Draft Order laid before Parliament under section 180(7) of the Anti-social Behaviour, Crime and Policing Act 2014, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2017 No. XXXX (L. X)

SENIOR COURTS, ENGLAND AND WALES

The Non-Contentious Probate Fees Order 2017

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(**1**) ("the 2003 Act") and section 180(1) of the Anti-social Behaviour, Crime and Policing Act 2014(**2**) ("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 2017 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(**3**) (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—

(**1**) 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, 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 paragraphs 308 and 348 of Schedule 4 to the Constitutional Reform Act 2005 (c. 4).

(**2**) 2014 c. 12.

(**3**) 1981 c. 54; section 124 was amended by paragraph 5 of Schedule 2 to the Constitutional Reform Act 2005.

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

(b) any district probate registry, or

(c) any sub-registry attached to a district probate registry;

"grant" means a grant of probate or letters of administration;

"the Principal Registry" means the Principal Registry of the Family Division and any sub-registry attached to it;

"the registrar" means the district probate registrar of the district probate registry to which an application for a grant is made.

(2) Any reference in this Order to a fee by number is to the fee so numbered in Schedule 1.

Interpretation: assessed value of an estate

3.—(1) For the purposes of this Order, "the assessed value of an estate" means—

(a) in the case of an application for a grant, the value of the net real and personal estate (excluding any settled land and any relevant death gratuity) passing under the grant as shown—

(i) in the Inland Revenue affidavit (for a death occurring before 13th March 1975);

(ii) in the account required to be delivered under section 216 of the Inheritance Tax Act 1984(**4**) (for a death occurring on or after 13th March 1975), or

(iii) where paragraph (2) applies, in the oath which is sworn to lead to the grant;

(b) in the case of an application to reseal, the value as shown in the document referred to in paragraph (a)(i) to (iii), passing under the grant upon its being resealed.

(2) This paragraph applies in any case in which, in accordance with arrangements made under section 109 of the Senior Courts Act 1981(**5**) (refusal of grant where capital transfer tax unpaid) or regulations made under section 256(1)(a) or (aa) of the Inheritance Tax Act 1984(**6**) (regulations about accounts, etc.), the affidavit or account referred to in paragraph (a)(i) or (ii) is not required to be delivered.

(3) In this article "relevant death gratuity" means a death gratuity payable—

(a) under section 17(2) of the Judicial Pensions Act 1981(**7**) (lump sum on retirement or death);

(b) under section 4(3) of the Judicial Pensions and Retirement Act 1993(**8**) (lump sum on the judicial officer's retirement or death), or

(c) to the personal representatives of a deceased civil servant by virtue of a scheme made under section 1 of the Superannuation Act 1972(**9**) (superannuation schemes as respects civil servants, etc.).

(**4**) 1984 c. 51; section 216 was amended by section 94 of, and paragraph 11 of Schedule 26 to, the Finance Act 1985 (c. 54), section 101(1) and (3) of, and paragraph 29 to Schedule 19 to, the Finance Act 1986 (c. 41), section 96(1) and (7) of, and paragraph 4 of Schedule 7 to, the Finance (No 2) Act 1987 (c. 51), section 105 of the Finance Act 1999 (c. 16), section 160 of, and paragraphs 1 and 7 of Schedule 22 to, the Finance Act 2006 (c. 25), section 65 of, and paragraphs 49, 54(1), (2) and 85 to 109 of Schedule 16 to, the Finance Act 2011 (c. 11), and section 117 of, and paragraphs 1 and 5(1) of Schedule 25 to, the Finance Act 2014 (c. 26).

(**5**) section 109 was amended by section 276 of, and paragraph 20 of Schedule 8 to, the Inheritance Tax Act 1984 (c. 51), and section 294(1) of, and Part 4 of Schedule 42 to, the Finance Act 2004 (c. 12).

(**6**) section 256(1) was amended by section 293(1) and (2) of the Finance Act 2004.

(**7**) 1981 c. 20; section 17 was amended by paragraph 13(2) of Schedule 3(3) to SI. 2015/182.

(**8**) 1993 c. 8; section 4 was amended by paragraph 12(3) of Schedule 3(3) to S.I. 2015/182 and paragraph 11(3) of Schedule 3(3) to S.I. 2015/76.

(**9**) 1972 c. 11; section 1 was amended by paragraph 7 of Schedule 8 to the Public Service Pensions Act 2013 (c. 25).

Fees to be taken

4. The fees prescribed in column 2 of Schedule 1 are to be taken in the Principal Registry and each district registry in respect of the items described in column 1 in accordance with and subject to any directions specified in column 1.

Exemptions: general

5. If any convention entered into by Her Majesty with any foreign power provides that no fee is to be required to be paid in respect of any proceedings, the fees prescribed by this Order are not to be taken in respect of those proceedings.

Exemption: search made for documents over 100 years old

6. Fee 6 (inspection) is not to be taken where—

(a) a search is made for research, or a similar purpose, for a document over 100 years old filed in any authorised place of deposit, and

(b) the President of the Family Division gives permission for no fee to be taken.

Refunds: armed forces

7. Where a fee has been taken on an application for a grant or resealing of a grant and that application was in respect of—

(a) an estate which, on the date on which that fee was taken, was exempt from inheritance tax by virtue of section 154 of the Inheritance Tax Act 1984(**10**) (death on active service, etc.), and

(b) a death occurring before 20th March 2003,

the Lord Chancellor must, on receipt of a written application from the person who paid the fee, refund to that person the difference between the fee taken and fee 2.2 (application for grant in respect of death in active service, etc.).

Remissions and refunds: Indian Ocean Tsunami and London Terrorist Bombings

8.—(1) The Lord Chancellor must remit in full any fee prescribed in this Order where it appears to the Lord Chancellor that an application for a grant or resealing of a grant is in respect of—

(a) a death occurring as a result of the earthquake and tsunami in the Indian Ocean on 26th December 2004;

(b) a death occurring as a result of another person's detonation of a bomb in London on 7th July 2005, or

(c) a death occurring as a result of action taken in a police operation following another person's attempted detonation of a bomb in London on 21st July 2005.

(2) Where a fee has been taken under the Non-Contentious Probate Fees Order 2004(**11**)

(a) after 26th December 2004 but before 4th March 2005, in respect of a death occurring in the circumstance described in paragraph (1)(a), or

(b) after 7th July 2005 but before 29th December 2005, in respect of a death occurring in the circumstances described in paragraph (1)(b) or (c),

(**10**) section 154 was amended by Section 378(1) of, and paragraph 99 of Schedule 16 to, the Armed Forces Act 2006 (c. 52), and section 75(1) and (3) of the Finance Act 2015 (c. 11).
(**11**) S.I. 2004/3120.

the Lord Chancellor must, on receipt of a written application from the person who paid the fee, refund the fee to that person.

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 savings provisions

12. The Non-Contentious Probate Order 2004(**12**) 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.

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

We consent

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

(**12**) S.I. 2004/3120