

# British Probates Regulation 2018

Explanatory notes for SL 2018 No. 116

Made under the

*British Probates Act 1898*

## General Outline

### Short title

*British Probates Regulation 2018*

### Authorising law

Sections 3 and 6 of the *British Probates Act 1898*.

### Policy objectives and the reasons for them

The *British Probates Regulation 2008* (2008 Regulation) made under the *British Probates Act 1898* (Act) will automatically expire on 1 September 2018 under section 54 of the *Statutory Instruments Act 1992*. To support the operation of the Act, it is necessary for the 2008 Regulation to be remade.

The Act provides for the resealing, in Queensland, of probates and letters of administration granted in other parts of Her Majesty's dominions that would otherwise not have effect outside of the jurisdiction in which they are made.

Section 3 of the Act provides for the Governor in Council to declare by regulation a place to which the Act applies if satisfied that the place is part of Her Majesty's dominions and the legislature of the place recognises probates and letters of administration granted by the Supreme Court of Queensland.

The 2008 Regulation declares as places to which the Act applies all of the Australian States and Territories (including the external territories of Christmas Island, the Cocos (Keeling) Islands and Norfolk Island), as well as New Zealand (NZ) and the United Kingdom of Great Britain and Northern Ireland (UK) (places currently listed).

The legislature in each place currently listed continues to make adequate provision for the recognition of probates and letters of administration granted by the Supreme Court of Queensland.

The *British Probates Regulation 2018* (2018 Regulation) is in the same form as the 2008 Regulation, with minor changes necessary for consistency with current drafting practice.

## **Achievement of policy objectives**

The policy objectives of the 2018 Regulation are achieved by remaking the 2008 Regulation in the same form.

## **Consistency with policy objectives of authorising law**

The 2018 Regulation is consistent with the policy objectives of the Act, that is, to allow for the resealing, in Queensland, of probates and letters of administration granted in other parts of Her Majesty's dominions.

## **Inconsistency with policy objectives of other legislation**

The 2018 Regulation is not inconsistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

The 2018 Regulation supports the effective operation of the Act.

There are no anticipated implementation costs for the 2018 Regulation.

## **Consistency with fundamental legislative principles**

The 2018 Regulation is consistent with fundamental legislative principles.

## **Consultation**

The following key legal stakeholders have been consulted on the 2018 Regulation and have raised no concern regarding any specified place: the Queensland Law Society, the Public Trustee of Queensland and the Society of Trust and Estate Practitioners Queensland.

The Queensland Productivity Commission (QPC) was consulted regarding the requirements under the '*Queensland Government Guide to Better Regulation*' (Guidelines) for the remake of the 2008 Regulation. QPC considers that the objectives for sunset reviews under the Guidelines have been satisfied and that no further regulatory impact analysis is required.