

*These notes refer to the Public Trustee (Liability and Fees) Act 2002 (c.35) which received Royal Assent on 7th November 2002*

# **PUBLIC TRUSTEE (LIABILITY AND FEES) ACT 2002**

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## **EXPLANATORY NOTES**

### **SUMMARY**

3. This Act amends provisions of the Public Trustee Act 1906 about liability and fees of the Public Trustee in order to:
  - bring the power to fix fees in relation to the Public Trustee's trust work into line with other fee-setting provisions, by providing that the Lord Chancellor (as the Minister responsible) sets the fees rather than the Treasury;
  - remove the requirement that fees charged by the Public Trustee must be set to produce an annual amount sufficient to discharge the salaries and other expenses incidental to the workings of the Act;
  - clarify the extent of the Public Trustee's liability for breach of trust, and make the Lord Chancellor's Department, rather than the Consolidated Fund, liable to make good sums required to discharge it.
4. The Act does not raise any issues in relation to the European Convention on Human Rights.
5. The Public Trustee Act 1906 established the office of the Public Trustee. The Public Trustee's trust work arises when individuals appoint him to act as the executor or trustee of estates or settlements, or where he agrees to act as successor trustee where existing trustees are no longer willing or able to act. In other cases, the Public Trustee is asked to act by the High Court, although the current practice is for the Court's power to be exercised only for the benefit of children pending their majority.

### ***Fees charged by the Public Trustee***

6. Section 9(1) of the Public Trustee Act 1906 provides that fees are to be charged in respect of the duties of the Public Trustee under the Act, and that the Treasury sets the level of those fees with the sanction of the Lord Chancellor. It provides that the Treasury has power to direct the manner in which those fees are to be collected and accounted for.
7. [Section 9\(4\)](#) provides that the fees charged by the Public Trustee must be fixed to produce an annual amount sufficient to discharge the salaries and other expenses incidental to the working of the Act and no more.
8. There has been a significant shortfall between the fees generated by and the actual costs attributable to trust work under the Act. Following recommendations in a Quinquennial Review of the former Public Trust Office, a re-focused role for Public Trustee work was agreed. This involved removing trust work from the Public Trust Office, re-launching that office as the Public Guardianship Office with effect from April 2001, and combining the trust work with the Official Solicitor's existing estates work. As a result, the accommodation and other overhead costs attributed to trust work increased from 1 April 2001. This means that the level of fees has not been sufficient to meet

the requirement in section 9(4) for full cost recovery. The level of fee increase required to meet full cost recovery would be very high, (in the region of 100% in the financial year 2001/2) and would not be accompanied by any increase in the level of service to beneficiaries. The Act removes the requirement for full cost recovery in section 9(4), permitting the Lord Chancellor flexibility in setting the level of the fees, subject to normal Government fees and charges policy, guidance on which is to be found in the Treasury's Fees and Charges Guide.

### ***Public Trustee's liability***

9. The Public Trustee's liability to the beneficiaries of the funds he manages is imposed by section 2 of the Public Trustee Act 1906.
10. Section 2 of the Public Trustee Act 1906 provides that (subject to the other provisions of the Act) the Public Trustee has the same powers, duties and liabilities as a private trustee acting in the same capacity. In general, the position is that a private trustee is personally liable to reimburse a fund where his breach of trust causes a loss to it.
11. [Section 7](#) imposes a liability on the Consolidated Fund to make good any sums required to discharge the Public Trustee's liability. It also provides, however, that the Public Trustee (and accordingly the Consolidated Fund) is not liable where the Public Trustee (or any of his officers) has not contributed in any way to that liability, and could not have prevented it by reasonable diligence.
12. The intention behind the limitation of liability in section 7 seems to have been to exclude liability for a breach of trust caused solely by the actions of a co-trustee. This exception to the general liability imposed by section 7 of the Act is not needed because private trustees are not liable for breach of trust by co-trustees in the absence of their own fault. Accordingly, the exception in section 7 is of no effect.