

DRAFT STATUTORY INSTRUMENTS

2018 No. 0000 (L. 0)

SENIOR COURTS OF ENGLAND AND WALES

The Non-Contentious Probate (Fees) Order 2018

Made - - - - *****

Coming into force in accordance with article 1

The Lord Chancellor, with the consent of the Treasury, makes the following Order in exercise of the powers conferred by sections 92(1) and (2) and 108(6) of the Courts Act 2003(a) (“the 2003 Act”) and section 180(1) of the Anti-social Behaviour, Crime and Policing Act 2014(b) (“the 2014 Act”).

The Lord Chancellor has had regard to the matters referred to in section 92(3) of the 2003 Act and in section 180(3) of the 2014 Act and has consulted in accordance with section 92(5) and (6) of the 2003 Act.

A draft of this Order has been laid before Parliament and approved by resolution of each House of Parliament in accordance with section 180(7) of the 2014 Act.

Citation and commencement

1. This Order may be cited as the Non-Contentious Probate (Fees) Order 2018 and comes into force 21 days after the day on which the Order is made.

Interpretation: general

2.—(1) In this Order—

“the assessed value of an estate” has the meaning given in article 3;

“authorised place of deposit” means any place where, in accordance with a direction given under section 124 of the Senior Courts Act 1981(c) (place for deposit of original wills and other documents), original wills and other documents under the control of the High Court (either in the Principal Registry or a district registry) are deposited and preserved;

“district registry” means—

(a) the probate registry of Wales and any sub-registry attached to it;

(a) 2003 c. 39; section 92 was amended by paragraph 345 of Schedule 4 and paragraph 4 of Schedule 11 to the Constitutional Reform Act 2005 (c. 4), and paragraph 40(a) of Schedule 9 and paragraph 95 of Schedule 10 to the Crime and Courts Act 2013 (c. 22). Section 108(6) was amended by paragraph 348 of Schedule 4 to the Constitutional Reform Act 2005.

(b) 2014 c. 12.

(c) 1981 c. 54; section 124 was amended by paragraph 5 of Schedule 2 to the Constitutional Reform Act 2005.

Refund of fees on withdrawal of application for grant

9. Where an application for a grant is withdrawn before the issue of the grant, the registrar must refund to the applicant the difference between the fee taken and £50.

Remission of fees in exceptional circumstances

10. The Lord Chancellor may remit a fee prescribed in this Order where satisfied that there are exceptional circumstances which justify doing so.

Revocation

11. The Orders specified in Schedule 2 are revoked.

Transitional and saving provision

12. The Non-Contentious Probate Fees Order 2004 continues to have effect where an application described in column 1 of Schedule 1 has been received by the Principal Registry or a district registry before the coming into force of this Order.

Date *Name*
Parliamentary Under Secretary of State
Ministry of Justice

We consent

Date *Name*
Name
Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1 Article 4

FEES TO BE TAKEN

<i>Column 1</i> <i>Name and description of fee</i>	<i>Column 2</i> <i>Amount of fee</i>
1 Application for a grant or resealing of a grant	
On an application for a grant or resealing of a grant where the assessed value of the estate:	
(a) exceeds £50,000 but does not exceed £300,000;	£250
(b) exceeds £300,000 but does not exceed £500,000;	£750
(c) exceeds £500,000 but does not exceed £1,000,000;	£2,500
(d) exceeds £1,000,000 but does not exceed £1,600,000;	£4,000
(f) exceeds £1,600,000 but does not exceed £2,000,000;	£5,000
(g) exceeds £2,000,000	£6,000
Fee 1 is not payable on any application on which fee 2.1 or 2.2 is payable	

2 Special applications	
2.1 On an application for a duplicate or second or subsequent grant (including a grant following a revoked grant) in respect of the same estate as the original grant	£20
Fee 2.1 is not payable if the application for the grant was preceded only by a grant limited to settled land, to trust property or to part of the estate	
2.2 On an application for a grant or resealing of a grant in respect of— (a) a death occurring on or after 20th March 2003, and (b) an estate exempt from inheritance tax by virtue of section 154 of the Inheritance Tax Act 1984 (death in active service etc.)	£10
3 Caveats	
On an application for the entry or extension of a caveat	£20
4 Search	
On an application for a standing search to be carried out in an estate, for each period of six months and including the issue of a copy grant and will (if any) (irrespective of the number of pages)	£10
5 Deposit of wills	
On depositing a will for safe custody in the Principal Registry or a district registry	£20
6 Inspection	
On inspection of any will or other document retained by the Principal Registry or a district registry and in the presence of an official of that registry	£20
7 Copy documents	
On a request for a copy of any document:	
(a) for the first copy;	£10
(b) for every subsequent copy if supplied at the same time as the first copy;	50p
(c) where the copy or copies are made available on a computer disk or in any other electronic form, for each such copy	£10
Fees 7(a), (b) and (c) are payable whether or not the copy is provided as a certified copy	
8 Oaths	
For administering an oath:	
(a) for each deponent to each affidavit;	£11
(b) for marking each exhibit	£2
Fees 8(a) and (b) are not payable on an application for a grant which is a personal application	
9 Determination of costs	

For determining costs	The same fees as are payable under the Civil Proceedings Fees Order 2008(a) for determining costs (see Fee 5 (Determination of costs (Senior Court and County Court)) in Schedule 1)
10 Settling documents	
For perusing and settling citations, advertisements, oaths, affidavits or other documents, for each document settled	£12

SCHEDULE 2

ORDERS REVOKED

Article 11

<i>Title</i>	<i>S.I. number</i>
Non-Contentious Probate Fees Order 2004	S.I. 2004/3120
Non-Contentious Probate Fees (Indian Ocean Tsunami) Order 2005	S.I. 2005/266
Non-Contentious Probate Fees (London Terrorist Bombings) Order 2005	S.I. 2005/3359
Non-Contentious Probate Fees (Amendment) Order 2007	S.I. 2007/2174
Non-Contentious Probate Fees (Amendment) Order 2008	S.I. 2008/2854
Non-Contentious Probate Fees (Amendment) Order 2009	S.I. 2009/1497
Non-Contentious Probate Fees (Amendment) Order 2011	S.I. 2011/588
Non-Contentious Probate Fees (Amendment) Order 2013	S.I. 2013/1408
Non-Contentious Probate Fees (Amendment) Order 2014	S.I. 2014/876

EXPLANATORY NOTE

(This note is not part of the Order)

The Non-Contentious Probate (Fees) Order 2018 introduces a new regime of fees for non-contentious probate matters in the Principal Registry and district registries. It replaces the Non-Contentious Probate Fees Order 2004 (S.I. 2004/3120) ('the 2004 Order').

Under this Order, the fee payable for an application for a grant of probate or letters of representation or resealing of a grant is now to be determined by reference to a scale based on the assessed value of the estate. No fee is payable for such an application where the assessed value of the estate does not exceed £50,000. This scale replaces the flat fee of £155 (or £215 for a personal applicant) which was formerly payable in respect of estates valued in excess of £5,000. Article 3 provides the definition of "the assessed value of the estate". Schedule 1 sets out the relevant scales and fees for such an application. It also prescribes the fees payable for other non-contentious probate matters, although those amounts have not been changed by this Order.

Articles 5 to 9 largely consolidate existing legislative provisions regarding refunds and remissions that were made in, or in relation to, the 2004 Order. Article 9 makes provision for the registrar to provide a partial refund in circumstances where an applicant withdraws their application before a grant is issued.

The Order removes fees for non-contentious probate matters from the general fee remissions scheme for court and tribunals ('Help with Fees') previously contained in Schedule 1A to the 2004 Order. Article 10 retains a power for the Lord Chancellor to remit fees in exceptional circumstances.

(a) S.I. 2008/1053. Relevant amending instruments are S.I. 2014/874 and 2016/807.