

2008 No. 611

TRUSTEES, ENGLAND AND WALES

The Public Trustee (Fees) Order 2008

Made - - - - *5th March 2008*

Coming into force - - *1st April 2008*

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The Lord Chancellor makes the following Order in exercise of the power conferred by section 9(1) of the Public Trustee Act 1906(a) as extended by section 1 of the Public Trustee (Fees) Act 1957(b).

(a) 1906 c. 55; section 9(1) was amended by section 2(1)(a) of the Public Trustee (Liability and Fees) Act 2002 (c. 35).
(b) 1957 c. 12; section 1(1) was amended by section 2(3) of the Public Trustee (Liability and Fees) Act 2002.

PART 1

Citation, commencement and interpretation

Citation and commencement

1. This Order may be cited as the Public Trustee (Fees) Order 2008 and shall come into force on 1st April 2008.

Interpretation

2. In this Order—

“acceptance valuation date” in respect of any trust property means the date selected by the public trustee in relation to that property under article 11(1) or 15(1);

“executor” means the executor of a will or the administrator of an estate however appointed;

“financial year” means the year ending on 31st March;

“gross capital value” means the value of the estate or trust property (excluding any annuity or other terminable payment purchased by any person in the name of, transferred to or covenanted to be paid to the public trustee for the benefit of some other person) without deduction for debts, incumbrances, funeral expenses or inheritance tax.

PART 2

General

Payment of fees from capital or income

3.—(1) Subject to paragraph (2), all fees must be paid out of capital.

(2) The following fees must be paid out of income—

- (a) fees which the public trustee has directed to be paid out of income under section 1(3) of the Public Trustee (Fees) Act 1957;
- (b) the administration fee in cases to which article 18 applies;
- (c) the insurance fee provided for by article 21;
- (d) the income collection fee provided for by article 24;
- (e) the management fee provided for by article 30; and
- (f) the value added tax fee provided for by article 31, in cases where the fee in respect of which the value added tax fee is payable is itself payable out of income.

Calculation

4. In ascertaining the amount payable in respect of any fee the public trustee—

- (a) will take the value of any estate or trust property to be the price which it is estimated that the estate or property would fetch in the open market; and
- (b) may treat the value of any estate or trust property as being that multiple of £100 which is nearest to the estimate of its exact value.

Postponement of payment of fee

5. The public trustee may postpone any payment due in respect of any fee.

Commutation

6. Liability to pay all or any part of any sums which may become due in respect of any fee may be commuted by the public trustee in consideration of a payment which represents the capital value of that liability.

Power to remit fees and settle disputes

7.—(1) The public trustee may remit so much as appears equitable of any fee payable in respect of any estate or trust where the whole or any part of the property is in another estate or trust in which the public trustee is acting.

(2) The public trustee may remit the whole or part of any fee where it is equitable to do so having regard to—

- (a) the nature and character of the estate, trust or other matter;
- (b) the work in respect of which the fee is charged; or
- (c) the impact of the fee on a beneficiary or beneficiaries.

PART 3

Executorship fee

When executorship fee payable

8. An executorship fee is payable, in accordance with articles 9 to 11, on acceptance by the public trustee of any executorship.

Property subsequently received

9. If additional property becomes part of an estate of which the public trustee is executor an executorship fee is payable in respect of the gross capital value of the additional property on its acceptance valuation date of such amount as would have been payable if the additional property had formed part of the estate at the date of acceptance of the executorship and this Order had been in force at that date.

Postponement of payment of executorship fee

10. Where an executorship fee becomes payable under article 8 or 9 in respect of an estate any part of which is not in possession or not readily realisable, the public trustee will exclude the value of that part from the value of the remainder of the estate for the purpose of ascertaining the amount of the executorship fee then payable.

Amount of executorship fee

11.—(1) Subject to paragraphs (3) and (4), the executorship fee is calculated in accordance with paragraph (2) as a percentage of the gross capital value of the estate on the date of acceptance or on such convenient date as the public trustee may select.

(2) The rate of executorship fee is—

- (a) in respect of the first £50,000, 12.5 per cent;
- (b) in respect of any excess over £50,000 up to £75,000, 10 per cent;
- (c) in respect of any excess over £75,000 up to £100,000, 5 per cent;
- (d) in respect of any excess over £100,000, 3.8 per cent

but so that the fee payable is not less than £1,250.

(3) Where the main asset of an estate to be vested in one or more beneficiaries is an unencumbered property which was the principal private residence of the deceased and the public trustee's executorship duties have been exceptionally simple, a reduction may be made in the amount of the fee payable.

(4) Where the public trustee is acting as personal representative of a deceased statutory owner or tenant for life and is not acting otherwise in the trust a fee of £150 only will be payable.

(5) In this article, "statutory owner" and "tenant for life" have the meanings given by section 117(1) of the Settled Land Act 1925(a).

PART 4

Acceptance fee

When acceptance fee payable

12.—(1) Subject to paragraph (2), an acceptance fee is payable, in accordance with articles 13 to 15, on acceptance by the public trustee of any trust other than a trust consisting entirely of an annuity or other terminable payment purchased by any person in the name of, transferred to or covenanted to be paid by the public trustee for the benefit of some other person.

(2) An acceptance fee is not payable in respect of any estate which the public trustee accepts as executor on or after 1st April 1977 during the period in which the public trustee so acts.

Property subsequently coming into trust

13. If additional property becomes subject to a trust (other than an executorship accepted by the public trustee on or after 1st April 1977) which is administered by the public trustee as executor or as trustee, and such property is not an accumulation of the income of the property already subject to the estate or the trust, an acceptance fee is payable in respect of the gross capital value of the additional property on its acceptance valuation date of such amount as would have been payable if—

- (a) the additional property had formed part of the estate or the trust property at the date of acceptance of the estate or the trust; and
- (b) this Order had been in force at that date.

Postponement of payment of acceptance fee

14. Where an acceptance fee becomes payable in accordance with article 12 or 13 in respect of estate or trust property, any part of which is not in possession or not readily realisable, the public trustee—

- (a) will exclude the value of the property not in possession or not readily realisable from the value of the remainder of the estate or trust property for the purpose of ascertaining the amount of the acceptance fee then payable; and
- (b) will, when the property so excluded falls into possession or is realised, as the case may be, charge an acceptance fee in respect of the gross capital value of the excluded property of such amount as would have been payable if—
 - (i) the excluded property had formed part of the estate or of the trust property at the date of acceptance of the estate or of the trust; and
 - (ii) this Order had been in force at that date.

(a) 1925 c. 18.

Amount of acceptance fee

15.—(1) The acceptance fee is calculated in accordance with paragraph (2) as a percentage of the gross capital value of the estate or the trust property on the date of acceptance or on such convenient date as the public trustee may select.

(2) Subject to paragraph (3), where the public trustee is acting—

- (a) under a declaration of trust in favour of one beneficiary only; or
- (b) as original, substituted or additional trustee of property to which an infant is absolutely entitled under a will (or other testamentary disposition) or on an intestacy,

the rate of the acceptance fee is—

- (i) in respect of the first £50,000, 1.25 per cent;
- (ii) in respect of any excess over £50,000, 0.5 per cent

but so that the fee payable is not less than £175.

(3) No acceptance fee will be charged in respect of property to which paragraph (2) applies if that property is immediately and directly derived from an estate or a trust in which the public trustee is acting.

(4) In all other cases in which the public trustee is acting as trustee the rate of the acceptance fee is one half the rate of the executorship fee but so that the fee payable is not less than £550.

PART 5

Administration fee

When administration fee payable

16.—(1) Subject to paragraph (3), an administration fee is payable, in accordance with articles 17 and 18, at the beginning of each financial year.

(2) An administration fee is payable in full even if the public trustee ceases to act in the estate or the trust, or any part of the estate or trust, in the course of that year.

(3) An administration fee is not payable—

- (a) in respect of the period between the date of the acceptance of a trust or any part of a trust and the commencement of the next financial year; or
- (b) in respect of any estate or part of an estate which the public trustee accepts as executor during the period in which the public trustee so acts.

Amount of administration fee

17.—(1) Subject to paragraphs (5) to (9), the administration fee is the relevant percentage of that multiple of £100 which is nearest to the net capital value of the estate or the trust fund as certified by the public trustee after such value has been estimated in accordance with paragraph (2).

(2) The net capital value of an estate or a trust fund is $A + B - C$ where—

“A” is the value on the appropriate valuation date of the estate or the trust property other than interests not in possession and annuities or other terminable payments to which article 18 applies;

“B” is the value, on its acceptance valuation date, of any additional property becoming part of the estate or subject to the trust during the relevant period; and

“C” is such sum as the public trustee considers to be a reasonable deduction in respect of any estate or trust property distributed or disbursed by the public trustee during the relevant period.

(3) In valuing any property for the purposes of this article no deduction will be made for any debt specifically charged on it.

- (4) The relevant percentage of the net capital value of the estate or the trust fund is—
- (a) in respect of the first £30,000, 5 per cent;
 - (b) in respect of any excess over £30,000 up to £150,000, 3 per cent;
 - (c) in respect of any excess over £150,000 up to £375,000, 2 per cent;
 - (d) in respect of any excess over £375,000 up to £2,500,000, 1.25 per cent;
 - (e) in respect of any excess over £2,500,000 up to £3,000,000, 0.6 per cent; and
 - (f) in respect of any excess over £3,000,000, 0.3 per cent,

but so that the fee payable is not less than £375.

(5) Where the public trustee is acting exclusively as custodian trustee, the fee payable will be reduced by one half where the trust was accepted before 1st April 1980.

(6) Where the public trustee is acting exclusively as trustee of a settlement under the Settled Land Act 1925(a), the fee payable will be reduced by three quarters in respect of any part of the trust property which at the date on which the fee becomes payable is represented by land.

(7) Where the public trustee is acting as trustee under a declaration of trust for one beneficiary only, the fee payable will be reduced by five eighths.

(8) Where the public trustee is acting in a trust or an estate where an asset is represented by either—

- (a) the principal private residence of a beneficiary who discharges all outgoings but pays no rent to the estate or trust; or
- (b) a mortgage secured on the principal private residence of a beneficiary,

the fee payable will be reduced by three quarters in respect of that asset provided that in the event of a beneficiary occupying part only of a building such reduction will apply only to the value of that part of the building.

(9) Where the trust or estate has a net capital value of less than £3,000 (calculated in accordance with paragraph (2)) the fee payable will be 10 per cent of the net capital value.

(10) In this article—

“appropriate valuation date” means whichever of the following dates next precedes the date on which the fee is payable—

- (a) 30th September 2006, in the case of any estate or trust in which the public trustee was acting on that date; and
- (b) in any other case, the acceptance valuation date of the estate or trust;

“relevant period” means the period between the appropriate valuation date and the date on which the fee is payable.

Annuities

18. Where trust property includes an annuity or other terminable payment purchased by any person in the name of, transferred to or covenanted to be paid to the public trustee for the benefit of some other person, the administration fee in respect of that annuity or other payment is charged at the rate of 5 per cent of the gross income without deduction of income tax or other outgoings, and no other fee is payable under this Part.

(a) 1925 c. 18, as amended by the Trusts of Land and Appointment of Trustees Act 1996 (c. 47).

PART 6

Withdrawal fee

When withdrawal fee payable

19. A withdrawal fee is payable—
- (a) on the public trustee ceasing to act—
 - (i) as trustee or manager of any scheme or funds under Part 8 whether on retirement or otherwise; or
 - (ii) other than on retirement, in any estate or trust; or
 - (b) on the withdrawal or distribution of any part of the estate or the trust property, or, as the case may be, of the capital of a scheme or fund under Part 8, except where—
 - (i) the public trustee ceases to act as executor of an estate in respect of which an executorship fee is payable;
 - (ii) trust property held on a declaration of trust in favour of one beneficiary only is withdrawn for the purpose of transfer to a new executorship or a new trust accepted by the public trustee;
 - (iii) the public trustee is acting other than as trustee or manager of any scheme or fund under Part 8 and the trust or estate has, in the opinion of the public trustee, a total value of £30,000 or less on 31st March 2004; or
 - (iv) trust property or, as the case may be, capital of a scheme or fund under Part 8, is withdrawn for the purpose of paying any fees prescribed by this Order.

Amount of withdrawal fee

20.—(1) Subject to paragraph (4), the withdrawal fee is charged at a relative percentage of the gross capital value of the property withdrawn or distributed.

(2) Subject to paragraph (3), the relative percentage is—

- (a) one half of the effective rate of administration or management fee charged on that property on the assessment date immediately prior to withdrawal, other than where the public trustee ceases to act on retirement, in any estate or trust; and
- (b) equivalent to the effective rate of administration or management fee charged on that property on the assessment date immediately prior to withdrawal or distribution, in any other case.

(3) Where the property did not form part of the estate or trust on the assessment date prior to withdrawal or distribution the value of that property on its acceptance valuation date will be used to determine the effective rate of the administration fee as if it had formed part of the estate or trust on the assessment date prior to withdrawal or distribution.

(4) Where the public trustee ceases to act as trustee or manager of any scheme or fund under Part 8—

- (a) the withdrawal fee is such amount as may be agreed between the public trustee and the other trustees of the scheme or society as commensurate with the amount of work involved in the cessation and the capital value of the fund; or
- (b) where no such agreement is reached, the withdrawal fee will be charged as a relative percentage of the gross capital value of the property withdrawn or distributed equivalent to the effective rate of administration or management fee charged on that property on the assessment date immediately prior to the withdrawal or distribution.

(5) In this article—

“assessment date” means whichever of the following dates next precedes the date on which the fee is payable—

- (a) 1st April, in the case of any estate or trust subject to administration fee under Part 5, or
- (b) the accounting date in the case of any scheme or fund subject to management fee under Part 8;

“effective rate” means the percentage rate determined by the formula $(\frac{a}{b}) \times 100$ where—

“a” equals the amount of administration or management fee charged, or deemed to have been charged, on the property on the assessment date prior to withdrawal or distribution; and

“b” equals the value on which that fee was, or was deemed to have been, assessed.

(6) Where some or all of a fee has been remitted, the references in this article to administration or management fee charged mean such fee as would have been charged but for the remission.

PART 7

Fees for special services

Insurance fee

21. If the public trustee is paid commission when effecting or renewing a policy of insurance on any trust property, a fee is payable in an amount equal to the amount of the commission paid.

Commission fee

22.—(1) On any dealing in securities, a fee is payable equal to the amount of any stockbroker’s commission refunded to the public trustee.

(2) Where a commission is received by the public trustee on any deposit of money, a fee is payable equal to the amount of the commission received.

Supervision of investigation or audit fee

23. A fee of £750 is payable to the public trustee for the supervision of any investigation or audit under section 13 of the Public Trustee Act 1906(a).

Income collection fee

24.—(1) Subject to the following paragraphs, an income collection fee at the rate of 7.5 per cent is payable at such time or times as the public trustee may direct in respect of the gross income of any estate or trust received by the public trustee.

(2) Where the public trustee receives income from dividends or interest after deduction of tax, the income collection fee is payable in respect of the income so received.

(3) Where the public trustee is acting exclusively under a declaration of trust for one beneficiary only, the income collection fee is payable at one-half of the rate payable under paragraph (1).

(4) No fee is payable under this article in respect of an annuity or other terminable payment to which article 18 applies.

(5) The public trustee may remit so much as appears equitable of any fee payable under this article where—

- (a) the public trustee’s duties have been or are likely to be exceptionally simple; or
- (b) the circumstances are otherwise exceptional.

(a) 1906 c. 55.

Investigation fee

25.—(1) On being asked to act as trustee of an existing trust, the public trustee may demand the deposit of such fee or fees as is deemed sufficient to cover the cost of examining and considering relevant documents and accounts whether or not the public trustee subsequently accepts appointment as trustee.

(2) If the public trustee is subsequently appointed, the public trustee may set off all or part of the fee or fees deposited under paragraph (1) against fees then due under Parts 3 or 4.

(3) When the public trustee renounces probate of any will (or other testamentary disposition) of which the public trustee has been appointed executor, the public trustee may charge a fee commensurate with the work involved in the public trustee's investigation of the assets and liabilities of the estate.

Fee for agency work

26. On acting as agent, the public trustee is entitled to make such a charge commensurate with the amount of work involved as the public trustee may determine.

Fee for additional work

27. The public trustee is entitled to make a reasonable additional charge according to the work involved in—

- (a) dealing with a business;
- (b) dealing with assets situated outside the United Kingdom;
- (c) supplying information for the purpose of any proposed dealing with a beneficial interest or for registering a notice of charge;
- (d) dealing with freehold or leasehold property or a mortgage;
- (e) supplying copies of documents and additional copies of accounts;
- (f) an administration following the cessation of a life or other interest in property in circumstances in which no withdrawal fee is payable;
- (g) work incidental to any application to the court in connection with the administration of an estate or trust;
- (h) conducting a hearing in accordance with rule 37 of the Public Trustee Rules 1912(a); or
- (i) dealing with duties of an unusual, complex or exacting nature.

Registration and enquiry fees

28. A fee is payable in respect of trusts or estates in which the public trustee is nominated to receive notices under section 138 of the Law of Property Act 1925(b)—

- (a) for accepting nomination, a fee of £100;
- (b) for the entry of each notice, a fee of £35 (such fee to cover any necessary acknowledgement of the notice);
- (c) for permitting any authorised person to inspect and take copies of the register and of any notices, a fee of £35 for each inspection in respect of each trust or estate; and
- (d) for replying to an enquiry respecting notices, a fee not exceeding £85 for each reply in respect of each trust.

(a) S.R. &O. 1912/348, as modified by the Solicitors' Incorporated Practices Order 1991 (S.I. 1991/2684).

(b) 1925 c. 20; section 138 is amended by section 2(2) of the Public Trustee (Liability and Fees) Act 2002 (c. 35).

Fees for registration of documents in respect of deceased persons and searches of the register

29. The following fees are payable in respect of the functions of the public trustee under section 19 of the Law of Property (Miscellaneous Provisions) Act 1994(a) (functions of public trustee in relation to notices etc.)—

- (a) for entering details of documents on the register, £40 for each deceased person against whose name the details are registered, payable in relation to each property in respect of which registration is made; or
- (b) for causing a search of the register to be made, £20 for each name or variation of a name against which the search is made.

PART 8

Superannuation schemes and friendly societies

Management fee

30.—(1) A management fee is payable where the public trustee is acting as trustee of a superannuation scheme or is managing funds on behalf of the trustees of a friendly society.

(2) The management fee is payable annually on the accounting date and is charged at an amount commensurate with the amount of work involved and, subject to paragraph (3), the capital value of the Fund on the relevant accounting date as the public trustee may agree with the trustees.

(3) In the event that agreement is not reached in accordance with paragraph (2), the management fee will be 1.25 times the annual fee last charged or, if not actually charged, chargeable, before 1st April 2005.

(4) In this article—

“friendly society” means a society registered as a friendly society under the Friendly Societies Act 1974(b); and

“superannuation scheme” means any scheme established for the provision of superannuation or other benefits for persons entitled to or eligible for such benefits under the scheme.

PART 9

Value added tax

Amount of fee

31. For the purposes of reimbursing the public trustee in respect of value added tax payable on the supply of services in relation to which a fee (other than a fee payable under article 21 or 22) is charged, an additional fee equal to the amount of the tax is payable.

(a) 1994 c. 36. Section 19 is amended by section 2(4) of the Public Trustee (Liability and Fees) Act 2002.

(b) 1974 c. 46. Section 7 is amended by paragraph 4 of Schedule 16 to the Friendly Societies Act 1992 (c. 40), paragraph 2 of Schedule 18 to the Financial Services and Markets Act 2000 (c. 8) and sections 41(4) and 98 of, and Schedule 27, Part 5 to, the Finance Act 1998 (c. 54).

PART 10

Revocations

Revocation of previous fees orders

32. The instruments listed in column 1 of the following table (which have the references listed in column 2) are revoked.

<i>Column 1</i> <i>Title</i>	<i>Column 2</i> <i>Reference</i>
The Public Trustee (Fees) Order 1999	S.I. 1999/855
The Public Trustee (Fees) (Amendment) Order 2002	S.I. 2002/2232
The Public Trustee (Fees) (Amendment) Order 2003	S.I. 2003/690
The Public Trustee (Fees) (Amendment) Order 2004	S.I. 2004/799
The Public Trustee (Fees) (Amendment) Order 2005	S.I. 2005/351
The Public Trustee (Fees) (Amendment) Order 2007	S.I. 2007/681

By authority of the Lord Chancellor

5th March 2008

Bridget Prentice
Parliamentary Under-Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Order)

This Order revokes, replaces and consolidates the Public Trustee (Fees) Order 1999 (S.I. 1999/855), as amended. It specifies the fees payable in respect of the duties of the public trustee. In addition to minor amendments, this Order makes the following changes of substance—

Article 16 is amended so as to provide that the administration fee is payable in full, even if the public trustee ceases to act in the estate or trust, or part of it, in the course of the year, rather than the fee being payable in twelve equal instalments which would cease to be payable if the public trustee ceased to act in any estate or trust during the year.

Article 17(4)(a) and (b) is amended so as to increase the relevant percentages of the net capital value of the estate or trust used to calculate the administration fee. In respect of the first £30,000, the relevant percentage rises from 4.65% to 5% and in respect of any excess over £30,000 up to £150,000, the relevant percentage rises from 2.7% to 3%.

£3.00

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under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E2130 3/2008 182130T 19585

ISBN 978-0-11-081131-4



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