



# Public Trustee and Administration of Funds Act 1986

## 1986 CHAPTER 57

An Act to make provision with respect to certain functions of the Public Trustee, the Accountant General of the Supreme Court and the Court of Protection as respects the management, protection or administration of the funds and other property and, if under disability, the affairs of private persons; and with respect to the investment expenses of the National Debt Commissioners. [7th November 1986]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Public Trustee and Funds Administration*

#### **1 Public Trustee and Accountant General: appointment, tenure of office etc.**

- (1) The office of Public Trustee and the office of Accountant General of the Supreme Court may be held by one person.
- (2) The office of Accountant General of the Supreme Court may, but need not, be held by the Permanent Secretary to the Lord Chancellor.
- (3) The enactments specified in the Schedule to this Act shall have effect with the amendments specified in that Schedule.

#### **2 Exercise by Public Trustee of functions of Court of Protection**

- (1) Part VII of the Mental Health Act 1983 (which provides for the protection and management of the property and affairs of mental patients) shall have effect with the following amendments.
- (2) In section 94 (exercise of judge's functions)—

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- (a) in subsection (1), at the beginning there shall be inserted the words " Subject to subsection (1A) below " and after the words " Master of the Court of Protection " there shall be inserted the words " , by the Public Trustee ";
  - (b) in subsection (1), there shall be inserted, in paragraph (a), after the word " Master" the words " , the Public Trustee" and, after that paragraph, the following paragraph—
    - “(aa) in the case of the Public Trustee, subject to any directions of the Master and so far only as may be provided by any rules made under this Part of this Act or (subject to any such rules) by directions of the Master.”; and
  - (c) after subsection (1) there shall be inserted the following subsection—
    - “(1A) In such cases or circumstances as may be prescribed by any rules under this Part of this Act or (subject to any such rules) by directions of the Master, the functions of the judge under this Part of this Act shall be exercised by the Public Trustee (but subject to any directions of the Master as to their exercise)”.
- (3) In section 111 (exercisability of functions conferred by other Acts)—
- (a) in subsection (2), after the words " subsection (3) " there shall be inserted the words " and (3A) " and after the words " Master of the Court of Protection " there shall be inserted the words " , by the Public Trustee " ;
  - (b) after subsection (2) there shall be inserted the following subsection—
    - “(2A) The exercise of the functions referred to in subsection (2) above by the Public Trustee shall be subject to any directions of the Master and they shall be exercisable so far only as may be provided by any rules made under this Part of this Act or (subject to any such rules) by directions of the Master.”; and
  - (c) after subsection (3) there shall be inserted the following subsection—
    - “(3A) In such cases or circumstances as may be prescribed by any rules under this Part of this Act or (subject to any such rules) by directions of the Master, the functions referred to in subsection (2) above shall be exercised by the Public Trustee (but subject to any directions of the Master as to their exercise).”

### **3 Functions of the Public Trustee**

- (1) The Public Trustee shall have, in addition to his powers and duties under the Public Trustee Act 1906 (" the 1906 Act"), the following functions.
- (2) Subject to subsections (4), (5) and (6) below, the Public Trustee shall have all the functions expressed to be conferred by Part VII of the Mental Health Act 1983 (" the 1983 Act") on the judge with respect to the property and affairs of a patient and, notwithstanding anything in the 1906 Act, if authorised, appointed or directed (as the case may be) to do so, he may—
  - (a) act as, as well as appoint a person to act as, a receiver for a patient, or
  - (b) carry on, as well as authorise or direct a suitable person to carry on, a patient's profession, trade or business.

- (3) Subject to subsections (4), (5) and (6) below, the Public Trustee shall have all the functions expressed to be conferred by any enactment not contained in Part VII of the 1983 Act on the authority having jurisdiction under that Part of that Act.
- (4) The Public Trustee shall not exercise the functions conferred on him by subsection (2) or (3) above except where those functions are made exercisable or are to be exercised by him by virtue of rules made or directions given to him under Part VII of the 1983 Act.
- (5) Where, under any such rules or directions, functions become exercisable or are to be exercised by the Public Trustee he shall discharge the duties and may exercise the powers so imposed or conferred on him (and, where directions are given by the Master, in accordance with the directions) whether or not, under any provision of the 1906 Act, he would be obliged or empowered to decline to accept any trust or other duty.
- (6) The discharge by the Public Trustee of any functions under this section shall not be treated as the discharge of the duties of his office for the purposes of the following provisions of the 1906 Act, that is to say—
  - (a) section 7 (liability of Consolidated Fund);
  - (b) section 9 (fees); and
  - (c) section 10 (appeal to court);but persons may be appointed as his officers and expenses paid under section 8 and rules may be made under section 14 of that Act for the purposes of this section as for the purposes of that Act.
- (7) In this section " the judge " and " patient " have the same meaning as in Part VII of the 1983 Act and " the Master " means the Master of the Court of Protection.

#### **4 Accountant General's powers of investment**

In section 38 of the Administration of Justice Act 1982 (management and investment of funds in court), subsection (5) (power of court to specify manner of investment by Accountant General) and, in subsection (4), the words " subject to subsection (5) below " shall be omitted.

#### *Investment expenses of National Debt Commissioners*

#### **5 Deduction by National Debt Commissioners of investment expenses of money in court**

- (1) In section 39 of the Administration of Justice Act 1982 (investment of money in court transferred to National Debt Commissioners) in subsection (2) (payment of excess into Consolidated Fund) after paragraph (b) there shall be inserted the words—

“and

  - (c) an amount equal to the expenses incurred by the Commissioners in that year in making investments under subsection (1) above and disposing of investments so made”.
- (2) In subsection (3) of that section (deficiencies to be made good out of the Consolidated Fund) for the words " paragraphs (a) and (b)" there shall be substituted the words " paragraphs (a) to (c) ".

(3) After subsection (4) of that section there shall be inserted the following subsection—

“(4A) Any sum deducted by the Commissioners under subsection (2)(c) above shall be applied as an appropriation in aid of moneys provided by Parliament for the expenses of the National Debt Commissioners; and, so far as not so applied, shall be paid into the Consolidated Fund.”

*General*

**6 Short title, commencement and extent**

- (1) This Act may be cited as the Public Trustee and Administration of Funds Act 1986.
- (2) This Act shall come into force on such day as the Lord Chancellor appoints by order made by statutory instrument.
- (3) With the exception of the amendments in the Administration of Justice Act 1982, this Act extends to England and Wales only.

SCHEDULE

Section 1.

OFFICES OF PUBLIC TRUSTEE AND ACCOUNTANT GENERAL

*Public Trustee*

1 For subsection (1) of section 8 of the Public Trustee Act 1906 (appointment and tenure of office of public trustee) there shall be substituted the following—

“(1) The Lord Chancellor shall appoint such person as he thinks fit to the office of Public Trustee and the person so appointed shall hold and vacate office in accordance with the terms of his appointment.

(1A) The Public Trustee shall be paid such salary or fees as the Lord Chancellor determines with the consent of the Treasury.

(1B) If one person holds office both as the Public Trustee and as the Accountant General of the Supreme Court then, if he ceases to be the Accountant General, he shall also cease to be the Public Trustee unless the Lord Chancellor otherwise directs.

(1C) If a vacancy occurs in the office of Public Trustee or the person appointed to hold office is for any reason unable to act for any period such person as the Lord Chancellor appoints as deputy in that office shall, during the vacancy or that period, perform the functions of that office (and any property vested in the Public Trustee may accordingly be dealt with by the deputy in all respects as if it were vested in him instead).”

*Accountant General of the Supreme Court*

2 In section 93(1) of the Supreme Court Act 1981 (status of officers for purposes of salary and pension), after the words " Schedule 2 " there shall be inserted the words " or the office of Accountant General of the Supreme Court " .

3 For subsections (2) and (3) of section 97 of the Supreme Court Act 1981 (office of Accountant General) there shall be substituted the following—

“(2) The Lord Chancellor shall appoint such person as he thinks fit to the office in the Supreme Court of Accountant General of the Supreme Court and the person so appointed shall hold and vacate office in accordance with the terms of his appointment.

(3) The Accountant General shall be paid such salary or fees as the Lord Chancellor determines with the consent of the Treasury.

(4) If one person holds office both as the Accountant General and as the Public Trustee then, if he ceases to be the Public Trustee, he shall also cease to be the Accountant General unless the Lord Chancellor otherwise directs.

(5) If a vacancy occurs in the office of Accountant General or the person appointed to hold the office is for any reason unable to act for any period such person as the Lord Chancellor appoints as deputy in that office shall, during the vacancy or that period, perform the functions of that office (and any property vested in the Accountant General may accordingly be dealt with by the deputy in all respects as if it were vested in him instead).”

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- 4 In Schedule 2 to the Parliamentary Commissioner Act 1967 (which lists the authorities subject to investigation under that Act), after note 1, there shall be inserted the following note—
- “1A The reference to the Lord Chancellor's Department includes the department of the Accountant General of the Supreme Court (whether or not that office is held by the Permanent Secretary to the Lord Chancellor).”.