

2004 No. 3120 (L. 22)

SUPREME COURT OF ENGLAND AND WALES

The Non-Contentious Probate Fees Order 2004

Made - - - - - 25th November 2004
Laid before Parliament 30th November 2004
Coming into force - - 4th January 2005

The Lord Chancellor, in exercise of the powers conferred upon him by sections 92 and 108(6) of the Courts Act 2003(a), and section 128 of the Finance Act 1990(b) with the consent of the Treasury under section 92(1) of the Courts Act 2003 and after consultation with the Lord Chief Justice, the Master of the Rolls, the President of the Family Division, the Vice-Chancellor, the Head of Civil Justice and the Deputy Head of Civil Justice and the Civil Justice Council under section 92(5) and (6) of the Courts Act 2003, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Non-Contentious Probate Fees Order 2004 and shall come into force on the 4th January 2005.

(2) In this Order—

- (a) a fee referred to by number means the fee so numbered in Schedule 1 to this Order;
- (b) “assessed value” means the value of the net real and personal estate (excluding settled land if any) passing under the grant as shown—
 - (i) in the Inland Revenue affidavit (for a death occurring before 13th March 1975), or
 - (ii) in the Inland Revenue account (for a death occurring on or after 13th March 1975), or
 - (iii) in the case in which, in accordance with arrangements made between the President of the Family Division and the Commissioners of the Inland Revenue, or regulations made under section 256(1)(a) of the Inheritance Tax Act 1984(c) and from time to time in force, no such affidavit or account is required to be delivered, in the oath which is sworn to lead to the grant,

and in the case of an application to reseal means the value, as shown, passing under the grant upon its being resealed;

- (c) “authorised place of deposit” means any place in which, by virtue of a direction given under section 124 of the Supreme Court Act 1981(d) original wills and other documents under the control of the High Court (either in the principal registry or in any district registry) are deposited and preserved;
- (d) “grant” means a grant of probate or letters of administration;
- (e) “district registry” includes the probate registry of Wales, any district probate registry and any sub-registry attached to it;

(a) 2003 c. 39.
(b) 1990 c. 29.
(c) 1984 c. 51.
(d) 1981 c. 54.

- (f) “the principal registry” means the Principal Registry of the Family Division and any sub-registry attached to it.

Fees to be taken

2. The fees set out in column 2 of Schedule 1 to this Order shall be taken in the principal registry and in each district registry in respect of the items described in column 1 in accordance with and subject to any directions specified in column 1.

Exclusion of certain death gratuities

3. In determining the value of any personal estate for the purposes of this Order there shall be excluded the value of a death gratuity payable under section 17(2) of the Judicial Pensions Act 1981(a) or section 4(3) of the Judicial Pensions and Retirement Act 1993(b), or payable to the personal representatives of a deceased civil servant by virtue of a scheme made under section 1 of the Superannuation Act 1972(c).

Exemptions, reductions, remissions and refunds

4. Where it appears to the Lord Chancellor that the payment of any fee prescribed by this Order would, owing to the exceptional circumstances of the particular case, involve undue financial hardship, he may reduce or remit the fee in that case.

5.—(1) Subject to paragraph (2) where a fee has been paid at a time—

- (a) where the Lord Chancellor, if he had been aware of all the circumstances, would have reduced the fee under article 4, the amount by which the fee would have been reduced shall be refunded; and
- (b) where the Lord Chancellor, if he had been aware of all the circumstances, would have remitted the fee under article 4, the fee shall be refunded.

(2) No refund shall be made under paragraph (1) unless the party who paid the fee applies within 6 months of paying the fee.

(3) The Lord Chancellor may extend the period of 6 months referred to in paragraph (2) if he considers that there is good reason for an application being made after the end of the period of 6 months.

6.—(1) Where by any convention entered into by Her Majesty with any foreign power it is provided that no fee shall be required to be paid in respect of any proceedings, the fees specified in this Order shall not be taken in respect of those proceedings.

(2) Where any application for a grant is withdrawn before the issue of a grant, a registrar may reduce or remit a fee.

(3) Fee 7 shall not be taken where a search is made for research or similar purposes by permission of the President of the Family Division for a document over 100 years old filed in the principal registry or a district registry or another authorised place of deposit.

Special exemption—Armed Forces

7. Where a fee has been paid or fees have been paid for the application of a grant (other than fee 3.2) and at the time of payment of that fee or those fees—

- (a) the application for the grant was in respect of an estate exempt from Inheritance Tax by virtue of section 154 of the Inheritance Tax Act 1984(d) (exemption for members of the armed forces etc); and
- (b) was in respect of a death occurring before 20th March 2003;

the Lord Chancellor shall upon receiving a written application refund the difference between any fee or fees paid and fee 3.2.

(a) 1981 c. 20.

(b) 1993 c. 8.

(c) 1972 c. 11.

(d) 1984 c. 51.

Revocation

8. The Order specified in Schedule 2 in so far as it was made under section 128 of the Finance Act 1990 shall be revoked.

Dated 22nd November 2004

Falconer of Thoroton, C

We consent,

Dated 25th November 2004

Two of the Lords Commissioners of Her Majesty's Treasury

*John Heppell
Nick Ainger*

SCHEDULE 1
FEES TO BE TAKEN

Article 2

<i>Column 1</i> <i>Number and description of fee</i>	<i>Column 2</i> <i>Amount of fee</i>
1. Application for a grant On an application for a grant (or for resealing a grant) other than on an application to which fee 3 applies, where the assessed value of the estate exceeds £5,000	£40
2. Personal application fee Where the application under fee 1 is made by a personal applicant (not being an application to which fee 3 applies) fee 2 is payable in addition to fee 1, where the assessed value of the estate exceeds £5,000	£50
3. Special applications 3.1 For a duplicate or second or subsequent grant (including one following a revoked grant) in respect of the same deceased person, other than a grant preceded only by a grant limited to settled land, to trust property, or to part of the estate	£15
3.2 On an application for a grant relating to a death occurring on or after 20th March 2003 and in respect of an estate exempt from inheritance tax by virtue of section 154 of the Inheritance Tax Act 1984 (exemption for members of the armed forces etc)	£8
4. Caveats For the entry or the extension of a caveat	£15
5. Search On an application for a standing search to be carried out in an estate, for each period of six months including the issue of a copy grant and will, if any (irrespective of the number of pages)	£5
6. Deposit of wills On depositing a will for safe custody in the principal registry or a district registry	£15
7. Inspection On inspection of any will or other document retained by the registry (in the presence of an officer of the registry)	£15
8. Copy documents On a request for a copy of any document whether or not provided as a certified copy:	
(a) for the first copy	£5
(b) for every subsequent copy of the same document if supplied at the same time	£1
(c) where copies of any document are made available on a computer disk or in other electronic form, for each such copy	£3
(d) where a search of the index is required, in addition to fee 8(a), (b) or (c) as appropriate, for each period of 4 years searched after the first 4 years	£3
9. Oaths Except on a personal application for a grant, for administering an oath,	
9.1 for each deponent to each affidavit	£5
9.2 for marking each exhibit	£2

<i>Column 1</i> <i>Number and description of fee</i>	<i>Column 2</i> <i>Amount of fee</i>
10. Determination of costs For determining costs	The same fees as are payable from time to time for determining costs under the Civil Proceedings Fees Order 2004, (the relevant fees are set out in fee 5 in Schedule 1 to that Order)
11. Settling documents For perusing and settling citations, advertisements, oaths, affidavits, or other documents, for each document settled	£10

SCHEDULE 2
ORDER REVOKED

Article 8

<i>Title</i>	<i>Reference</i>
The Non-Contentious Probate Fees (Amendment) Order 2000	S.I. 2000/642

EXPLANATORY NOTE

(This note is not part of the Order)

The Non-Contentious Probate Fees Order 1999 (S.I. 1999/688) specified fees for non-contentious probate matters in the principal registry and district registries. This Order which replaces it incorporates amendments to that Order since 1999 and includes some fee changes:

- the fee for the application for a grant (or for resealing a grant) where the assessed value of the estate exceeds £5,000 has been reduced from £50 to £40.
- the Personal application fee where the assessed value of the estate exceeds £5,000 has been reduced from £80 to £50.

TABLE OF COMPARISON

<i>Number and summary of new fee (for full description see Schedule 1)</i>	<i>Amount of new fee (for full details see Schedule 1)</i>	<i>Amount of old fee (for full details see Schedule 1)</i>	<i>Number of old fee</i>
1. Application for a grant	£40	£50	1
2. Personal application fee	£50	£80	2

A Regulatory Impact Assessment of the costs and benefits of this Order (and other Orders relating to court fees) was placed in the Libraries of both Houses of Parliament, and is available on the Court Service's website at www.courtservice.gov.uk/usingthecourts/htm

STATUTORY INSTRUMENTS

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