in square brackets inserted by the Adoption and Children Act 2002, s 139(1), Sch 3, paras 50, 52.

Date in force: 30 December 2005: see SI 2005/2213, art 2(o).

A1.421

20 No special protection for trustees and personal representatives

. . .

This section repeals the Family Law Reform Act 1969, s 17.

A1.422

21 Entitlement to grant of probate etc

(1) For the purpose of determining the person or persons who would in accordance with probate rules be entitled to a grant of probate or administration in respect of the estate of a deceased person, the deceased shall be presumed, unless the contrary is shown, not to have been survived—

(a) by any person related to him whose father and mother were not married to[, or civil partners of,] each other at the time of his birth; or

(b) by any person whose relationship with him is deduced through such a person as is mentioned in paragraph (a) above.

(2) In this section 'probate rules' means rules of court made under section 127 of the [Senior Courts Act 1981].

(3) This section does not apply in relation to the estate of a person dying before the coming into force of this section.

Sub-s (1): in para (a) words ", or civil partners of," in square brackets inserted by SI 2019/1458, reg 13(1), (4). Date in force: 2 December 2019: see SI 2019/1458, reg 1(2).

Sub-s (2): words 'Senior Courts Act 1981' in square brackets substituted by the Constitutional Reform Act 2005, s 59(5), Sch 11, Pt 1, para 1(2). Date in force: 1 October 2009: see SI 2009/1604, art 2(d).

PART IV
DETERMINATION OF RELATIONSHIPS

A1.423

22 Declarations of parentage

[*Substitutes s 56 of the Family Law Act 1986 (declarations of legitimacy or legitimation): for text see para* **A1.405**.]

PART V
REGISTRATION OF BIRTHS

A1.424

24 Registration of father where parents not married

[*Substitutes s 10 of the Births and Deaths Registration Act 1953 (in this Act referred to as 'the 1953 Act'): for text see para* **A1.156**.]

A1.425

25 Re-registration where parents not married

[*Substitutes s 10A of the 1953 Act: for text see para* **A1.158**.]

(3) Subsection (1) is subject to provision made by this Act or any other enactment or any subordinate legislation.

A1.564

10 Registration

(1) Where there is a UK birth register entry in relation to a person to whom a full gender recognition certificate is issued, the Secretary of State must send a copy of the certificate to the appropriate Registrar General.

[(1A) Where a full gender recognition certificate is issued to a person who is a party to—

(a) a marriage under the law of England and Wales, or

(b) a civil partnership under that law,

the Secretary of State must send a copy of the certificate to the Registrar General for England and Wales.]

[(1B) Where a full gender recognition certificate is issued by a Gender Recognition Panel or the sheriff to a person who is a party to a protected Scottish marriage or a protected Scottish civil partnership, the Panel must send a copy of the certificate to the Registrar General for Scotland.]

[(1C) Where a full gender recognition certificate is issued to a person who is a party to—

(a) a marriage under the law of Northern Ireland, or

(b) a civil partnership under the law of Northern Ireland,

the Secretary of State must send a copy of the certificate to the Registrar General for Northern Ireland.]

(2) In this Act "UK birth register entry", in relation to a person to whom a full gender recognition certificate is issued, means—

(a) an entry of which a certified copy is kept by a Registrar General, or

(b) an entry in a register so kept,

containing a record of the person's birth or adoption (or, if there would otherwise be more than one, the most recent).

(3) "The appropriate Registrar General" means whichever of—

(a) the Registrar General for England and Wales,

(b) the Registrar General for Scotland, or

(c) the Registrar General for Northern Ireland,

keeps a certified copy of the person's UK birth register entry or the register containing that entry.

(4) Schedule 3 (provisions about registration) has effect.

Sub-s (1A): inserted by the Marriage (Same Sex Couples) Act 2013, s 12, Sch 5, Pt 1, paras 1, 9(1). Date in force (for the purpose of exercising any power to make subordinate legislation): 30 June 2014: see SI 2014/1662, art 2(b). Date in force (for remaining purposes): 10 December 2014: see SI 2014/3169, art 2.

Sub-s (1B): inserted by the Marriage and Civil Partnership (Scotland) Act 2014, s 29, Sch 2, Pt 1, paras 1, 9(1). Date in force: 16 December 2014: see SSI 2014/287, art 3, Schedule.

Sub-s (1C): inserted by SI 2019/1514, regs 41, 44. Date in force: 13 January 2020: see SI 2019/1514, reg 1(2).

A1.565

11 Marriage

Schedule 4 (amendments of marriage law) has effect.

A1.566

[11A Change in gender of party to marriage]

[(1) This section applies in relation to a protected marriage if (by virtue of section 4(2)(b) or 4A) a full gender recognition certificate is issued to a party to the marriage.

(2) The continuity of the protected marriage is not affected by the relevant change in gender.

(3) If the protected marriage is a foreign marriage—

(a) the continuity of the marriage continues by virtue of subsection (2) notwithstanding any impediment under the proper law of the marriage;

(b) the proper law of the marriage is not affected by its continuation by virtue of subsection (2).

(4) In this section—

"foreign marriage" means a marriage under the law of a country or territory outside the United Kingdom;

"impediment" means anything which affects the continuation of a marriage merely by virtue of the relevant change in gender;

"proper law", in relation to a protected marriage, means the law of the country or territory under which the marriage was entered into;

"relevant change in gender" means the change or changes of gender occurring by virtue of the issue of the full gender recognition certificate or certificates.]

Inserted by the Marriage (Same Sex Couples) Act 2013, s 12, Sch 5, Pt 1, paras 1, 10. Date in force: 10 December 2014: see SI 2014/3169, art 2.

A1.567

[11B Change in gender of civil partners] **[11B Change in gender of civil partner**

[The continuity of a civil partnership is not affected by the issuing of full gender recognition certificates (by virtue of section 4(2)(c)) to both civil partners.]

(1) This section applies in relation to a protected civil partnership if (by virtue of section 4(2)(c) or 4A) a full gender recognition certificate is issued to a party to the partnership.

(2) The continuity of the protected civil partnership is not affected by the relevant change in gender.

(3) If the protected civil partnership is a protected overseas relationship—

(a) the continuity of the civil partnership continues by virtue of subsection (2) notwithstanding any impediment under the relevant law;

(b) the relevant law is not affected by the continuation of the civil partnership by virtue of subsection (2).

(4) In this section—

"impediment" means anything which would affect the continuation of the overseas relationship merely by virtue of the relevant change in gender;

"relevant change in gender" means the change or changes in gender occurring by virtue of the issue of the full gender recognition certificate or certificates;

"relevant law", in relation to the protected overseas relationship in question, has the same meaning as in Chapter 2 of Part 5 of the Civil Partnership Act 2004.]

Inserted by the Marriage (Same Sex Couples) Act 2013, s 12, Sch 5, Pt 1, paras 1, 11. Date in force: 10 December 2014: see SI 2014/3169, art 2.

Substituted in relation to England and Wales by SI 2019/1458, regs 23, 32 and in relation to Northern Ireland by SI 2019/1514, regs 41, 45(1); a corresponding amendment has been made in

(3) Without prejudice to sub-paragraph (2) but subject to any conditions or restrictions contained in the instrument, an attorney under an enduring power, whether general or limited, may (without obtaining any consent) dispose of the property of the donor by way of gift to the following extent but no further—

(a) he may make gifts of a seasonal nature or at a time, or on an anniversary, of a birth, a marriage or the formation of a civil partnership, to persons (including himself) who are related to or connected with the donor, and

(b) he may make gifts to any charity to whom the donor made or might be expected to make gifts,

provided that the value of each such gift is not unreasonable having regard to all the circumstances and in particular the size of the donor's estate.

PART 2
ACTION ON ACTUAL OR IMPENDING INCAPACITY OF DONOR

Duties of attorney in event of actual or impending incapacity of donor

4

(1) Sub-paragraphs (2) to (6) apply if the attorney under an enduring power has reason to believe that the donor is or is becoming mentally incapable.

(2) The attorney must, as soon as practicable, make an application to the Public Guardian for the registration of the instrument creating the power.

(3) Before making an application for registration the attorney must comply with the provisions as to notice set out in Part 3 of this Schedule.

(4) An application for registration—

(a) must be made in the prescribed form, and

(b) must contain such statements as may be prescribed.

(5) The attorney—

(a) may, before making an application for the registration of the instrument, refer to the court for its determination any question as to the validity of the power, and

(b) must comply with any direction given to him by the court on that determination.

(6) No disclaimer of the power is valid unless and until the attorney gives notice of it to the Public Guardian; and the Public Guardian must notify the donor if he receives a notice under this sub-paragraph.

(7) A person who, in an application for registration, makes a statement which he knows to be false in a material particular is guilty of an offence and is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.

(8) In this paragraph, 'prescribed' means prescribed by regulations made for the purposes of this Schedule by the Lord Chancellor.

Para 2: in sub-para (5)(a) words from "or is not" to "Insolvency Act 1986)" in square brackets inserted by SI 2012/2404, art 3(2), Sch 2, para 53(1), (6)(a). Date in force: 1 October 2012: see SI 2012/2404, art 1; for transitional provisions see art 5 thereof.

Para 2: in sub-para (7) words from "or the making" to "donor or attorney" in square brackets inserted by SI 2012/2404, art 3(2), Sch 2, para 53(1), (6)(b). Date in force: 1 October 2012: see SI 2012/2404, art 1; for transitional provisions see art 5 thereof.

Para 2: in sub-para (8) words from "or where the" to "relief restrictions order" in square brackets inserted by SI 2012/2404, art 3(2), Sch 2, para 53(1), (6)(c). Date in force: 1 October 2012: see SI 2012/2404, art 1; for transitional provisions see art 5 thereof.

PART 8
INTERPRETATION

23

(1) In this Schedule—

'enduring power' is to be construed in accordance with paragraph 2,

'mentally incapable' or 'mental incapacity', except where it refers to revocation at common law, means in relation to any person, that he is incapable by reason of mental disorder *(within the meaning of the Mental Health Act)* of managing and administering his property and affairs and 'mentally capable' and 'mental capacity' are to be construed accordingly,

'notice' means notice in writing, and

'prescribed', except for the purposes of paragraph 2, means prescribed by regulations made for the purposes of this Schedule by the Lord Chancellor.

[(1A) In sub-paragraph (1), 'mental disorder' has the same meaning as in the Mental Health Act but disregarding the amendments made to that Act by the Mental Health Act 2007.]

(2) Any question arising under or for the purposes of this Schedule as to what the donor of the power might at any time be expected to do is to be determined by assuming that he had full mental capacity at the time but otherwise by reference to the circumstances existing at that time.

Para 23: in sub-para (1) in definition '"mentally incapable" and "mental incapacity"' words '(within the meaning of the Mental Health Act)' in italics repealed by the Mental Health Act 2007, s 1(4), 55, Sch 1, Pt 2, para 23(1), (2), Sch 11, Pt 1. Date in force: 3 November 2008: see SI 2008/1900, art 2(a), (p); for transitional provisions and savings see the Mental Health Act 2007, s 53, Sch 10, paras 1, 2(1)–(3), (4)(a), (g).

Para 23: sub-para (1A) inserted by the Mental Health Act 2007, s 1(4), Sch 1, Pt 2, para 23(1), (3). Date in force: 3 November 2008: see SI 2008/1900, art 2(a); for transitional provisions and savings see the Mental Health Act 2007, s 53, Sch 10, paras 1, 2(1)–(3), (4)(a).

SCHEDULE 7
REPEALS

Section 67(2)

A1.631

Administration of Estates Act 1925 (c 23)	Section 55(1)(viii)
Enduring Powers of Attorney Act 1985 (c 29)	The whole Act.

LEGAL SERVICES ACT 2007

2007 CHAPTER 29

[30th October 2007]