

DRAFT STATUTORY INSTRUMENTS

2018 No. 0000 (L. 0)

SENIOR COURTS OF ENGLAND AND WALES

The Non-Contentious Probate (Fees) Order 2018

Made - - - - *****

Coming into force in accordance with article 1

The Lord Chancellor, with the consent of the Treasury, makes the following Order in exercise of the powers conferred by sections 92(1) and (2) and 108(6) of the Courts Act 2003(a) (“the 2003 Act”) and section 180(1) of the Anti-social Behaviour, Crime and Policing Act 2014(b) (“the 2014 Act”).

The Lord Chancellor has had regard to the matters referred to in section 92(3) of the 2003 Act and in section 180(3) of the 2014 Act and has consulted in accordance with section 92(5) and (6) of the 2003 Act.

A draft of this Order has been laid before Parliament and approved by resolution of each House of Parliament in accordance with section 180(7) of the 2014 Act.

Citation and commencement

1. This Order may be cited as the Non-Contentious Probate (Fees) Order 2018 and comes into force 21 days after the day on which the Order is made.

Interpretation: general

2.—(1) In this Order—

“the assessed value of an estate” has the meaning given in article 3;

“authorised place of deposit” means any place where, in accordance with a direction given under section 124 of the Senior Courts Act 1981(c) (place for deposit of original wills and other documents), original wills and other documents under the control of the High Court (either in the Principal Registry or a district registry) are deposited and preserved;

“district registry” means—

(a) the probate registry of Wales and any sub-registry attached to it;

(a) 2003 c. 39; section 92 was amended by paragraph 345 of Schedule 4 and paragraph 4 of Schedule 11 to the Constitutional Reform Act 2005 (c. 4), and paragraph 40(a) of Schedule 9 and paragraph 95 of Schedule 10 to the Crime and Courts Act 2013 (c. 22). Section 108(6) was amended by paragraph 348 of Schedule 4 to the Constitutional Reform Act 2005.

(b) 2014 c. 12.

(c) 1981 c. 54; section 124 was amended by paragraph 5 of Schedule 2 to the Constitutional Reform Act 2005.

(b) any district probate registry, or

(c) any sub-registry attached to a district probate registry;

“grant” means a grant of probate or letters of administration;

“the Principal Registry” means the Principal Registry of the Family Division and any sub-registry attached to it, and

“the registrar” means the district probate registrar of the district probate registry to which an application for a grant is made.

(2) Any reference in this Order to a fee by number is to the fee so numbered in Schedule 1.

Interpretation: assessed value of an estate

3.—(1) For the purposes of this Order, “the assessed value of an estate” means—

(a) in the case of an application for a grant, the value of the net real and personal estate (excluding any settled land and any relevant death gratuity) passing under the grant as shown—

(i) in the Inland Revenue affidavit (for a death occurring before 13th March 1975);

(ii) in the account required to be delivered under section 216 of the Inheritance Tax Act 1984(a) (for a death occurring on or after 13th March 1975), or

(iii) where paragraph (2) applies, in the oath which is sworn to lead to the grant, and

(b) in the case of an application to reseal, the value as shown in the document referred to in sub-paragraph (a)(i) to (iii), passing under the grant upon its being resealed.

(2) This paragraph applies in any case in which, in accordance with arrangements made under section 109 of the Senior Courts Act 1981(b) (refusal of grant where capital transfer tax unpaid) or regulations made under section 256(1)(a) or (aa) of the Inheritance Tax Act 1984(c) (regulations about accounts, etc.), the affidavit or account referred to in sub-paragraph (a)(i) or (ii) is not required to be delivered.

(3) In this article “relevant death gratuity” means a death gratuity payable—

(a) under section 17(2) of the Judicial Pensions Act 1981(d) (lump sum on retirement or death);

(b) under section 4(3) of the Judicial Pensions and Retirement Act 1993(e) (lump sum on the judicial officer’s retirement or death), or

(c) to the personal representatives of a deceased civil servant by virtue of a scheme made under section 1 of the Superannuation Act 1972(f) (superannuation schemes as respects civil servants, etc.).

(a) 1984 c. 51; section 216 was amended by paragraph 11 of Schedule 26 to the Finance Act 1985 (c. 54), section 101(1) and (3) of, and paragraph 29 of Schedule 19 to, the Finance Act 1986 (c. 41), paragraph 4 of Schedule 7 to the Finance (No 2) Act 1987 (c. 51), section 105 of the Finance Act 1999 (c. 16), paragraph 7 of Schedule 22 to the Finance Act 2006 (c. 25), paragraphs 54 and 85 to 109 of Schedule 16 to, the Finance Act 2011 (c. 11), and paragraph 5(1) of Schedule 25 to, the Finance Act 2014 (c. 26).

(b) Section 109 was amended by paragraph 20 of Schedule 8 to the Inheritance Tax Act 1984, and section 294(1) of, and paragraph 1 of Part 4 of Schedule 42 to, the Finance Act 2004 (c. 12).

(c) Section 256(1) was amended by section 293(1) and (2) of the Finance Act 2004.

(d) 1981 c. 20; section 17 was amended by paragraph 5 of Schedule 1 to the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and by S.I. 2015/182.

(e) 1993 c. 8; section 4 was amended by S.R. 2015/76 and S.I. 2015/182.

(f) 1972 c. 11; section 1 was amended by section 8 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), paragraph 14 of Schedule 8 to the Scotland Act 1998 (c. 46), section 34 of the Public Bodies Act 2011 (c. 24), paragraph 35 of Schedule 18 to the Financial Services Act 2012 (c. 21), paragraphs 6 and 7 of Schedule 8 and paragraphs 1 and 2 of Schedule 9 to the Public Service Pensions Act 2013 (c. 25), and by S.I. 2000/2040, 2011/3649, 2077/126 and 2013/3115.

Fees to be taken

4. The fees prescribed in column 2 of Schedule 1 are to be taken in the Principal Registry and each district registry in respect of the items described in column 1 in accordance with and subject to any directions specified in column 1.

Exemptions: general

5. If any convention entered into by Her Majesty with any foreign power provides that no fee is to be required to be paid in respect of any proceedings, the fees prescribed by this Order are not to be taken in respect of those proceedings.

Exemption: search made for documents over 100 years old

6. Fee 6 (inspection) is not to be taken where—
- (a) a search is made for research, or a similar purpose, for a document over 100 years old filed in any authorised place of deposit, and
 - (b) the President of the Family Division gives permission for no fee to be taken.

Refunds: armed forces

7. Where a fee has been taken on an application for a grant or resealing of a grant and that application was in respect of—

- (a) an estate which, on the date on which that fee was taken, was exempt from inheritance tax by virtue of section 154 of the Inheritance Tax Act 1984(a) (death on active service, etc.), and
- (b) a death occurring before 20th March 2003,

the Lord Chancellor must, on receipt of a written application from the person who paid the fee, refund to that person the difference between the fee taken and fee 2.2 (application for grant in respect of death in active service, etc.).

Remissions and refunds: Indian Ocean Tsunami and London Terrorist Bombings

8.—(1) The Lord Chancellor must remit in full any fee prescribed in this Order where it appears to the Lord Chancellor that an application for a grant or resealing of a grant is in respect of—

- (a) a death occurring as a result of the earthquake and tsunami in the Indian Ocean on 26th December 2004;
- (b) a death occurring as a result of another person's detonation of a bomb in London on 7th July 2005, or
- (c) a death occurring as a result of action taken in a police operation following another person's attempted detonation of a bomb in London on 21st July 2005.

(2) Where a fee has been taken under the Non-Contentious Probate Fees Order 2004(b)-

- (a) after 26th December 2004 but before 4th March 2005, in respect of a death occurring in the circumstance described in paragraph (1)(a), or
- (b) after 7th July 2005 but before 29th December 2005, in respect of a death occurring in the circumstances described in paragraph (1)(b) or (c),

the Lord Chancellor must, on receipt of a written application from the person who paid the fee, refund the fee to that person.

(a) Section 154 was amended by paragraph 99 of Schedule 16 to the Armed Forces Act 2006 (c. 52) and section 75(1) and (3) of the Finance Act 2015 (c. 11).

(b) S.I. 2004/3120. Relevant amending instruments are S.I. 2007/2174, 2011/588, 2013/2302, 2014/513, 590 and 876 and 2017/422.

Refund of fees on withdrawal of application for grant

9. Where an application for a grant is withdrawn before the issue of the grant, the registrar must refund to the applicant the difference between the fee taken and £50.

Remission of fees in exceptional circumstances

10. The Lord Chancellor may remit a fee prescribed in this Order where satisfied that there are exceptional circumstances which justify doing so.

Revocation

11. The Orders specified in Schedule 2 are revoked.

Transitional and saving provision

12. The Non-Contentious Probate Fees Order 2004 continues to have effect where an application described in column 1 of Schedule 1 has been received by the Principal Registry or a district registry before the coming into force of this Order.

Date *Name*
Parliamentary Under Secretary of State
Ministry of Justice

We consent

Date *Name*
Name
Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1 Article 4

FEES TO BE TAKEN

<i>Column 1</i> <i>Name and description of fee</i>	<i>Column 2</i> <i>Amount of fee</i>
1 Application for a grant or resealing of a grant	
On an application for a grant or resealing of a grant where the assessed value of the estate:	
(a) exceeds £50,000 but does not exceed £300,000;	£250
(b) exceeds £300,000 but does not exceed £500,000;	£750
(c) exceeds £500,000 but does not exceed £1,000,000;	£2,500
(d) exceeds £1,000,000 but does not exceed £1,600,000;	£4,000
(f) exceeds £1,600,000 but does not exceed £2,000,000;	£5,000
(g) exceeds £2,000,000	£6,000
Fee 1 is not payable on any application on which fee 2.1 or 2.2 is payable	

2 Special applications	
2.1 On an application for a duplicate or second or subsequent grant (including a grant following a revoked grant) in respect of the same estate as the original grant	£20
Fee 2.1 is not payable if the application for the grant was preceded only by a grant limited to settled land, to trust property or to part of the estate	
2.2 On an application for a grant or resealing of a grant in respect of— (a) a death occurring on or after 20th March 2003, and (b) an estate exempt from inheritance tax by virtue of section 154 of the Inheritance Tax Act 1984 (death in active service etc.)	£10
3 Caveats	
On an application for the entry or extension of a caveat	£20
4 Search	
On an application for a standing search to be carried out in an estate, for each period of six months and including the issue of a copy grant and will (if any) (irrespective of the number of pages)	£10
5 Deposit of wills	
On depositing a will for safe custody in the Principal Registry or a district registry	£20
6 Inspection	
On inspection of any will or other document retained by the Principal Registry or a district registry and in the presence of an official of that registry	£20
7 Copy documents	
On a request for a copy of any document:	
(a) for the first copy;	£10
(b) for every subsequent copy if supplied at the same time as the first copy;	50p
(c) where the copy or copies are made available on a computer disk or in any other electronic form, for each such copy	£10
Fees 7(a), (b) and (c) are payable whether or not the copy is provided as a certified copy	
8 Oaths	
For administering an oath:	
(a) for each deponent to each affidavit;	£11
(b) for marking each exhibit	£2
Fees 8(a) and (b) are not payable on an application for a grant which is a personal application	
9 Determination of costs	

For determining costs	The same fees as are payable under the Civil Proceedings Fees Order 2008(a) for determining costs (see Fee 5 (Determination of costs (Senior Court and County Court)) in Schedule 1)
10 Settling documents	
For perusing and settling citations, advertisements, oaths, affidavits or other documents, for each document settled	£12

SCHEDULE 2

ORDERS REVOKED

Article 11

<i>Title</i>	<i>S.I. number</i>
Non-Contentious Probate Fees Order 2004	S.I. 2004/3120
Non-Contentious Probate Fees (Indian Ocean Tsunami) Order 2005	S.I. 2005/266
Non-Contentious Probate Fees (London Terrorist Bombings) Order 2005	S.I. 2005/3359
Non-Contentious Probate Fees (Amendment) Order 2007	S.I. 2007/2174
Non-Contentious Probate Fees (Amendment) Order 2008	S.I. 2008/2854
Non-Contentious Probate Fees (Amendment) Order 2009	S.I. 2009/1497
Non-Contentious Probate Fees (Amendment) Order 2011	S.I. 2011/588
Non-Contentious Probate Fees (Amendment) Order 2013	S.I. 2013/1408
Non-Contentious Probate Fees (Amendment) Order 2014	S.I. 2014/876

EXPLANATORY NOTE

(This note is not part of the Order)

The Non-Contentious Probate (Fees) Order 2018 introduces a new regime of fees for non-contentious probate matters in the Principal Registry and district registries. It replaces the Non-Contentious Probate Fees Order 2004 (S.I. 2004/3120) ('the 2004 Order').

Under this Order, the fee payable for an application for a grant of probate or letters of representation or resealing of a grant is now to be determined by reference to a scale based on the assessed value of the estate. No fee is payable for such an application where the assessed value of the estate does not exceed £50,000. This scale replaces the flat fee of £155 (or £215 for a personal applicant) which was formerly payable in respect of estates valued in excess of £5,000. Article 3 provides the definition of "the assessed value of the estate". Schedule 1 sets out the relevant scales and fees for such an application. It also prescribes the fees payable for other non-contentious probate matters, although those amounts have not been changed by this Order.

Articles 5 to 9 largely consolidate existing legislative provisions regarding refunds and remissions that were made in, or in relation to, the 2004 Order. Article 9 makes provision for the registrar to provide a partial refund in circumstances where an applicant withdraws their application before a grant is issued.

The Order removes fees for non-contentious probate matters from the general fee remissions scheme for court and tribunals ('Help with Fees') previously contained in Schedule 1A to the 2004 Order. Article 10 retains a power for the Lord Chancellor to remit fees in exceptional circumstances.

(a) S.I. 2008/1053. Relevant amending instruments are S.I. 2014/874 and 2016/807.

Article 11 and Schedule 2 to this Order revoke the 2004 Order save that, in accordance with Article 12, the 2004 Order continues to have effect in place of this Order in respect of applications described in column 1 of Schedule 1 to this Order received by the Principal Registry or a district registry before the coming into force of this Order.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available at <https://legislation.gov.uk>.

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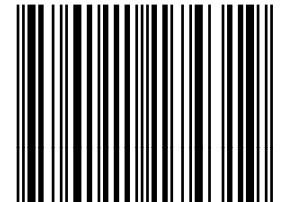
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