STATUTORY INSTRUMENTS

1977 No. 508

TRUSTEES

The Public Trustee (Fees) Order 1977

Made - - - - 17*th March* 1977

Coming into Operation 1*st April* 1977

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 1977 and shall come into operation on 1st April 1977.

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—

"acceptance valuation date" in respect of any trust property means the date selected by the Public Trustee in relation to that property under paragraph 11(1) or 15(1);

"executor" means executor of a will or administrator of an estate however appointed;

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

"friendly society" means a society registered as a friendly society under the Friendly Societies Act 1974(**e**);

"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 capital transfer tax;

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

"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;

"will" includes any testamentary disposition; and

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

(**a**) 1906 c. 55. (**b**) 1957 c. 12. (**c**) 1965 c. 2.
(**d**) 1889 c. 63. (**e**) 1974 c. 46. (**f**) 1925 c. 18.

PART I

GENERAL

Incidence of fees

3. 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 18 applies;

(*c*) the insurance fee provided for by paragraph 21;

(*d*) the fee provided for by paragraph 23 in respect of work done in relation to income tax;

(*e*) the income collection fee provided for by paragraph 26;

(*f*) the management fees provided for by paragraphs 28 and 29; and

(*g*) the value added tax fee provided for by paragraph 30, 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*) shall take the value of any estate or 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 estate or trust property as being that multiple of £10 which is nearest to his estimate of its exact value.

Time of payment

5. 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

6. 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.

Power to remit fees and settle disputes

7.—(1) The Public Trustee may remit so much as appears to him 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 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 estate or trust where—

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

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

PART II

EXECUTORSHIP FEE

When payable

8. An executorship fee shall be payable, in accordance with the provisions of this Part of this Order, upon acceptance by the Public Trustee on or after 1st April 1977 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 shall be 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.

Postponement of payment

10. Where an executorship fee becomes payable in accordance with paragraph 8 or 9 in respect of an estate, any part of which is not in possession or not readily realisable, the Public Trustee shall exclude the value of the property not in possession or not readily realisable 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) The executorship fee shall be calculated in accordance with the provisions of this paragraph 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 the executorship fee shall be as follows:—

in respect of the first £10,000	4½ per cent.
in respect of any excess over £10,000 up to £ 50,000	4 per cent.
in respect of any excess over £50,000 up to £ 75,000	3 per cent.
in respect of any excess over £75,000 up to £100,000	2 per cent.
in respect of any excess over £100,000	1 per cent.

but so that the fee payable shall not be less than £250:

Provided that 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 £75 only shall be payable.

PART III

ACCEPTANCE FEE

When payable

12. 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 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:

Provided that an acceptance fee shall not be payable in respect of any estate which the Public Trustee accepts as executor on or after 1st April 1977 during the period he so acts.

Property subsequently coming into trust

13. If additional property becomes subject to a trust (other than 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 shall be 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

14. Where an acceptance fee becomes payable in accordance with paragraph 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*) shall 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*) 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 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.

Amount of acceptance fee

15.—(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 estate or the trust property on the date of acceptance or on such convenient date as the Public Trustee may select.

(2) Where the Public Trustee is acting as original trustee of a trust created *inter vivos* (other than a declaration of trust in favour of one beneficiary only) the rate of the acceptance fee shall be as follows:—

in respect of the first £50,000	$\frac{1}{2}$ per cent.
in respect of any excess over £50,000 up to £100,000	$\frac{1}{4}$ per cent.
in respect of any excess over £100,000	$\frac{1}{20}$ per cent.

but so that the fee payable shall not be less than £150.

(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 on an intestacy,

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

in respect of the first £25,000	$\frac{1}{2}$ per cent.
in respect of any excess over £25,000	$\frac{1}{5}$ per cent.

but so that the fee payable shall not be less than £50:

Provided that no acceptance fee shall be charged in respect of property to which this sub-paragraph 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 (except where he is acting exclusively as custodian trustee) the rate of the acceptance fee shall be as follows:—

in respect of the first £50,000	1 per cent.
in respect of any excess over £50,000 up to £100,000	½ per cent.
in respect of any excess over £100,000	¼ per cent.

but so that the fee payable shall not be less than £200.

(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 IV

ADMINISTRATION FEE

When payable

16. 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 shall be payable in full notwithstanding that the Public Trustee ceases to act in the estate or the trust, or any part thereof, in the course of that year:

Provided that an administration fee shall not be 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 on or after 1st April 1977 during the period he so acts.

Amount of administration fee

17.—(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 an estate or a trust shall be 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 paragraph 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 him during the relevant period.

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

(4) The relevant percentage shall be 1 per cent. of the net capital value of the estate or the trust except that—

(*a*) where the Public Trustee is acting exclusively as custodian trustee, the relevant percentage shall be $\frac{1}{4}$ per cent.;

(*b*) where he is acting exclusively as trustee of a settlement under the Settled Land Act 1925, it shall be $\frac{1}{2}$ per cent. in respect of any part of the trust property which at the date upon which the fee becomes payable is represented by land; and

(*c*) where he is acting as trustee under a declaration of trust for one beneficiary only, it shall be $\frac{1}{2}$ per cent.

but so that the fee payable shall not be less than £10.

(5) In this paragraph—

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

(*a*) 1st July 1976 in the case of any estate or trust in which the Public Trustee was acting on that date and, in any other case, its acceptance valuation date; and

(*b*) thereafter, in every case each succeeding third anniversary of 1st July 1976; and

"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 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 V

WITHDRAWAL FEE

When payable

19. A withdrawal fee shall be payable upon the Public Trustee ceasing to act in any estate or trust, whether upon retirement or otherwise, or upon the withdrawal or distribution of any part of the estate or the trust property, except where—

(*a*) the Public Trustee ceases to act as executor of an estate in respect of which an executorship fee is payable;

(*b*) trust property held under 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; or

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

Amount of withdrawal fee

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

Provided that where the Public Trustee is acting in any case to which paragraph 15(3) applies the rate shall be 1 per cent.

PART VI

FEES FOR SPECIAL SERVICES

Insurance fee

21. 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

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

Fee for tax work

23. For work undertaken by the Public Trustee in the recovery of any tax, or in supplying or preparing returns, statements or computations in respect of income or capital tax there may be charged a fee of such amount not exceeding £125 commensurate with the amount of work involved as the Public Trustee may determine.

Investment fee

24. On the sale, purchase 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 $\frac{3}{8}$ per cent. of the amount realised, invested or repaid.

Audit fee

25. A fee of £300 shall be payable in respect of every audit conducted by the Public Trustee under section 13 of the Public Trustee Act 1906.

Income collection fee

26.—(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 estate or trust received by him on or after 1st April 1977.

(2) Where the Public Trustee is acting exclusively as a custodian trustee 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 18 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.

Fees for additional work

27. The Public Trustee shall be entitled to make a reasonable additional charge according to the work involved in:—

(*a*) dealing with a business;

(*b*) dealing with assets situate 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**);

and for duties of an unusual, complex or exacting nature.

PART VII

SUPERANNUATION SCHEMES AND FRIENDLY SOCIETIES

Management fee

28.—(1) A management fee shall be 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 shall be payable annually on the accounting date and shall be charged at such amount commensurate with the amount of work involved and the capital value of the fund on the relevant accounting date as the Public Trustee may agree with the trustees.

PART VIII

COMMON INVESTMENT SCHEMES

Management fee

29.—(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:—

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

(*b*) where the value exceeds £4,000,000, at the rate equal to the aggregate of £7,500 and 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.

(a) S.R. & O. 1912/348 (Rev. XXIII, p. 311: 1912, p. 1241).

PART IX

VALUE ADDED TAX

Amount of fee

30. 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 21 or 22) is charged, there shall be charged an additional fee equal to the amount of the tax.

PART X

REVOCATION

Revocation of previous Fee Order

31. The Public Trustee (Fees) Order 1975(**a**) is hereby revoked.

Dated 16th March 1977.

Donald R. Coleman,

David Stoddart,

Two of the Lords Commissioners of Her Majesty's Treasury.

Dated 17th March 1977.

Elwyn-Jones, C.

(**a**) S.I. 1975/287 (1975 I, p. 734).

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order re-enacts with amendments the provisions of the Public Trustee (Fees) Order 1975.

The principal amendments are as follows: —

(1) the introduction of an executorship fee (paragraph 8);

(2) the basic minimum acceptance fee is increased from £100 to £200 and the lower minimum fees from £100 to £150 and from £25 to £50 (paragraph 15);

(3) the basic rate of the administration fee is decreased from 2 per cent. of the value of the trust property on 1st October 1974 to 1 per cent. of its value on 1st July 1976; a minimum fee of £10 is introduced (paragraph 17);

(4) the maximum fee for tax work is increased from £75 to £125 (paragraph 23);

(5) the investment fee ceases to be payable on exchanges and conversions (paragraph 24);

(6) the audit fee is increased from £150 to £300 (paragraph 25);

(7) the introduction of fees for additional work and for special duties (paragraph 27); and

(8) a management fee for superannuation schemes and friendly societies is introduced (paragraph 28).

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