

2007 No. 2174 (L. 14)

SUPREME COURT OF ENGLAND AND WALES

The Non-Contentious Probate Fees (Amendment) Order 2007

Made - - - - *24th July 2007*
Laid before Parliament *26th July 2007*
Coming into force - - *1st October 2007*

The Lord Chancellor, with the consent of the Treasury, makes the following Order in exercise of the powers conferred by section 92 of the Courts Act 2003(a).

In accordance with section 92(5) and (6) of that Act the Lord Chancellor has consulted the Lord Chief Justice, the Master of the Rolls, the President of the Queen’s Bench Division, the President of the Family Division, the Chancellor of the High Court, the Head of Civil Justice, the Deputy Head of Civil Justice and the Civil Justice Council.

1. This Order may be cited as the Non-Contentious Probate Fees (Amendment) Order 2007 and shall come into force on 1st October 2007.

2. In this Order, “the 2004 Order” means the Non-Contentious Probate Fees Order 2004(b).

3. For articles 4 and 5 of the 2004 Order substitute—

“Remission of fees

4. Schedule 1A applies for the purpose of ascertaining whether a party is entitled to a remission or part remission of a fee prescribed by this Order.

5. The Lord Chancellor may, on the ground of financial hardship or for other reasonable cause, remit in whole or in part any fee prescribed by this Order.”.

4. After Schedule 1 of the 2004 Order, insert the Schedule in the Schedule to this Order.

24th July 2007
We consent,

Jack Straw
Lord Chancellor

24th July 2007

Frank Roy
Alan Campbell
Two of the Lords Commissioners of Her Majesty’s Treasury

(a) 2003 c.39. section 92 is amended by section 15(1) of and paragraphs 308 and 345 of Part I of Schedule 4 to the Constitutional Reform Act 2005 (c.4) from 1 October 2005 and by section 59(5) of and paragraph 4(1) and (3) of Schedule 11 to that Act from a date to be appointed.

(b) S.I. 2004/3120. Further provisions about the remission of fees are made by S.I.2005/266 and 2005/3359.

SCHEDULE

Article 4

“SCHEDULE 1A

Article 4

Remission of fees

Interpretation

1.—(1) In this Schedule—

“child care costs” and “the Independent Living Funds” have the meaning given to them in the Criminal Defence Service (Financial Eligibility) Regulations 2006**(a)**;

“child” means a child of the party, living in his household, under the age of 18;

“couple” has the meaning given in section 3(5A) of the Tax Credits Act 2002**(b)**;

“disposable monthly income” has the meaning given in paragraph 3;

“excluded benefits” means —

(a) any of the following benefits payable under the Social Security Contributions and Benefits Act 1992**(c)**—

(i) attendance allowance paid under section 64;

(ii) severe disablement allowance;

(iii) carer’s allowance;

(iv) disability living allowance;

(v) constant attendance allowance paid under section 104 or paragraph 4 or 7(2) of Schedule 8 as an increase to a disablement pension;

(vi) council tax benefit;

(vii) any payment made out of the social fund;

(viii) housing benefit;

(b) any direct payments made under the Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2003**(d)** or the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2004**(e)**;

(c) a back to work bonus payable under section 626 of the Jobseekers Act 1995**(f)**;

(d) any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983**(g)**;

(e) any pensions paid under the Naval, Military and Air Forces etc (Disablement and Death) Service Pension Order 2006**(h)**;

(f) any payments made from the Independent Living Funds; and

(g) any financial support paid under an agreement for the care of a foster child;

(a) S.I. 2006/2492; there are no relevant amendments.

(b) 2002 c.21. Section 5A was inserted by paragraph 144 of Schedule 24 to the Civil Partnership Act 2004 (c.33).

(c) 1992 c.4.

(d) S.I. 2003/762.

(e) S.I. 2004/1748.

(f) 1995 c18.

(g) S.I. 1983/686.

(h) S.I. 2006/606.

“gross monthly income” means total monthly income, for the month in which the application for remission or part remission is made, from all sources other than receipt of any of the excluded benefits;

“partner” means a person with whom the party lives as a couple and includes a person with whom the party is not currently living but from whom he is not living separate and apart;

“party” means the party who would, but for this Schedule, be liable to pay the fee required under this Order.

Remission or part remission of fees

2.—(1) No fee shall be payable under this Order by a party if, at the time when the fee would otherwise be payable, his disposable monthly income is £50 or less.

(2) The maximum amount of fee payable by a party is—

- (a) if his disposable monthly income is more than £50 but does not exceed £210, an amount equal to one-quarter of every £10 of his disposable monthly income up to a maximum of £50; and
- (b) if his disposable monthly income is more than £210, an amount equal to £50 plus one-half of every £10 over £200 of his disposable monthly income.

(3) Where the fee that would otherwise be payable under this Order is greater than the maximum fee which a party is required to pay as calculated in sub-paragraph (2), the fee shall be remitted to the amount payable under that sub-paragraph .

Disposable monthly income

3.—(1) A party’s disposable monthly income is his gross monthly income for the month in which the fee becomes payable (“the period”) less the deductions referred to in sub-paragraphs (2) and (3).

(2) There are to be deducted from the gross monthly income —

- (a) income tax paid or payable in respect of the period;
- (b) any contributions estimated to have been paid under Part I of the Social Security Contributions and Benefits Act 1992;
- (c) either—
 - (i) monthly rent or monthly payment in respect of a mortgage debt or hereditary security, payable by him in respect of his only or main dwelling, less any housing benefit paid under the Social Security Contributions and Benefits Act 1992; or
 - (ii) the monthly cost of his living accommodation.
- (d) any child care costs paid or payable in respect of the period;
- (e) if the party is making bona fide payments for the maintenance of a child who is not a member of his household, the amount of such payments paid or payable in respect of the period;
- (f) any amount paid or payable, in respect of the period, in pursuance of a court order.

(3) There shall be deducted from the gross monthly income an amount representing the cost of living expenses in respect of the period being—

- (a) £279; plus
- (b) £198 for each child of the party; plus
- (c) £142, if the party has a partner.

Resources of partners

4.—(1) For the purpose of determining whether a party is entitled to the remission or part remission of a fee in accordance with this Schedule, the income of his partner, if any, is to be included as income of the party.

(2) The receipt by a partner of a qualifying benefit does not entitle a party to remission of a fee.

Application for remission of fees

5.—(1) An application for remission or part remission of a fee shall be made to the court officer at the time when the fee would otherwise be payable.

(2) The applicant must provide documentary evidence of—

- (a) such of his gross monthly income as he derives from—
 - (i) employment;
 - (ii) rental or other income received from persons living with him by reason of their residence in his home;
 - (iii) a pension; or
 - (iv) a state benefit, not being an excluded benefit;
- (b) any expenditure being deducted from his gross monthly income in accordance with paragraph 3(2).”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Non-Contentious Probate Fees Order 2004 (S.I. 2005/3120) by inserting Schedule 1A which sets out when a party is entitled to remission or part remission of a fee.

£3.00

© Crown copyright 2007

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E1136 7/2007 171136T 19585