

1988 No. 93

FEES AND CHARGES

The Department of Trade and Industry (Fees) Order 1988

Made - - - - - *21st January 1988*

Coming into force *22nd January 1988*

Whereas a draft of this Order has been approved by a resolution of the House of Commons in pursuance of section 102(5) of the Finance (No. 2) Act 1987(a):

Now, therefore, the Secretary of State, in the exercise of the powers conferred by section 102 of that Act, and, in relation to article 9 of and Part VI of Schedule 1 and Part I of Schedule 2 to this Order, with the consent of the Lord Chancellor, hereby makes the following Order:—

Citation and Commencement

1. This Order may be cited as the Department of Trade and Industry (Fees) Order 1988, and shall come into force on the day after the day on which it is made.

Interpretation

2. In this Order—

- (a) “the Act” means the Finance (No. 2) Act 1987;
“the 1938 Act” means the Trade Marks Act 1938(b);
“the 1949 Act” means the Registered Designs Act 1949(c);
“the 1977 Act” means the Patents Act 1977(d);
“the 1985 Act” means the Companies Act 1985(e);
“the 1986 Act” means the Insolvency Act 1986;
“wireless telegraphy”, “wireless telegraphy apparatus” and “interference” have the meanings given to them in section 19 of the Wireless Telegraphy Act 1949(f);
- (b) any reference to any provision of the 1985 Act includes any corresponding provision of any enactment repealed and re-enacted, with or without modification, by the 1985 Act.

3.—(1) In relation to the power of the Secretary of State under section 708 of the 1985 Act by regulations made by statutory instrument to require the payment to the registrar of companies of such fees as may be specified in the regulations in respect of—

- (a) the performance by the registrar of such functions under the 1985 Act or the 1986 Act as may be so specified, including the receipt by him of any notice or other document which under either of those Acts is required to be given, delivered, sent or forwarded to him,
- (b) the inspection of documents or other material kept by him under either of those Acts,

(a) 1987 c.51.
(b) 1938 c.22.
(c) 1949 c.88.
(d) 1977 c.37.
(e) 1985 c.6, as amended by the Insolvency Act 1986 (c.45.).
(f) 1949 c.54.

(b) the inspection of documents or other material kept by him under either of those Acts,

the functions specified for the purpose of section 102(3) of the Act shall be those specified in Part I of Schedule 1 hereto.

(2) In relation to the power of the Secretary of State specified in paragraph (1) above, the matters specified for the purposes of section 102(4) of the Act shall be those specified in Part I of Schedule 2 hereto.

4.—(1) In relation to the power of the Secretary of State to fix fees under sections 53(5), 54(4) and 71(2) of the 1986 Act, the functions specified for the purposes of section 102(3) of the Act shall be those specified in Part I of Schedule 1 hereto.

(2) In relation to the power of the Secretary of State specified in paragraph (1) above, the matters specified for the purposes of section 102(4) of the Act shall be those specified in Part I of Schedule 2 hereto.

5.—(1) In relation to the power of the Secretary of State to fix fees under sections 40 and 41 of the 1938 Act^(a), the functions specified for the purposes of section 102(3) of the Act shall be those specified in Part II of Schedule 1 hereto.

(2) In relation to the power of the Secretary of State specified in paragraph (1) above, the matters specified for the purposes of section 102(4) of the Act shall be those specified in Part I and Part II of Schedule 2 hereto.

6.—(1) In relation to the power of the Secretary of State to fix fees under sections 36 and 40 of the 1949 Act, the functions specified for the purposes of section 102(3) of the Act shall be those specified in Part III of Schedule 1 hereto.

(2) In relation to the power of the Secretary of State specified in paragraph (1) above, the matters specified for the purposes of section 102(4) of the Act shall be those specified in Part I and Part II of Schedule 2 hereto.

7.—(1) In relation to the power of the Secretary of State to fix fees under section 123(2)(c) of and paragraph 14 of Schedule 4 to the 1977 Act, the functions specified for the purposes of section 102(3) of the Act shall be those specified in Part IV of Schedule 1 hereto.

(2) In relation to the power of the Secretary of State specified in paragraph (1) above, the matters specified for the purposes of section 102(4) of the Act shall be those specified in Part I and Part II of Schedule 2 hereto.

8.—(1) In relation to the power of the Secretary of State to fix fees under section 2(1) of the Wireless Telegraphy Act 1949 the functions specified for the purposes of section 102(3) of the Act shall be those specified in Part V of Schedule 1 hereto.

(2) In relation to the power of the Secretary of State specified in paragraph (1) above, the matters specified for the purposes of section 102(4) of the Act shall be those specified in Part I of Schedule 2 hereto.

9.—(1) In relation to the power of the Lord Chancellor to fix fees under section 133(1) of the Bankruptcy Act 1914^(b), section 663(4) of the 1985 Act and sections 414 and 415 of the 1986 Act and in relation to the power of the Secretary of State to fix fees under sections 4 and 10 of the Insolvency Act 1985^(c) and sections 392, 414 and 419 of the 1986 Act, the functions specified for the purposes of section 102(3) of the Act shall be those specified in Part VI of Schedule 1 hereto.

(a) The 1938 Act was applied, with modifications, to service marks by the Trade Marks (Amendment) Act 1984 (c.19), section 1, as amended by the Patents, Designs and Marks Act 1986 (c.39), section 2(1) and Schedule 3.

(b) 1914 c.59.

(c) 1985 c.65.

(2) In relation to the power of the Lord Chancellor specified in paragraph (1) above and in relation to the power of the Secretary of State specified in that paragraph, the matters specified for the purposes of section 102(4) of the Act shall be those specified in Part I of Schedule 2 hereto.

21st January 1988

John Butcher
Parliamentary Under Secretary of State,
Department of Trade and Industry

I consent.

21st January 1988

Mackay of Clashfern C.
Lord Chancellor

SCHEDULE 1

PART I

1. Functions of the Secretary of State and the registrar of companies by virtue of the 1985 Act.
2. Functions of the registrar of companies by virtue of the 1986 Act.
3. Functions of inspectors appointed under Part XIV of the 1985 Act and of officers authorised under section 447 of that Act.
4. Functions of the Secretary of State in relation to anything done by the European Communities or any of their institutions with respect to company law, and the maintenance of relations with authorities and other persons both within the United Kingdom and abroad in respect of matters relating to company law.
5. Any other functions of the Secretary of State and the registrar of companies in relation to companies, including, without prejudice to the generality of the foregoing:-
 - (a) prosecution of offences under the 1985 Act and the taking of action with a view to ensuring compliance with any obligation arising under the 1985 Act;
 - (b) investigation of complaints relating to the conduct of the affairs of companies and consideration of requests for advice on questions of company law;
 - (c) review of the functioning of company law and consideration and development of proposals for legislation relating to companies;
 - (d) consideration, including in international fora, of accounting standards and auditing practices in relation to accounts of companies;
 - (e) the conduct of civil proceedings in relation to any of the functions specified in this part of this Schedule.

PART II

6. (a) the functions of the Registrar under the 1938 Act, other than those under sections 48(2) and 50(1);
 - (b) the functions of the Keeper of the Manchester Branch under section 39 of the 1938 Act;
 - (c) the function of the Secretary of State of remitting to the Cutlers' Company a proportion of each fee paid to the Registrar upon the making of an application for the registration of a trade mark in respect of metal goods (within the meaning of Schedule 2 to the 1938 Act), upon the registration of such a mark or upon the renewal of such registration, being an application, registration or renewal effected at the office of the Cutlers' Company; and

- (d) the function of the Secretary of State of making payments to the World Intellectual Property Organisation in accordance with international obligations of the United Kingdom, so far as those payments or those obligations relate to trade marks or service marks.

PART III

- 7. (a) the functions of the Registrar under the 1949 Act (other than section 5); and
- (b) the function of the Secretary of State of making payments to the World Intellectual Property Organisation in accordance with international obligations of the United Kingdom so far as those payments or those obligations relate to industrial designs.

PART IV

- 8. (a) the functions of the comptroller and the examiners under the 1977 Act (other than section 22) and the Patents Act 1949(a) (other than section 18);
- (b) the functions performed by the Patent Office under the European Patent Convention(b) and the Patent Co-operation Treaty(c);
- (c) the function of the Secretary of State of paying to the European Patent Organisation amounts due from Her Majesty under Article 39 of the European Patent Convention (payments in respect of renewal fees for European patents); and
- (d) the function of the Secretary of State of making payments to the World Intellectual Property Organisation in accordance with international obligations of the United Kingdom, so far as those payments or those obligations relate to patents;

and references in this paragraph to the European Patent Convention and the Patent Co-operation Treaty are to the Convention and the Treaty referred to by those names in section 130(1) and (6) of the 1977 Act.

PART V

9. The function of formulation and implementation of national and international radio communications policy, including the present and future use of wireless telegraphy apparatus, the immunity of non-wireless telegraphy electrical and electronic apparatus, the control of the generation of electromagnetic energy and the management of the radio spectrum, and the integration of that policy with other inter or intra departmental policies including telecommunications and broadcasting.

10. The function of planning and management of spectrum allocation and assignment (including monitoring), and the allocation of blocks of spectrum and assignment of individual frequencies.

11. The function of enforcement of national and international wireless telegraphy legislation including monitoring and prosecution.

12. The function of consideration of new and existing wireless telegraphy apparatus and the formulation of standards for wireless telegraphy and non-wireless telegraphy electrical and electronic equipment.

13. The function of research into aspects of radio technology including radio wave propagation, the control of the generation of electromagnetic energy and immunity from interference.

14. The function of development of proposals for legislation relating to wireless telegraphy whether national, European or international.

15. The function of the creation and administration of an appeal tribunal under section 10 of the Wireless Telegraphy Act 1949.

(a) 1949 c.87.

(b) Cmnd 8510.

(c) Cmnd 7340.

PART VI

16. Functions of official receivers as provisional liquidators, interim receivers of a debtor's property, receivers and managers of a bankrupt's estate, liquidators, trustees in bankruptcy and in their capacity as official receivers, under the Companies Act 1948(a), the 1985 Act, the Bankruptcy Acts 1914 and 1926(b), the Powers of Criminal Courts Act 1973(c), the Insolvency Act 1976(d), the Insolvency Act 1985, the 1986 Act and the Company Directors Disqualification Act 1986(e) and subordinate legislation made under those enactments.

17. Functions of the Secretary of State, the Board of Trade and the Insolvency Practitioners Tribunal under Part V of the Companies Act 1948, Parts IX and XX of the 1985 Act, the Deeds of Arrangement Act 1914(f), the Bankruptcy Acts 1914 and 1926, the Insolvency Services (Accounting and Investment) Act 1970(g), the Insolvency Act 1976, the Insolvency Act 1985, the 1986 Act and the Company Directors Disqualification Act 1986 and subordinate legislation made under those enactments.

18. Functions of official receivers, the Secretary of State and the Board of Trade in relation to the investigation and prosecution of fraud or other malpractice in respect of the affairs of bankrupts and bodies in liquidation.

19. Functions of the Secretary of State in relation to the supervision of the operation of all the insolvency and related procedures set out in the Insolvency Act 1986, the Bankruptcy (Scotland) Act 1985(h), the other enactments set out in paragraphs 16 and 17 above and the Bankruptcy (Scotland) Act 1913(i), including the development and implementation of proposals for the modification or improvement of those procedures by primary or subordinate legislation and the consideration of and contribution to proposals for other United Kingdom legislation having an impact on those procedures.

20. Functions of the Secretary of State in relation to anything done by the European Communities or any of their institutions, or any international instruments, in relation to insolvency and the maintenance of relations with authorities and other persons both within the United Kingdom and abroad in respect of insolvency matters.

SCHEDULE 2

PART I

1. All costs incurred by the Secretary of State, the registrar of companies, the Comptroller-General of Patents, Designs and Trade Marks, official receivers, the Board of Trade and the Insolvency Practitioners Tribunal which are directly attributable to the functions specified in Schedule 1 above.

2. That proportion of the costs, not falling within paragraph 1 above, incurred by, or on behalf of, any of the persons specified in paragraph 1 above, in relation to staff, equipment, premises, facilities and matters connected, whether directly or indirectly, therewith, being the proportion which falls to be attributed to any of the functions specified in Schedule 1 above.

3. A return on the resources employed in carrying out any of the functions specified in Schedule 1 above.

4. The allocation of a sum in respect of matters which would otherwise be covered by insurance, the allocation of a sum in respect of superannuation payments and provision for bad debts, in relation to any of the functions specified in Schedule 1 above.

5. The recovery of any past deficits incurred in relation to any of the functions specified in Schedule 1 above.

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- (a) 1948 c.38.
(b) 1926 c.7.
(c) 1973 c.62.
(d) 1976 c.60.
(e) 1986 c.46.
(f) 1914 c.47.
(g) 1970 c.8.
(h) 1985 c.66.
(i) 1913 c.20.

6. Amounts recovered in relation to any of the functions specified in Schedule 1 above other than from such fees as are referred to in this Order.

7. The allocation, over a period of years, of an initial or exceptional cost in relation to any of the functions specified in Schedule 1 above.

PART II

8. In respect of any function of any of the persons specified in paragraph 1 above consisting of the payment or remittance of any sum or amount, both the sum or amount in question and the cost incurred in effecting the payment or remittance.

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order specifies functions and matters which are to be taken into account in the determination of fees to be fixed by the Secretary of State for Trade and Industry in respect of certain activities concerning companies, intellectual property and wireless telegraphy and, in relation to insolvency, to be fixed by the Lord Chancellor and the Secretary of State for Trade and Industry.

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