STATUTORY INSTRUMENTS

1972 No. 1096 (L.12)

TRUSTEES

The Judicial Trustee Rules 1972

Made - - -	*20th July* 1972
Laid before Parliament	*3rd August* 1972
Coming into Operation	*1st September* 1972

The Lord Chancellor, in exercise of the powers conferred on him by section 4 of the Judicial Trustees Act 1896(**a**), and with the consent of the Treasury and of the authority for making orders under section 56 of the Solicitors Act 1957(**b**), hereby makes the following Rules:—

Citation and commencement

1. These Rules may be cited as the Judicial Trustee Rules 1972 and shall come into operation on 1st September 1972.

Interpretation

2. The Interpretation Act 1889(**c**) shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

3.—(1) In these Rules, unless the context otherwise requires—

"the Act" means the Judicial Trustees Act 1896;

"the Court" and "master" have the same meaning as in the Rules of the Supreme Court;

"district registrar" means a registrar of a district registry of the High Court;

"judicial trustee" means a sole judicial trustee or two or more judicial trustees appointed to act together;

"official of the Court" means the holder of any paid office in or connected with the Supreme Court and includes the Official Solicitor;

"Official Solicitor" means the Official Solicitor to the Supreme Court;

"qualified accountant" means a person who is a member or a firm all the partners in which are members of the Institute of Chartered Accountants in England and Wales or of the Association of Certified and Corporate Accountants;

"Rules of the Supreme Court" mean rules made under section 99 of the Supreme Court of Judicature (Consolidation) Act 1925(**d**).

(2) Subject to the provisions of these Rules and of any enactment, the Rules of the Supreme Court shall apply with the necessary modification to proceedings under the Act and these Rules.

(a) 1896 c. 35. (b) 1957 c. 27. (c) 1889 c. 63. (d) 1925 c. 49.

(3) Without prejudice to section 56(1) of the Supreme Court of Judicature (Consolidation) Act 1925 (which provides for the assignment to the Chancery Division of proceedings for the execution of trusts) proceedings under the Act shall be assigned to the Chancery Division.

APPOINTMENT OF JUDICIAL TRUSTEE

Making of application

4.—(1) An application to the Court to appoint a judicial trustee must be made by originating summons or, if it is made in a pending cause or matter, by summons in the cause or matter.

(2) The evidence in support of such an application must include an affidavit by the applicant exhibiting and verifying a statement containing the following particulars so far as the applicant can gain information with regard to them:—

(*a*) a short description of the trust and instrument by which it is, or is to be, created;

(*b*) short particulars of the trust property, with an approximate estimate of its income, and capital value;

(*c*) short particulars of the incumbrances (if any) affecting the trust property;

(*d*) particulars as to the persons who are in possession of the documents relating to the trust; and

(*e*) the names and addresses of the beneficiaries and short particulars of their respective interests.

(3) Where the applicant cannot gain the information required on any point he must mention his inability in the statement.

Service of summons and notice

5.—(1) Subject to any direction of the Court—

(*a*) the summons shall be served on every existing trustee who is not an applicant and on such of the beneficiaries as the applicant thinks fit;

but

(*b*) a summons issued by or on behalf of a person creating or intending to create a trust need not be served on any person.

(2) The Court may give such directions as it thinks fit for the service of the summons or the dispensing with service of the summons on any person.

(3) Where an application is made to appoint an official of the Court to be a judicial trustee, that official need not be made a party to the proceedings but shall be given by the applicant not less than four days' notice of the hearing of the application and shall be entitled to attend the hearing.

Appointment of trustee

6.—(1) The Court may appoint as a judicial trustee—

(*a*) any fit and proper person (whether nominated in the application or not) including—

(i) an existing trustee of the trust;

(ii) an executor or administrator of the estate of a deceased person the administration of whose property constitutes the trust;

(iii) a beneficiary;

(iv) a solicitor of the trust or to a trustee or to a beneficiary;

(v) a qualified accountant; and

(vi) a person standing in any special position with regard to the trust; or

(*b*) the Official Solicitor or, if for special reasons the Court sees fit to do so, some other official of the Court.

(2) On the appointment of any person to be a judicial trustee, the Court shall make such vesting or other orders and exercise such other powers as may be necessary for vesting the trust property in the judicial trustee either as sole trustee or jointly with other trustees as the case requires.

ADMINISTRATION OF THE TRUST

Statement of trust property

7. As soon as may be after his appointment a judicial trustee shall (unless the Court considers it unnecessary) provide the Court with a complete statement of the trust property and any charges thereon with an estimate of the capital value and annual income of each item and shall thereafter give sufficient information to the Court to enable the Court to keep the statement up to date.

Security

8.—(1) This rule shall apply where the judicial trustee is not an official of the Court.

(2) Subject to paragraph (3) below, the Court may in any case and at any time require a judicial trustee to give security for the due application of the trust property under or to be under his control.

(3) The Court shall not, except for special reasons, require security to be given when the application is made by a person creating or intending to create a trust.

(4) Any security required by the Court shall be given by guarantee or otherwise as the Court may direct.

(5) In any case where security is required—

(*a*) the Court may allow the judicial trustee to act before his security is completed;

(*b*) the guarantee shall be filed in the Central Office or, if the matter is proceeding in a district registry, in that registry and it shall be kept as of record until duly vacated;

(*c*) any premium payable by a judicial trustee on account of his security may, in the Court's discretion, be paid out of the trust;

(*d*) the security may be enforced only with the leave of the Court; and

(*e*) the Court may at any time require the security to be varied or permit it to be discharged.

Trust account

9.—(1) This rule shall apply where the judicial trustee is not the Official Solicitor.

(2) The judicial trustee shall open and keep with a bank approved by the

Court a trust account and may use it for the purposes of the trust and shall pay in to it without delay all money coming into his hands on account of the trust.

(3) The Court may give such directions as it thinks fit for securing the safety of the trust property, including a direction limiting the amount which the judicial trustee may authorise the bank to pay out of the trust account at any one time without the countersignature of the master or district registrar.

10. If the Court considers that a judicial trustee has kept trust money in his hands longer than necessary it may require him to pay interest on it at a rate not exceeding 6 per cent. per annum.

Custody of documents

11.—(1) This rule shall apply where the judicial trustee is not the Official Solicitor.

(2) The judicial trustee shall deposit or cause to be deposited in his name either with the bank where the trust account is kept or in such other custody as the Court may direct all the title deeds, certificates and other documents which are evidence of the title of the trustee to any of the trust property.

(3) In any case where such a deposit is made the judicial trustee shall—

(*a*) instruct the body or person with whom it is made that—

(i) no deed, certificate or other document deposited is to be delivered to any person except on a written request signed by the judicial trustee and countersigned by the master or district registrar; and

(ii) any person authorised in writing by the Court is to be entitled to inspect any such deed, certificate or document during business hours; and

(*b*) provide the Court with a list of all such deeds, certificates and documents and inform the Court from time to time of any variation to be made in the list.

Directions to judicial trustees

12.—(1) A judicial trustee may at any time request the Court to give him directions as to the trust or its administration.

(2) The request shall set out in writing the facts with regard to which directions are required, and shall be accompanied by the prescribed fee.

(3) The Court may require the trustee or any other person to attend at chambers (if it appears that such an attendance is necessary or convenient) or may direct a summons to be issued in the proceedings.

ACCOUNTS AND AUDIT

Accounts and audit

13.—(1) Subject to any direction of the Court to the contrary, a judicial trustee shall make up his accounts (in such form as the Court shall require) in each year to the anniversary of his appointment and shall deliver them to the Court for audit within one calendar month after such anniversary.

(2) A judicial trustee shall endorse on his accounts a certificate of the approximate capital value of the trust property at the commencement of the year of account.

(3) The accounts shall be audited by the Court unless it considers that the accounts are likely to involve questions of difficulty and refers them to a qualified accountant for report, in which case the Court may order payment to him out of the trust of such amount in respect of his report as it thinks proper.

Deductions

14.—(1) A judicial trustee shall, unless the Court otherwise directs, be allowed on the audit of his accounts deductions made on account of any—

(*a*) premium paid under rule 8(5)(*c*),

(*b*) report obtained under rule 13(3),

(*c*) remuneration allowed or directed under rule 16.

(*d*) fees paid by the judicial trustee under Schedule 2, and

(*e*) money expended pursuant to a power given to trustees by law.

(2) Subject to paragraph (1) above, deductions shall not be allowed on the audit on account of—

(*a*) the expenses of professional or other assistance, or

(*b*) the judicial trustee's own work or personal outlay,

unless one or more of the conditions in paragraph (3) is fulfilled.

(3) The conditions referred to in paragraph (2) above are that—

(*a*) the deduction has been authorised by the Court under rule 16(2)(*a*);

(*b*) the deduction has been directed by the Court under rule 16(2)(*b*);

(*c*) the deduction is attributable to a direction given under rule 12 or under section 1(4) of the Act;

(*d*) the deduction has been authorised under section 1(5) of the Act, and

(*e*) the Court is satisfied that the deduction is justified by the necessity of the case.

Filing and inspection of accounts

15.—(1) When the accounts have been audited they shall be filed together with a note of any corrections made on the audit, as the Court may direct.

(2) The judicial trustee shall send a copy of the accounts, or, if the Court thinks fit, of a summary of the accounts, of the trust to such beneficiaries or other persons as the Court may direct.

(3) If an application is made by any person to inspect the filed accounts, the Court may, if it thinks fit, having regard to the nature of the relation of the applicant to the trust, allow them to be inspected on giving reasonable notice.

Remuneration

16.—(1) Subject to paragraph (3) of this rule the Court may on the appointment of a judicial trustee or at any time thereafter make an order that the judicial trustee is to be remunerated.

(2) An order under paragraph (1) of this rule may provide that—

(*a*) in a case where the judicial trustee is the Official Solicitor or any other practising solicitor, the trustee is to be at liberty to act as solicitor to the trust and to be allowed as part of his remuneration

under these Rules all proper costs in respect of professional work done by him in that capacity as though he were not a trustee, and

(*b*) in that or in any other case, the remuneration payable to the judicial trustee shall be of such amounts and payable at such times and in such manner as the Court may from time to time direct, having regard to the duties imposed upon him by the trust.

(3) Remuneration allowed or directed under this rule shall not, in any year of account, exceed 10 per cent. of the capital value of the trust property.

(4) For the purposes of paragraph (3) of this rule the capital value shall be ascertained from the certificate under rule 13(2) in respect of the year of account, or, if the court sees fit in the case of a final account, from the certificate in respect of the preceding year.

(5) Any remuneration allowed or directed under this rule in respect of an official of the Court on account of his services as trustee shall be paid into the Exchequer and applied in such manner as the Treasury may direct.

ENFORCEMENT

Forfeiture of remuneration

17.—(1) If the Court is satisfied that a judicial trustee has failed to comply with the Act, or with these Rules, or with any direction of the Court made in accordance with the Act or these Rules, or has otherwise misconducted himself in relation to the trust, the Court may, after having given the trustee an opportunity of being heard, order that the whole or any part of his remuneration be forfeited.

(2) This rule shall not affect any liability of the judicial trustee for breach of trust or the power of the Court to remove or suspend him under rule 18 below.

Removal and suspension of judicial trustee

18.—(1) If at any time, whether or not on the application of any person appearing to be interested in the trust, the Court considers that it is expedient in the interests of the trust to do so, it may suspend a judicial trustee or may remove a judicial trustee.

(2) When a judicial trustee is suspended—

(*a*) he shall have no power to act as a trustee, and

(*b*) the Court shall cause notice of the suspension to be given to such of the persons appearing to be interested in the trust as the Court directs, and to any person having the custody of the trust property, and shall give such other directions as may appear necessary for securing the safety of the trust property.

(3) A judicial trustee shall not be removed by the Court unless—

(*a*) there has been an application for that purpose made by summons, or

(*b*) notice has been given to him by the Court of the grounds on which it is proposed to remove him, and of the time and place at which the matter will be heard.

(4) A copy of any notice to the trustee under paragraph (3)(*b*) above shall be sent to such of the persons appearing to be interested in the trust as the Court may direct, and the same procedure shall so far as possible be followed in the matter as on a summons to remove a judicial trustee.

(5) Where the Court removes a sole judicial trustee it shall at the same time appoint one or more new judicial trustees and rules 6(2) and 20(2) shall apply.

Inquiry into conduct of judicial trustee

19. Where an inquiry is ordered into the administration of any trust by, or into any dealing or transaction of, a judicial trustee, the inquiry shall, unless the Court otherwise directs, be conducted by the master or district registrar who shall have the same powers in relation thereto as he has in relation to any other inquiry directed by the Court.

RESIGNATION AND DISCONTINUANCE OF JUDICIAL TRUSTEE

Resignation of judicial trustee

20.—(1) A judicial trustee who desires to be discharged from his trust shall give notice to the Court of the arrangements proposed for the appointment of a successor.

(2) Where no fit and proper person appears available to replace the judicial trustee, or where the Court considers it convenient or expedient in the interests of the trust so to do, the Court may appoint an official of the Court to be a judicial trustee in place of the former judicial trustee.

Discontinuance

21.—(1) Where an application is made by summons by a person appearing to the Court to be interested in the trust, the Court (having ascertained as far as may be the wishes of all persons so appearing) may, and if all persons so appearing concur shall, order that there shall cease to be a judicial trustee of the trust.

(2) An order may be made under this rule whether the person who is judicial trustee continues as trustee or not, and the Court shall make such vesting or other orders and exercise such powers as may be required, including those necessary for vesting the trust property in the new trustee either as sole trustee or, as the case may be, jointly with other trustees.

SPECIAL PROVISIONS RELATING TO OFFICIALS OF THE COURT

22.—(1) Schedule 1 to these Rules shall apply only where the Official Solicitor is a sole judicial trustee.

(2) Where there are several judicial trustees of whom one is the Official Solicitor, they shall comply with such directions as the Court may give as to the manner in which, and the conditions subject to which—

(*a*) the trust fund is to be held;

(*b*) any title deeds, certificates or other documents which are evidence of their title to the trust property are to be disposed of; and

(*c*) any payments received or made on behalf of the trust are to be dealt with and accounts thereof are to be kept.

23. An official of the Court shall not be appointed or act as judicial trustee—

(*a*) for any persons in their capacity as members or debenture holders of, or being in any other relation to, any corporation or unincorporated body, or any club, or

(*b*) of a trust which involves the carrying on of any trade or business

unless the Court, with or without special conditions to ensure the proper supervision of the trade or business, specifically directs.

24.—(1) The appointment of an official of the Court as a judicial trustee shall be an appointment of the holder of that office for the time being, and no further order or appointment shall be necessary by reason only of the person appointed dying or ceasing to hold office.

(2) Any property vested in an official of the Court as a judicial trustee shall, on his dying or ceasing to hold office, without any conveyance, assignment or transfer, become vested in his successor in like manner as it was vested in him.

Fees

25.—(1) The fees specified in column 2 of Schedule 2 to these Rules shall be paid in respect of the matters specified in column 1 of that Schedule.

(2) All fees payable under these Rules shall, except as otherwise provided, be subject to similar provision as to payment, account and application as other fees payable in the Supreme Court.

Informality

26.—(1) The Court may dispense with formal proof of facts in any case where it is satisfied, without such proof, that there is no reasonable doubt of any fact which affects the administration of a trust by a judicial trustee.

(2) Except where a summons is required by these Rules, that is to say under rule 4(1), 18(3) or 21(1), or where the Court otherwise directs, no summons shall be required for any purpose under the Act or these Rules, and accordingly—

(i) a judicial trustee may by letter make an application or request to or communicate with the Court in the administration of his trust;

(ii) the Court may by letter give directions or notices to the judicial trustee;

(iii) the master or district registrar may by letter make or cause to be made such appointments as he thinks fit for the attendance at chambers of the trustee or any other person connected with the trust;

(iv) any fees payable may be remitted by post;

(v) any other thing required to be done in relation to the administration of the trust may be done in a simple and informal manner.

District Registries

27.—(1) Notwithstanding any provisions contained in the Rules of the Supreme Court, an originating summons may be issued out of a district registry for the purpose of an application to appoint a judicial trustee.

(2) Where a judicial trustee is appointed on a summons or in a cause or matter proceeding in a district registry all proceedings with respect to the trust and the administration thereof under the Act or these Rules shall, subject to paragraph (3) of this rule, be taken in the district registry.

(3) The Court may transfer any trust of which there is a judicial trustee from a district registry to London, or from London to a district registry, or

from one district registry to another, according as it appears convenient for the administration of the trust.

28. The rules specified in Schedule 3 to these Rules are hereby revoked, so however that the provisions of those rules in force immediately before the commencement of these Rules shall continue to apply to proceedings taken before that date in a county court.

Dated 19th July 1972.

Hailsham of St. Marylebone, C.

We consent,
Dated 19th July 1972.

Widgery, C.J.
Denning, M.R.
Desmond Heap.
G. P. Atkinson.

Dated 20th July 1972.

Tim Fortescue,
V. H. Goodhew,
Two of the Lords Commissioners
of Her Majesty's Treasury.

SCHEDULE 1

Rule 22(1)

Administration by Official Solicitor

1.—(1) In this Schedule "the Account" means the account maintained at the Law Courts Branch of the Bank of England, entitled "The Official Solicitor to the Supreme Court of Judicature No. 26083000" or any other account maintained at any other bank by the Official Solicitor with the authorisation and approval of the Treasury.

(2) The Official Solicitor may open a separate trust account, at any bank approved by the Court, for the temporary deposit of money or for any other purpose approved by the Court.

(3) The Official Solicitor shall transfer either to the credit of the Account or to the credit of the appropriate trust account—

(*a*) all lodgments of cash,

(*b*) all dividends and interest on securities and rents and payments received by him.

2.—(1) All registered stocks, shares and securities other than mortgages on real or leasehold property shall be registered in the sole name of the Official Solicitor.

(2) Real and leasehold property and mortgages thereon shall be vested in the Official Solicitor.

(3) All registered securities registered in the sole name of the Official Solicitor shall be designated in the books of the bank, company or other body in whose books such securities are registered in such manner as will identify them with the trust for which they are held.

Deposit of documents

3. All title deeds and certificates and other documents which are evidence of the title of the Official Solicitor to any of the trust property, or which represent security for such property, shall be held in safe custody by the Official Solicitor.

Financial dealings

4.—(1) The Official Solicitor shall keep separate accounts in his books in respect of each trust of all funds received, paid or transferred by him in relation to the administration of the trust.

(2) The Official Solicitor may make payments from trust funds either by payable order or by pre-authenticated order as authorised by the Treasury.

(3) The Official Solicitor may make purchases and sales of stocks, shares and securities through the Supreme Court Brokers or such other brokers as he may choose.

SCHEDULE 2

Rule 25

No. of Fee	*Column* 1	*Column* 2
1	On any matter for which a fee is provided under the orders for the time being in force relating to Supreme Court fees.	The fee so provided
2	On a request to the Court for— (*a*) directions, or (*b*) approval of any step taken,or to be taken, in relation to the administration of a trust.	p 50
3	On filing a statement of trust property, for every £100 or fraction of £100 of the estimated value of the property then in possession (subject to a minimum fee of £1).	13

4	On filing an amended statement of trust property, for every £100 or fraction of £100 of the estimated value of the property in possession shown therein (subject to a minimum fee of 50p): .. Provided that, in estimating the value of the property for the purpose of calculating this fee, there shall be excluded any asset (or the proceeds thereof or any property acquired with such proceeds) on which Fee No. 3 has been paid.	13
5	On filing—	
	(*a*) the accounts of a trust, ...	50
	(*b*) any other document relating to a trust.	25
6	On (*a*) auditing the account of a trust when audited by an officer of the Court, or (*b*) referring the accounts of a trust to a qualified accountant for report, for every £100 or fraction of £100 of the gross amount of the income without allowing for any deduction therefrom.	13
7	On the inspection of filed accounts, for each hour or part of an hour occupied (subject to a maximum fee of £1·50 in respect of any one day).	25

SCHEDULE 3

Rule 28

RULES REVOKED

Title	*Reference*
The Judicial Trustee Rules 1897	S.R. & O. 1897/708 (Rev. 1903, XII, p. 911: 1897, p. 634)
The Additional Rule 1899	S.R. & O. 1899/315 (Rev. 1903, XII, p. 922: 1899, p. 1392)
The Judicial Trustee Rule (April) 1900	S.R. & O. 1900/332 (Rev. 1903, XII, p. 923: 1900, p. 921)
The Judicial Trustee (Amendment) Rules 1962	S.I. 1962/163 (1962 I, p. 163)

EXPLANATORY NOTE

(*This Note is not part of the Rules.*)

These Rules consolidate with amendments the rules made under the Judicial Trustees Act 1896. The principal changes made are:—

(1) the formalities of application are simplified (Rule 4);

(2) security need not necessarily be required of a judicial trustee (Rule 8);

(3) a judicial trustee who is a practising solicitor or the Official Solicitor may be allowed professional costs for work done (Rule 16);

(4) county courts will no longer accept the control and supervision of further judicial trusts (Rule 28).

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