



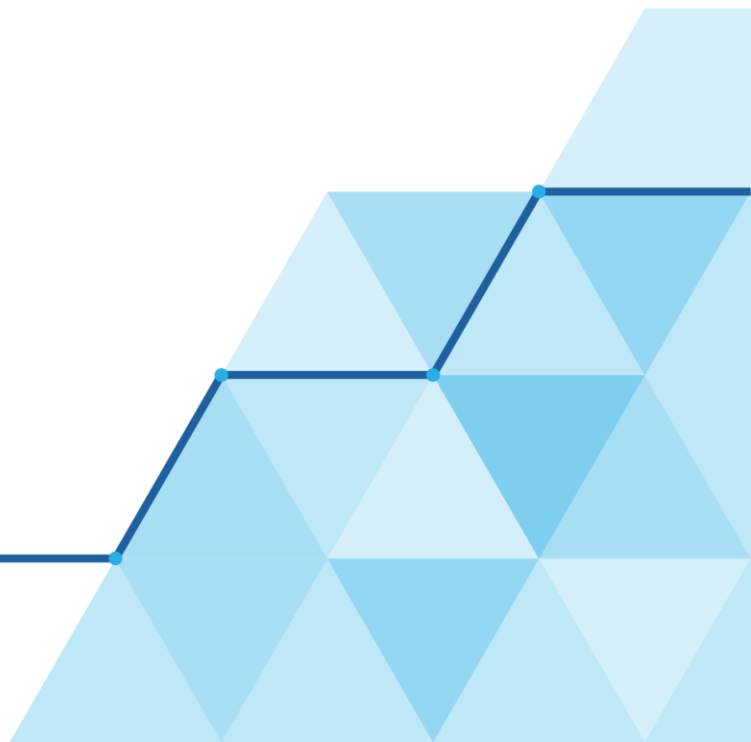
Ministry  
of Justice

# Non-Contentious Probate

## Mandating online professional applications

This consultation begins on 10 August 2020

This consultation ends on 10 September 2020





Ministry  
of Justice

## **Non-Contentious Probate Rules**

Mandating online professional applications

A consultation produced by the Ministry of Justice. It is also available at <https://consult.justice.gov.uk/>

# About this consultation

<b>To:</b>	Solicitors and other probate practitioners who make applications for grants of probate or letters of administration
<b>Duration:</b>	From 10/08/20 to 10/09/20
<b>Enquiries (including requests for the paper in an alternative format) to:</b>	Civil Law Policy Ministry of Justice 102 Petty France London SW1H 9AJ  Email: <a href="mailto:civil_justice_poli@justice.gov.uk">civil_justice_poli@justice.gov.uk</a>
<b>How to respond:</b>	Please send your response by 10 September 2020 to:  Civil Law Policy Ministry of Justice 102 Petty France London SW1H 9AJ  Email: <a href="mailto:civil_justice_poli@justice.gov.uk">civil_justice_poli@justice.gov.uk</a>
<b>Additional ways to feed in your views:</b>	HMCTS hold regular stakeholder meetings with probate practitioners which would provide opportunities to feed views in.
<b>Response paper:</b>	A response to this consultation exercise is due to be published in October 2020 at: <a href="https://consult.justice.gov.uk/">https://consult.justice.gov.uk/</a>

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# Introduction

This paper sets out for consultation with specialist probate practitioners the Government's proposals for mandating online solicitor and other practitioner applications for grants of probate or letters of administration. The consultation is aimed at specialist practitioners who submit probate applications in England and Wales.

A Welsh language summary is available at:

Copies of the consultation paper are being sent to:

- The Law Society
- The Bar Council
- The Chartered Institute of Legal Executives
- The Council of Licensed Conveyancers
- The Society of Trust and Estates Practitioners
- The Chancery Bar Association
- The Family Law Bar Association
- The Association of Chartered Certified Accountants
- Institute of Chartered Accountants in England and Wales
- The President of the Family Division
- Association of HM District Judges

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

# The proposals

## Background

1. The Probate Service is part of HM Courts & Tribunal Service (HMCTS), and was established in 1858. It issues grants of representation to allow executors and administrators to deal with the estates of deceased people in non-contentious probate cases. This work is governed by the Non-Contentious Probate Rules 1987 (NCPR) and is part of the Family Division of the High Court.
2. In addition, the Probate Service manages the process of searching for, and ordering, copies of historic wills and grants of probate and provides a “safe custody” facility for the storage of wills of living people.
3. The Probate Service issues around 260,000 grants each year. Generally, applications are made either by individuals directly (80,000 - personal applications) or by solicitors and other probate practitioners (180,000) on behalf of individuals (or as executors in their own right).

## The traditional paper-based system for applications

4. Until 2017 applications by solicitors and other probate practitioners could only be made using the traditional paper-based system for applications. These applications are made in accordance with Rule 4 of the Non-Contentious Probate Rules 1987 (as amended) for grants of probate where the deceased left a will, and Rule 5 for letters of administration where the person died intestate.
5. Practitioners can make a variety of other applications to the Probate Service under other Rules, including (but not restricted to):
  - Applications to amend or revoke a grant;
  - Standing searches for grants;
  - Caveats (objections) to the issuing of a grant;
  - Citations to accept or refuse to take a grant;
  - Applications for rectification of a will;
6. Applications are made by downloading the prescribed court probate forms and sending in completed copies (and original documents in some cases e.g. the will and codicils) as a bundle of papers.

## The online system of applications

7. The online probate service forms part of the HMCTS reform programme, and was introduced originally following the necessary changes to the Non-Contentious Probate Rules which took effect from November 2017 (personal applications could be made online a year before) in a 'Beta' phase, with invited law firms able to use the online process on a piloted basis.
8. The overall reform programme was launched in 2016, and represented a significant £1 Billion investment in modernising courts and tribunals. The programme's overall aim is to bring new technology and modern ways of working to the way justice is administered. HMCTS is working in collaboration with the senior judiciary and the Ministry of Justice, to make justice less confusing, easier to navigate and better at responding to the needs of the public. The aim is designing systems to create a more effective system for court users and generate efficiencies for the taxpayer.
9. The probate reform programme is expected to generate savings of £20 million over a 10 year period, while establishing online systems and concentrating back office functions in Court and Tribunal Service Centres (CTSCs) with a national telephone helpline for professional users and webchat facility. This is entailing the closure of the majority of District Probate Registries, and the Birmingham Registry and all Sub-Registries have already closed.
10. The online service for legal professionals was rolled out to be available to all practitioners in October 2019, following the Beta phase's successful pilot. User feedback shows the majority of users are satisfied with the online service.
11. A significant development in terms of making a range of probate application processes accessible online came in April 2020 when the President of the Family Division issued Practice Guidance<sup>1</sup> enabling statements of truth (which can be submitted electronically) to be used as an alternative to affidavits.
12. Although this was a measure designed to assist professional users during the coronavirus pandemic, with access to offices, papers and clients extremely difficult for many practitioners, consideration is being given to this being made a permanent change via amendment to the non-contentious probate rules.
13. Registration for the online service involves a simple process. Each organisation (such as a law firm) sets up an account on the *MyHMCTS* web platform<sup>2</sup>. A PBA (Payment By Account) system must be set up to pay court fees. Once established

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<sup>1</sup> <https://www.judiciary.uk/announcements/president-of-the-family-division-guidance-as-to-the-replacement-of-affidavits-with-statements-of-truth-in-non-contentious-probate-processes/>

<sup>2</sup> <https://www.gov.uk/guidance/hmcts-online-services-for-legal-professionals>



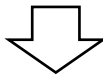
an organisation can have multiple users. Each practitioner for probate is then able to create a case on the system. This is accessible on a 24 hour automated basis, and the details are uploaded immediately, and each case has a unique identifying reference number.

14. Probate applications are then made using a step-by-step process, with all the normal details entered, and with scanned copies of the relevant documents submitted. It is also necessary for certain documents e.g. the original will to be sent by post to the Probate Service.

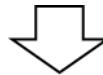
15. Once submitted the practitioner can monitor the progress of each of their applications with a dashboard showing all the cases they have with the Probate Service, and the stage they are at. HMCTS will update details as cases progress, with users receiving notifications when action has been taken. Practitioners can also update details.

Online Probate Service process

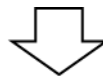
**Professional user signs up to My HMCTS  
(1 Registration per organisation, multiple users)**



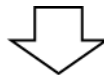
**Set up PBA – Payment By Account  
For court fees**



**Sign-in to account.  
Create case**



**Follow all online steps to  
Make probate application,  
Provide all data and documents**



**Submit application**



**Monitor progress and review all cases  
On system dashboard**

## **Proposal - to mandate professional applications to the online process**

**16. The Government and HMCTS propose changing the non-contentious probate rules to make it mandatory for professional users (solicitors and other probate practitioners) to use the online process.**

17. There are a range of factors which have influenced this policy and operational objective. The advantages to both practitioners and HMCTS are set out below, and the Government believe these make compelling reasons. Perhaps the biggest factor though is that it is clear that the service has to modernise.

18. Mandating the process will accelerate it and encourage users to adapt and take the necessary steps for the transition while helping to achieve the savings which HMCTS needs to deliver in fulfilling the requirements of the investment in the HMCTS reform programme.

19. Court and tribunal services are increasingly making this transition – there are similar moves to mandate professional user applications for the Asylum and Immigration chamber of the Tribunals Service.

20. There are a small number of probate processes which are not being mandated – details of these exceptions (and the reasons for not including them at this stage) are set out in paragraph 29.

### **Question 1**

**Do you agree that HMCTS should implement mandating of professional user applications? Please give reasons for your answer.**

### **Advantages to professional users of using the online service**

21. The advantages for probate practitioners in using the online process can be summarised as follows:

- Moving to an online process offers professional users cost and time savings and a more efficient and reliable system.
- The online process provides a secure means of sending through probate applications and documentation that provides immediate recording of receipt.
- The system is accessible to use at any time.

- Applications can be tracked and monitored. Developments in progress are notified to the professional. Time and money is saved on making enquiries, although each user can send queries and feedback online.
- The online system reduces the risk of making errors on applications, such as missing a section which has to be completed. It offers a built-in checklist which is designed to be user-friendly (and has been built following consultation and feedback with other professional users).
- Applications can be completed by remote workers.
- Changes can be made to applications before the final version is submitted.

### **Question 2**

**Do you agree with the advantages identified for professional users from the online probate system?**

### **Question 3**

**Are there disadvantages with the online probate system? Please give details.**

### **Advantages to HMCTS of the online system**

22. For HMCTS the online process also represents a more secure and reliable system which offers cost savings and a range of efficiencies – for example a reduction in returning erroneous forms, dealing with fewer queries from practitioners on the arrival or progress of individual cases.
23. Provides a more flexible operating model as staff are able to work remotely (as demonstrated in the Covid-19 pandemic), and processing times are quicker and more efficient resulting in more applications being processed, reducing waiting times.
24. Moving from a paper-based system means costs of maintaining large archives of application documents are lessened while improving records storage and management.
25. Records can be searched and located much more easily.
26. Linkage to related electronic systems such as HM Revenue and Customs' Inheritance tax systems.
27. Increased levels of user satisfaction with service.

28. Lower running and operational costs

#### Question 4

**Do you have any comments on the advantages to HMCTS of the online service? Do you consider there are disadvantages (please give details)?**

#### Exceptions from the mandating of professional applications

29. There remain a small number of probate processes which it is proposed should continue to be excluded from the online process due to their specific characteristics. These are outlined below

- a) **Where there are** multiple applicants entitled under intestacy- the system is being developed, but at present the limit is on applications for grants of letters of administration to the spouse, civil partner or a single child. This is a small minority of applications.
- b) **Rule 31 – Grants to Attorneys**, only where the attorney (representative for a deceased person who when alive was subject to a power of attorney order) is not an existing probate professional able to use the online service.
- c) **Rule 36 – Trust Corporation applications** – these must be made by officers of the Trust Corporation, but work is advanced on these applications moving online too.
- d) **Rule 39 – Resealing under Colonial Probates Acts** – these applications continue to require an affidavit, rather than a statement of truth, and thus need to continue to be paper-based and posted to the Probate Service.

#### Question 5

**Do you disagree with any of the exceptions HMCTS proposes to make?**

#### Question 6

**Are there any other exceptions which you believe should be made to the mandating of professional user applications?**

## Equalities statement

30. Under the Equality Act 2010 (“the EA”), Government must consider the equalities impact of any proposed changes and have due regard to the need to:

- eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

31. For the purposes of the equality impact statement the relevant protected characteristics under the EA are: race; sex; disability; sexual orientation; religion and belief; age; marriage and civil partnership; gender reassignment; pregnancy and maternity.

32. Consideration has been given to the impact of the proposals in this consultation paper against the statutory obligations under the EA. The reforms are directed exclusively to professional users rather than the public, and the assessment is that professional users will be already using and conversant with electronic processes for conducting their business activities, and that no direct or indirect discrimination is believed to apply to protected characteristic groups resulting from these reforms. If evidence of any such discrimination were to come to light, we would consider the impact of such discrimination against the objectives pursued by the reforms and consider the potential for modifications to mitigate the impact.

## Question 7

**Do you consider that any of proposals will have a disproportionate impact on individuals with protected characteristics? Are there any potential modifications that we should consider to mitigate this impact? Please give reasons for your answer.**

# Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

## Question 1

**Do you agree that HMCTS should implement mandating of professional user applications? Please give reasons for your answer.**

## Question 2

**Do you agree with the advantages identified for professional users from the online probate system?**

## Question 3

**Are there disadvantages with the online probate system? Please give details.**

## Question 4

**Do you have any comments on the advantages to HMCTS of the online service? Do you consider there are disadvantages (please give details)?**

## Question 5

**Do you disagree with any of the exceptions HMCTS proposes to make?**

## Question 6

**Are there any other exceptions which you believe should be made to the mandating of professional user applications?**

## Question 7

**Do you consider that any of proposals will have a disproportionate impact on individuals with protected characteristics? Are there any potential modifications that we should consider to mitigate this impact? Please give reasons for your answer.**

**Thank you for participating in this consultation exercise.**

# About you

Please use this section to tell us about yourself

<b>Full name</b>	
<b>Job title</b> or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
<b>Date</b>	
<b>Company name/organisation</b> (if applicable):	
<b>Address</b>	
<b>Postcode</b>	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

**If you are a representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent.

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## Contact details/How to respond

Please send your response by [insert date] to:

Civil Law Policy  
Ministry of Justice  
PostPoint 10.24  
102 Petty France  
London SW1H 9AJ

**Tel:** [insert telephone number]

**Email:** [civillawreform@justice.gov.uk](mailto:civillawreform@justice.gov.uk)

### Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

### Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can be requested from [civillawreform@justice.gov.uk](mailto:civillawreform@justice.gov.uk).

### Publication of response

A paper summarising the responses to this consultation will be published by 28 September 2020. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

### Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.



## **Confidentiality**

By responding to this consultation, you acknowledge that your response, along with your name/corporate identity will be made public when the Department publishes a response to the consultation in accordance with the access to information regimes (these are primarily the Freedom of information Act 2000(FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

Government considers it important in the interests of transparency that the public can see who has responded to Government consultations and what their views are. Further, the Department may choose not to remove your name/details from your response at a later date, for example, if you change your mind or seek to be 'forgotten' under data protection legislation, if Department considers that it remains in the public interest for those details to be publicly available. If you do not wish your name/corporate identity to be made public in this way then you are advised to provide a response in an anonymous fashion (for example 'local business owner', 'member of public'). Alternatively, you may choose not to respond.

# Impact Assessment, Equalities and Welsh Language

## Impact assessment

A formal impact assessment has not been prepared for these reforms as the proposals do not exceed the £5 million threshold in terms of costs to businesses of implementing the reforms. One of the assumptions underpinning the proposals is that using the online system will generate savings and efficiencies for probate practitioners.

## Equalities

These reforms are confined to professional users rather than the public, and the proposals assume that modern practitioners and businesses will have access to equipment enabling them to submit online applications.

Different considerations would and do apply to probate applications being made by non-professional users for whom a paper-based system of applications will remain.

The proposals will not result in people being treated less favourably because of any protected characteristic and therefore our assessment is that the proposals are not directly discriminatory within the meaning of the Equality Act 2010.

We also do not consider that these reforms will amount to indirect discrimination within the meaning of the Equality Act 2010

We do not consider that the proposed changes provide any particularly significant opportunities to advance equality of opportunity.

## Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/691383/Consultation\\_Principles\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf)



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