

PRELIMINARY

Title and commencement

1.1 (1) These Rules are the Probate and Administration Rules.

- [1.1.1] History and rule-making power The new *Rules* (Order 28 of 2003) were made under s.66(3), *Judicial Services and Courts* [Cap 270]. See further CPR [1.1.5]. Rules relating to probate and administration were formerly to be found in the *Succession, Probate and Administration Rules* No. 1 of 1974 which are repealed by r.5.4. The rule making power contained in reg.53, *Queen's Regulations* is not invoked.
- [1.1.2] Sources of relevant law Lawyers should have regard to at least the following: The *Queen's Regulation* No.7 of 1972, the *Wills Act* [Cap 55] and the *Administration of Estates Act* 1925 (UK). As to the possible operation of residual French law see the comment of Tuohy J in *Newman v Ah Tong* [2007] VUSC 102; CC 41 of 2007 at [8].

(2) These Rules come into operation on 1 August 2003.

- [1.1.3] See also r.5.2.

Purpose

1.2 The purpose of these Rules is to set out the procedures to be used in probate and administration proceedings brought in the Supreme Court.

- [1.2.1] Purposive interpretation The *Rules* should, in addition to the interpretive requirements of r.1.4(1)(b), be interpreted consistently with their purpose. See further CPR [1.1.3] and s.8, *Interpretation* [Cap. 132]. The long title reads: "To set out the procedure in probate and administration matters".
- [1.2.2] Limited scope of *Rules* The *Rules* do not appear to be comprehensive of the procedures to be used in all proceedings relating to a deceased estate nor even to all proceedings relating to probate and administration. For example, there is no procedure dealing with the way in which an application is to be made under any of regs.16 (dealing with infant's property), 17 (trustee of infant's property), 18 (relinquishment of grant), 24 (revocation of grant) or 26 (estate wasting or endangered), *Queen's Regulations*. See further rr.1.3 and 3.2. The repeal of the former rules by r.5.4 means that any earlier prescribed procedures have been abolished. Accordingly, r.1.3 imports the *Civil Procedure Rules* and persons seeking orders not provided by these *Rules* should commence a claim under the former.

Application of the Civil Procedure Rules

ConPR r1.3
EPR r1.3

1.3 (1) If these rules do not make provision for a matter relating to a proceeding, the Civil Procedure Rules apply to that matter.

- [1.3.2] See further [1.2.2], [3.2.1].

(2) In particular, the Civil Procedure Rules apply to contested proceedings, as set out in Rule 3.2.

ConPR r1.4
EPR r1.4

Overriding objective and case management

CPR r1.3

1.4 (1) The Supreme Court must give effect to the overriding objective, as set out in the Civil Procedure Rules, when it:

- [1.4.1] See CPR r.1.2 as to the overriding objective

(a) does any act under these Rules; or

(b) interprets these Rules.

CPR r1.4(1)

(2) In particular, the Court must actively manage cases brought under these Rules, as set out in the Civil Procedure Rules.

[1.4.2] See CPR r.1.4(2) as to active case management

Interpretation

1.5 (1) Some words used in these Rules have a particular meaning. These are defined as follows:

CPR r20.1
ConPR r1.5

"applicant" means the person who makes an application;

[1.5.1] Meaning of "application" This presumably refers to an application for a grant under Part 2.

"contested proceeding" means proceedings where an application for probate or administration is opposed;

[1.5.2] See Part 3.

ConPR r1.5

"Court" means the Supreme Court;

[1.5.3] Establishment of Supreme Court The Supreme Court is established by art.49 of the *Constitution*. See further Part 4, *Judicial Services and Courts* [Cap 270]. See also the definition of "court" in s.1, *Wills* [Cap 55].

"foreign probate or administration" means probate or administration granted in a Commonwealth country or territory;

[1.5.4] Meaning of "Commonwealth country" The Attorney-General may certify that a country or territory is a Commonwealth country or territory: See reg.2.3, *Queen's Regulation*.

"Queen's Regulation" means the Succession, Probate and Administration Regulation 1972, Queen's Regulation No. 7 of 1972;

[1.5.5] History The *Queen's Regulation* was made by the British Resident Commissioner in the New Hebrides pursuant to the New Hebrides Orders in Council 1922 to 1970 .

[1.5.6] Definitions contained in *Queen's Regulation* Regulation 2(1) of the *Queen's Regulation* also contains a number of relevant definitions, of particular importance are the following:

"administration" includes letters of administration of the estate and effects of deceased persons, whether with or without the will annexed, and whether granted for general, special, or limited purposes; and also exemplification of letters of administration with or without the will annexed and such other evidence of letters of administration purporting to be under the seal of a court of competent jurisdiction as in the opinion of the court is sufficient;

"administrator" includes any person to whom administration is granted;

"intestate" includes a person who leaves a will but dies intestate as to some beneficial interest in his estate;

"personal representative" means the executor, original or by representation, of the will, or the administrator of the estate for the time being, of a deceased person;

"probate" includes "exemplification of probate", and such other formal evidence of probate purporting to be under the seal of a court of competent jurisdiction, as in the opinion of the court is sufficient;

"will" includes a codicil to a will.

- [1.5.7] Formal requirements of a will There is no comprehensive definition, however the formal requirements of a will are set out in s.4, *Wills* [Cap 55].
- [1.5.8] Meaning of "codicil" A codicil is an addition or supplement added to a will. See generally *Re Elcom* [1894] 1 Ch 303.

(2) The Notes in these Rules do not form part of the Rules and are for information only.

- [1.5.9] The notes are not reproduced in this publication.

ConPR r1.6
EPR r1.6
CPR r1.9

Forms

1.6 A reference to a Form by number is a reference to the form identified by that number in the Schedule at the end of these Rules.

- [1.6.1] In this publication forms for all annotated rules appear in the chapter "Forms". See further rr.2.6(3) and 18.9, *CPR* and s.37, *Interpretation* [Cap 132] as to formal defects.

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