

**EXPLANATORY MEMORANDUM TO
THE PUBLIC TRUSTEE (FEES) (AMENDMENT) ORDER 2007**

2007 No. 681

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

This Statutory Instrument amends the Public Trustee (Fees) Order 1999 (“the 1999 Order”) (which has itself been amended by four previous Statutory Instruments) to do three things. First, it removes the withdrawal fee that currently is payable when the Public Trustee retires as trustee of an estate or trust. Secondly, it provides that the Public Trustee’s annual administration fee (which currently is payable in advance on 1 April of each year) is apportioned and paid monthly over a twelve month period. Thirdly, it provides for the use of up to date valuations to calculate the Public Trustee’s annual administration fee, which is charged on a scale fee basis depending on the value of assets under the control of the Public Trustee.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

The Joint Committee is referred to the policy background statement below at section 7 of this Memorandum.

4. **Legislative Background**

4.1 The Public Trustee was created under the Public Trustee Act 1906 (“the 1906 Act”) to be a responsible public sector trustee to whom people wishing to set up a trust could safely entrust their assets and whose liabilities would be guaranteed by the Crown.

4.2 Section 9 of the 1906 Act provides that the Public Trustee may charge such fees as the Lord Chancellor may fix. The power was originally vested in the Treasury with the consent of the Lord Chancellor, but this was amended under section 2 of the Public Trustee (Liability and Fees) Act 2002 to vest the power in the Lord Chancellor. The 1999 Order (which sets out the basis on which the Public Trustee may charge for his services) was made in accordance with Section 9 of the 1906 Act and the purpose of this Statutory Instrument is to amend the 1999 Order.

5. **Extent**

This instrument applies to England and Wales.

6. European Convention on Human Rights

As this instrument is not subject to affirmative resolution nor is it a negative instrument, which amends primary legislation, no statement is required.

7. Policy background

7.1 The Lord Chancellor has approved proposals for the Public Trustee to retire from the bulk of his existing caseload in favour of a single private sector trustee, leaving him to act as trustee only in those cases where public sector involvement is required - the intention is for a case to be dealt with in the public sector where the beneficiary is vulnerable or there is some reason, in the interests of justice, why the case needs to be dealt with in the public sector. This policy was announced to Parliament by ministerial statement on 23 May 2006.

7.2 In accordance with this proposal, the Public Trustee invited suitable private sector trustees to bid for those cases from which he intends to retire. That process has completed. The beneficiaries of the trusts are being consulted as to whether they would wish their case to be transferred to the nominated provider or to a suitable alternative provider of their choice.

7.3 The rationale for the amendments is as follows: -

Abolition of the withdrawal fee on retirement from an estate or trust

In view of the wish of the Public Trustee to retire from these cases either in favour of the nominated provider or trustees selected by the beneficiaries, it is inappropriate to charge a withdrawal fee.

As far as any remaining cases are concerned, should there come a time when public sector involvement is no longer required in a particular case, the Public Trustee will seek to retire from that case. For the same reason, in that event it would be inappropriate to charge a withdrawal fee on retirement.

Apportionment of the administration fee

The current position is the Public Trustee charges the administration fee in full at the start of the administration year, regardless of whether either he retires or the case comes to an end part way through the year. The nominated provider (or any other trustee who takes over a case from the Public Trustee) will of course be entitled to charge fees from the date that the Public Trustee retires and they take over as trustee.

The apportionment of the administration fee over a 12 month period will ensure that the Public Trustee charges an administration fee only to the month that he retires. For cases that come to an end during the administration year, this amendment will ensure that the administration fee is payable only until the date that the Public Trustee ceases to act.

The use of up to date valuations

The fees of the Public Trustee are charged on a scale fee basis on the value of the assets under his control. This amendment will mean that the fees are charged based on updated values of assets under the control of the Public Trustee as at 30 September

2006. This merely reflects the fact that the fees of the Public Trustee should reflect the up to date value of the assets that are under his control.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

Mr David Thompson at the Office of the Official Solicitor and Public Trustee (Tel: 020 7911 7158 or e-mail: david.thompson@offsol.gsi.gov.uk) can answer any queries regarding the instrument.