STATUTORY INSTRUMENTS

1975 No. 287

TRUSTEES

The Public Trustee (Fees) Order 1975

Made - - - - *28th February* 1975

Coming into Operation *1st April* 1975

The Treasury, in exercise of the powers conferred on them by section 9 of the Public Trustee Act 1906**(a)**, as amended by section 1 of the Public Trustee (Fees) Act 1957**(b)** and section 2(1) of the Administration of Justice Act 1965**(c)**, and with the sanction of the Lord Chancellor, hereby make the following Order:—

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Public Trustee (Fees) Order 1975 and shall come into operation on 1st April 1975.

Interpretation

2.—(1) The Interpretation Act 1889**(d)** shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

(2) In this Order, unless the context otherwise requires:—

"the Act" means the Public Trustee Act 1906;

"acceptance fee valuation date" in respect of any trust property means the date selected by the Public Trustee in relation to that property under paragraph 12(1);

"financial year" means the year ending 31st March;

"gross capital value" means the value of the 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 estate duty;

"statutory owner" and "tenant for life" have the meanings given by section 117(1) of the Settled Land Act 1925**(e)**;

"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;

"trust" includes an executorship or administratorship, and also includes the administration of an estate in pursuance of section 3 of the Act, and any reference to the acceptance of a trust or to trust property shall be construed accordingly;

(a) 1906 c. 55. **(b)** 1957 c. 12. **(c)** 1965 c. 2.
(d) 1889 c. 63. **(e)** 1925 c. 18.

"will" includes any testamentary disposition; and

a paragraph referred to by number means the paragraph so numbered in this Order.

PART I

GENERAL

Classification of fees

3. The following fees shall be charged by the Public Trustee in respect of work undertaken by him:—

(*a*) an acceptance fee;

(*b*) an administration fee;

(*c*) a withdrawal fee;

(*d*) fees for special services;

(*e*) management fees in connection with common investment funds;

(*f*) a value added tax fee.

Incidence of fees

4. All fees shall be paid out of capital, except the following which shall be paid out of income:—

(*a*) fees which the Public Trustee directs to be paid out of income by virtue of section 1(3) of the Public Trustee (Fees) Act 1957;

(*b*) the administration fee in cases to which paragraph 15 applies;

(*c*) the insurance fee provided for by paragraph 18;

(*d*) the fee provided for by paragraph 20 in respect of work done in relation to income tax, surtax or other similar tax;

(*e*) the income collection fee provided for by paragraph 23;

(*f*) the management fees provided for by paragraph 24; and

(*g*) the value added tax fee provided for by paragraph 25, in cases where the fee in respect of which the value added tax fee is payable is itself payable out of income.

Calculation

5. In ascertaining the amount payable in respect of any fee the Public Trustee—

(*a*) shall take the value of any trust property to be the price which he estimates that that property would fetch in the open market; and

(*b*) may treat the value of any trust property as being that multiple of £10 which is nearest to his estimate of its exact value.

Time of payment

6. The Public Trustee may, if it appears just and reasonable in any case, agree to the postponement of any payment due in respect of any fee.

Commutation

7. Liability to pay all or any sums which may become due in respect of any fee, or any part of those sums, may be commuted by the Public Trustee in consideration of a payment which seems to him to represent the capital value of that liability after taking into account—

(*a*) interest accruing thereon at the rate of 4 per cent. annually; and

(*b*) any circumstances likely to affect that liability but for the commutation.

Power to remit fees and settle disputes

8.—(1) The Public Trustee may remit so much as appears to him equitable of any fee payable in respect of any trust where the whole or any part of the trust property is subject to another trust in which he is acting.

(2) With the approval of the Treasury, the Public Trustee may—

(*a*) compromise any dispute about his right to a fee or about the amount due; and

(*b*) remit so much as appears to him equitable of any fee payable in respect of any trust where—

(i) his duties have been or are likely to be exceptionally simple; or

(ii) the trust is otherwise of an exceptional character.

PART II

ACCEPTANCE FEE

When payable

9. An acceptance fee shall be payable, in accordance with the provisions of this Part of this Order, upon acceptance by the Public Trustee of any trust other than one consisting entirely of 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.

Property subsequently coming into trust

10. If additional property becomes subject to a trust which is administered by the Public Trustee and is not an accumulation of the income of the property already subject to the trust, an acceptance fee shall be payable in respect of the gross capital value of the additional property, on its acceptance fee valuation date, of such amount as would have been payable if—

(*a*) the additional property had formed part of the trust property at the date of acceptance of the trust; and

(*b*) this Order had been in force at that date.

Postponement of payment

11. Where an acceptance fee becomes payable in accordance with paragraph 9 or 10 in respect of trust property, any part of which is not in possession or not readily realisable, the Public Trustee—

(*a*) shall exclude the value of the property not in possession or not readily realisable from the value of the remainder of the trust property for the

purpose of ascertaining the amount of the acceptance fee then payable; and

(*b*) shall, 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 trust property at the date of acceptance of the trust; and

(ii) this Order had been in force at that date.

Amount of acceptance fee

12.—(1) The acceptance fee shall be calculated in accordance with the provisions of this paragraph as a percentage of the gross capital value of the trust property on the date of acceptance or on such other convenient date (not being more than 6 months before or after the date of acceptance) as the Public Trustee may select.

(2) Where the Public Trustee is acting—

(i) as original trustee of a trust created *inter vivos* (other than a declaration of trust in favour of one beneficiary only); or

(ii) as trustee of a superannuation scheme,

the rate of the acceptance fee shall be as follows:—

in respect of the first £25,000	½ per cent.
in respect of any excess over £25,000 up to £50,000	⅖ per cent.
in respect of any excess over £50,000 up to £75,000	⅕ per cent.
in respect of any excess over £75,000 up to £100,000	1/10 per cent.
in respect of any excess over £100,000 ...	1/20 per cent.

but so that the fee payable shall not in any event be less than £100.

(3) Where the Public Trustee is acting—

(i) under a declaration of trust in favour of one beneficiary only; or

(ii) as original, substituted or additional trustee of property to which an infant is absolutely entitled under a will or on an intestacy,

the rate of the acceptance fee shall be as follows:—

in respect of the first £25,000	¼ per cent.
in respect of any excess over £25,000	1/10 per cent.

but so that the fee payable shall not in any event be less than £25:

Provided that no acceptance fee shall be charged in respect of property to which this sub-paragraph applies if that property is already subject to a trust in which the Public Trustee is acting.

(4) In all other cases in which the Public Trustee is acting as executor or administrator or as trustee (except where he is acting exclusively as custodian

ly

trustee) the rate of the acceptance fee shall be as follows:—

in respect of the first £25,000	1 per cent
in respect of any excess over £25,000 up to £50,000	$\frac{4}{5}$ per cent.
in respect of any excess over £50,000 up to £75,000	$\frac{2}{5}$ per cent.
in respect of any excess over £75,000 up to £100,000	$\frac{1}{5}$ per cent.
in respect of any excess over £100,000 ...	$\frac{1}{10}$ per cent.

but so that the fee payable shall not in any event be less than £100:

Provided that where the Public Trustee is acting as personal representative of a deceased tenant for life or of a statutory owner of a settlement under the Settled Land Act 1925, and is not acting otherwise in the trust, a fee of £75 only shall be payable.

(5) Where the Public Trustee is acting exclusively as custodian trustee, the acceptance fee shall be one-half of the fee which would have been payable under this paragraph if he had then been appointed managing trustee of the same trust, so, however, that the fee payable shall not be less than the appropriate minimum fee which would have been chargeable in that event.

PART III

ADMINISTRATION FEE

When payable

13. An administration fee shall be payable in accordance with the provisions of this Part of this Order at the commencement of each financial year and—

(*a*) shall be payable in full notwithstanding that the Public Trustee ceases to act in the trust, or any part thereof, in the course of that year;

(*b*) shall not be payable 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.

Amount of administration fee

14.—(1) The administration fee shall be the relevant percentage of that multiple of £100 which is nearest to the net capital value of the trust as certified by the Public Trustee after such value has been estimated in accordance with the provisions of this paragraph.

(2) The net capital value of a trust shall be A + B — C where—

A is the aggregate value on the appropriate valuation date of the trust property other than interests not in possession and annuities or other terminable payments to which paragraph 15 applies;

B is the value, on its acceptance fee valuation date, of any additional property becoming subject to the trust during the relevant period;

C is such sum as the Public Trustee considers to be a reasonable deduction in respect of any trust property distributed or disbursed by him during the relevant period.

(3) In the case of any trust accepted by the Public Trustee after 31st March 1975 the aggregate value as ascertained for the purposes of sub-paragraph (2) above shall be multiplied by the factor $\frac{X}{Y}$ where—

X is the Financial Times Actuaries All-Share Index Number for 1st October 1974, namely 78·58; and

Y is the Financial Times Actuaries All-Share Index Number for the acceptance fee valuation date;

and in the case of any additional property becoming subject to a trust after 31st March 1975 the value of the additional property shall be multiplied by that factor.

(4) In valuing any property for the purposes of this paragraph no deduction shall be made for any debt specifically charged upon it.

(5) The relevant percentage shall be 2 per cent. of the net capital value of the trust except that—

(*a*) where the Public Trustee is acting exclusively as custodian trustee, the relevant percentage shall be $\frac{1}{2}$ per cent.;

(*b*) where he is acting exclusively as trustee of a settlement under the Settled Land Act 1925, it shall be 1 per cent. in respect of any part of the trust property which at the appropriate valuation date is represented by land;

(*c*) where he is acting as trustee of a superannuation scheme, it shall be 1 per cent.;

(*d*) where he is acting as trustee under a declaration of trust for one beneficiary only, it shall be 1 per cent.

(6) In this paragraph the "appropriate valuation date" means 1st October 1974 in the case of any trust in which the Public Trustee was then acting and in the case of any other trust, its acceptance fee valuation date; and the "relevant period" means the period between the appropriate valuation date and the date on which the fee is payable.

Annuities

15. 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 shall be charged at the rate of 2 per cent. of the gross income without deduction of income tax or other outgoings, and no other fee shall be payable in respect thereof under this Part of this Order.

PART IV

WITHDRAWAL FEE

When payable

16. A withdrawal fee shall be payable upon the Public Trustee ceasing to act in any trust, whether upon retirement or otherwise, or upon the withdrawal or

distribution of any part of the trust property, except where—

(*a*) trust property held under a declaration of trust in favour of one beneficiary only is withdrawn for the purpose of transfer to a new trust accepted by the Public Trustee;

(*b*) trust property is withdrawn for the purpose of paying any fees prescribed by this Order.

Amount of withdrawal fee

17. The withdrawal fee shall be charged at the rate of 4 per cent. of the gross capital value of the property withdrawn:

Provided that where the Public Trustee is acting in any case to which paragraph 12(3) applies the rate shall be 1 per cent.

PART V

FEES FOR SPECIAL SERVICES

Insurance fee

18. If the Public Trustee effects or renews a policy of insurance on any trust property a fee shall be payable equal to the amount of any commission allowed.

Stockbroker's commission fee

19. On any dealing in securities a fee shall be payable equal to the amount of any stockbroker's commission refunded.

Fee for tax work

20. For work undertaken by the Public Trustee:—

(*a*) in the recovery, whether by way of repayment or set-off, of any United Kingdom income tax or any foreign tax of a similar character, there shall be charged such fee as may previously have been agreed with the beneficiary or beneficiaries for whose benefit the recovery is made or, in the absence of such agreement, a fee of £5 or such fee not exceeding 10 per cent. of the tax recovered as the Public Trustee may determine;

(*b*) in supplying or preparing returns, statements or computations in respect of—

(i) income tax or surtax where no tax is recovered; or

(ii) capital gains tax,

there shall be charged a fee of such amount not exceeding £75 as the Public Trustee may determine in each case.

Investment fee

21. On the sale, purchase, conversion, exchange or repayment of any stocks, funds, shares, securities or land or on an advance on mortgage a fee shall be payable at the rate of $\frac{3}{4}$ per cent. of the amount realised or invested:

Provided that where the Public Trustee is acting under the direction of a tenant for life or statutory owner of settled land, or is acting exclusively as custodian trustee, the rate shall be one-half of that prescribed above.

Audit fee

22. A fee of £150 shall be payable in respect of every audit conducted by the Public Trustee under section 13 of the Act.

Income collection fee

23.—(1) Subject to the provisions of this paragraph, an income collection fee at the rate of $1\frac{1}{2}$ per cent. shall be payable annually, at such time or times as the Public Trustee may direct, in respect of the gross annual income of any trust received by him on or after 1st April 1975.

(2) Where the Public Trustee is acting exclusively as a custodian trustee, a trustee of a superannuation scheme, or under a declaration of trust for one beneficiary only, the income collection fee shall be payable at one-half of the rate prescribed above.

(3) No fee shall be payable under this paragraph in respect of an annuity or other terminable payment to which paragraph 15 applies.

(4) The Public Trustee may remit so much as appears to him equitable of any fee payable under this paragraph where—

(*a*) his duties have been or are likely to be exceptionally simple; or

(*b*) the circumstances are otherwise exceptional.

PART VI

COMMON INVESTMENT SCHEMES

Management fee

24.—(1) A management fee shall be payable in respect of each fund established under a common investment scheme.

(2) The management fee shall be payable in respect of each half-year during which the fund is in existence and shall become due on the accounting date terminating each half-year, so, however, that the period beginning with the establishment of the fund and ending with the first accounting date shall, irrespective of its length, be treated as a half-year.

(3) The management fee shall vary in accordance with the capital value of the fund on the relevant accounting date and shall be charged as follows:—

(i) where the value does not exceed £4,000,000, at the rate of $\frac{3}{16}$ per cent.;

(ii) where the value exceeds £4,000,000, at a rate equal to the aggregate of £7,500 and $\frac{3}{20}$ per cent. of the excess.

(4) In this paragraph "common investment scheme" means a scheme made under section 1 of the Administration of Justice Act 1965.

PART VII

VALUE ADDED TAX FEE

25. For the purpose 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 paragraph 18 or 19) is charged, there shall be charged an additional fee equal to the amount of the tax.

PART VIII

REVOCATION

Revocation of previous Fees Orders

26. The Public Trustee (Fees) Order 1969**(a)**, the Public Trustee (Fees) Order 1970**(b)**, the Public Trustee (Fees) (No. 2) Order 1970**(c)**, the Public Trustee (Fees) Order 1971**(d)**, the Public Trustee (Fees) Order 1973**(e)** and the Public Trustee (Fees) Order 1974**(f)** are hereby revoked.

Dated 27th February 1975.

Donald R. Coleman,
James A. Dunn,
Two of the Lords Commissioners of Her Majesty's Treasury.

Dated 28th February 1975.

Elwyn-Jones, C.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order amends and consolidates the Public Trustee (Fees) Order 1969 and subsequent amending Orders.

The principal amendments made by the Order are as follows:—

(1) the basic minimum acceptance fee is increased from £50 to £100 and the lower minimum from £15 to £25 (paragraph 12);

(2) the basic rate of the administration fee is increased from ½ per cent of the value of the trust property on 1st October 1971 (when the Financial Times Actuaries All-Share Index Number was 179·51) to 2 per cent. of its value on 1st October 1974 (when the Index Number was 78·58). To allow for the recent rise in values, trust property accepted after the Order comes into force is to be valued as if it had been accepted on 1st October 1974, by means of a factor expressing subsequent movements of the Index (paragraph 14) of which details can be obtained from the Public Trustee Office on working days between 9 a.m. and 5 p.m.;

(3) the basic rate of the withdrawal fee is increased from 2 per cent. to 4 per cent. and the lower rate from ½ per cent. to 1 per cent.; and the concession for property withdrawn within 3 years of acceptance is removed (paragraph 17);

(a) S.I. 1969/513 (1969 I, p. 1422).
(b) S.I. 1970/466 (1970 I, p. 1560).
(c) S.I. 1970/1169 (1970 II, p. 3938).
(d) S.I. 1971/291 (1971 I, p. 1011).
(e) S.I. 1973/408 (1973 I, p. 1356).
(f) S.I. 1974/310 (1974 I, p. 1070).

(4) the maximum fee for tax work is increased from £50 to £75 (paragraph 20);

(5) the investment fee is extended to cover conversions, exchanges and repayments (paragraph 21);

(6) the rate of the income collection fee is increased from 1 per cent. of the first £5,000 to $1\frac{1}{2}$ per cent. of all the trust income (paragraph 23); and

(7) the management fees of $\frac{1}{8}$ per cent. of common investment funds up to £2,000,000, £2,500 on funds between £2,000,000 and £2,500,000 and $\frac{1}{10}$ per cent. of greater funds are increased to $\frac{3}{16}$ per cent. of funds up to £4,000,000 and $\frac{3}{20}$ per cent. of any excess.

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