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 STATUTORY INSTRUMENTS
 

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## 1983 No. 370 (L.4)

## TRUSTEES

## The Judicial Trustee Rules 1983

<i>Made - - - -</i>	<i>8th March 1983</i>
<i>Laid before Parliament</i>	<i>11th March 1983</i>
<i>Coming into Operation</i>	<i>1st April 1983</i>

The Lord Chancellor, in exercise of the powers conferred on him by section 4 of the Judicial Trustees Act 1896<sup>(a)</sup>, and with the consent of the Treasury and of the authority for making orders under section 56 of the Solicitors Act 1974<sup>(b)</sup>, hereby makes the following Rules:—

*Citation and commencement*

1. These Rules may be cited as the Judicial Trustee Rules 1983 and shall come into operation on 1st April 1983.

*Interpretation*

2.—(1) In these Rules, unless the context otherwise requires—

“the Act” means the Judicial Trustees Act 1896;

“the Court” has the same meaning as in the Rules of the Supreme Court;

“Corporate Trustee” means the Official Solicitor, the Public Trustee or a corporation either appointed by the Court in any particular case to be a trustee or entitled by rules made under section 4(3) of the Public Trustee Act 1906 to act as custodian trustee;

“judicial trustee” means a sole judicial trustee or two or more judicial trustees appointed to act together;

“master” means a master of the Supreme Court other than a master of the Supreme Court (Taxing Office) and includes a district registrar of a district registry of the High Court;

“official of the Court” means the holder of any paid office in or connected with the Supreme Court and includes the Official Solicitor to the Supreme Court;

“Official Solicitor” means the Official Solicitor to the Supreme Court;

“qualified accountant” means a person who is a member or a firm all the partners in which are members of the Institute of Chartered Accountants in England and Wales or of the Association of Certified and Corporate Accountants;

“Rules of the Supreme Court” has the same meaning as in section 151(4) of the Supreme Court Act 1981 (c).

(2) Subject to the provisions of these Rules and of any enactment, the Rules of the Supreme Court shall apply with the necessary modification to proceedings under the Act and these Rules.

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(a) 1896 c.35.

(b) 1974 c.47.

(c) 1981 c.54.

## APPOINTMENT OF JUDICIAL TRUSTEE

*Making of application*

3.—(1) An application to the Court for the appointment of a judicial trustee must be made by originating summons or, if it is made in a pending cause or matter, by summons or motion in the cause or matter.

(2) An application for an injunction ancillary or incidental to an order appointing a judicial trustee may be joined with the application for such order.

(3) The Court hearing an application under paragraph (2) may grant an injunction restraining any trustee or person entitled to any interest in the property of which a judicial trustee is sought from assigning, charging or otherwise dealing with that property until after the hearing of a summons for the appointment of the judicial trustee and may require such summons returnable on such date as the Court may direct, to be issued.

(4) The evidence in support of such an application must include an affidavit by the applicant containing the following particulars so far as the applicant can gain information with regard to them:—

- (a) a short description of the trust and instrument by which it is, or is to be, created;
- (b) short particulars of the trust property, with an approximate estimate of its income, and capital value;
- (c) short particulars of the incumbrances (if any) affecting the trust property;
- (d) particulars as to the persons who are in possession of the documents relating to the trust;
- (e) the names and addresses of the beneficiaries and short particulars of their respective interests; and
- (f) the name, address and description of the proposal judicial trustee (if any) together with any proposal the applicant may make for his remuneration.

(5) Where the applicant cannot gain the information required on any point he must mention his inability in the affidavit.

*Service of summons and notice*

4.—(1) Subject to any direction of the Court—

- (a) the summons shall be served on every existing trustee who is not an applicant and on such of the beneficiaries as the applicant thinks fit; but
- (b) a summons issued by or on behalf of a person creating or intending to create a trust need not be served on any person.

(2) The Court may give such directions as it thinks fit for the service of the summons or the dispensing with service of the summons on any person.

(3) Where an applicant has no nomination for a judicial trustee he may, if he thinks fit, give not less than four days notice of the hearing of the application to any official of the Court who may be appointed judicial trustee.

(4) Where an official of the Court receives notice under paragraph (3) of this rule he shall not be a party to the proceedings but shall be entitled to attend the hearing.

*Service of order*

5. A copy of the order appointing a judicial trustee shall be served by the party having conduct of the proceedings on the judicial trustee, such beneficiaries, former trustees and other persons as the Court may direct.

*Security*

6.—(1) This rule shall apply where the judicial trustee is not an official of the Court.

(2) Subject to paragraph (3) below, an order appointing a judicial trustee may include such directions as the Court thinks fit for the giving of security by the person appointed.

(3) The Court shall not, except for special reasons, require security to be given when the application is made by a person creating or intending to create a trust.

(4) Where, by virtue of paragraph (2), a person is required to give security in accordance with this rule he must give security approved by the Court duly to account for what he receives as judicial trustee and to deal with it as the Court directs.

(5) Unless the Court otherwise directs, the security shall be by guarantee.

(6) Any guarantee or undertaking ordered to be filed as security shall be filed in Chancery Chambers or, if the cause or matter is proceeding in a district registry, that registry.

*Custody of trust funds, property and documents*

7. The Court may give such directions as it thinks fit as to the manner in which and the conditions subject to which—

- (a) the trust fund is to be held;
- (b) any title deeds, certificates or other documents which are evidence of the title to the trust property are to be held or disposed of;
- (c) trust property may be vested in the judicial trustee; and
- (d) any payments received or made on behalf of the trust are to be dealt with and accounts thereof are to be kept.

*Applications for directions*

8.—(1) A judicial trustee or any person interested in the trust may at any time request the Court to give directions as to the trust or its administration, including a direction that there shall cease to be a judicial trustee, and such request shall state in writing the matters with regard to which directions are required.

(2) The Court may require the trustee or any other person to attend at chambers (if it appears that such attendance is necessary or convenient) or may direct a summons to be issued in the proceedings, or direct an issue or issues to be tried.

## ACCOUNTS AND EXAMINATION

*Preparation of accounts*

9. Unless the Court otherwise orders a judicial trustee shall make up his accounts (in such form as the Court shall require) in each year to the anniversary of his appointment and shall deliver them in accordance with rules 12 or 13, as the case may be, within one calendar month after such anniversary.

10. A judicial trustee shall endorse on his accounts a certificate of the approximate capital value of the trust property at the commencement of the year of account.

*Remuneration and disbursements*

11.—(1) A person appointed judicial trustee shall be allowed on the examination of his accounts—

- (a) by way of remuneration, if any, such reasonable amount in respect of work reasonably performed as may be authorised by the Court and the Court may direct that such remuneration shall be fixed by reference to such scales or rates of professional charges as it thinks fit provided that remuneration authorised under this rule shall not, in any year of account, exceed 15 per cent of the capital value of the trust property.
  - (b) such disbursements as have actually and properly been expended in his trusteeship.
- (2) For the purpose of sub-paragraph (1)(a) of this rule:—
- (a) the capital value shall be ascertained from the certificate under rule 10 in respect of the year of account, or, if the Court sees fit in the case of a final account, from the certificate in respect of the preceding year.
  - (b) The Court may, if it thinks fit, indicate to a judicial trustee upon his appointment the scale or rate of professional charges that it considers would be appropriate in relation to the appointment.

*Filing, examination and inspection of accounts*

12.—(1) This rule shall apply where the judicial trustee is not a corporate trustee.

(2) Unless the Court otherwise directs a judicial trustee must submit his accounts to the Court.

(3) The accounts shall be examined by the Court unless it considers that the accounts are likely to involve questions of difficulty and refers them to a qualified accountant for report, in which case the Court may order payment to him out of the trust of such reasonable amount in respect of his report as it thinks fit.

(4) Following examination by or on behalf of the Court, the result of such examination must be certified by a master and an order may thereupon be made as to the incidence of any costs or expenses incurred.

(5) The judicial trustee shall send a copy of the accounts, or if the Court thinks fit, a summary of the accounts, of the trust to such beneficiaries or other persons as the Court may direct.

(6) If an application is made by any person to inspect the filed accounts, the Court may, if it thinks fit, having regard to the nature of the relation of the applicant to the trust, allow them to be inspected on giving reasonable notice.

(7) Any person who is served with a copy of the accounts, or a summary of the accounts under paragraph (5), or, after inspection of the accounts under paragraph (6), remains dissatisfied with them, may apply to the Court for directions.

13.—(1) This rule shall apply where the judicial trustee is a corporate trustee.

(2) A judicial trustee shall submit for examination such accounts to such persons as the Court may direct.

(3) Any person to whom a judicial trustee is required to submit accounts may, on giving reasonable notice to the judicial trustee, inspect, either personally or by an agent, the books and other papers relating to such accounts.

(4) Any person to whom the judicial trustee is required to submit accounts, or any beneficiary, who is dissatisfied with them may give notice specifying the item or items as to which objection is taken and requiring the judicial trustee within not less than 14 days to lodge his accounts with the Court and a copy of such notice shall be lodged in Chancery Chambers or, if the cause or matter is proceeding in a district registry, that registry.

(5) Following an examination by or on behalf of the Court of an item or items in an account to which objection is taken the result of such examination must be certified by a master and an order may thereupon be made as to the incidence of any costs or expenses incurred.

*Default by judicial trustee*

14.—(1) Where a judicial trustee fails to submit his account in the prescribed manner or do any other thing which he is required to submit, provide or do, he and any or all of the beneficiaries and such other persons as the Court may direct may be required to attend in chambers to show cause for the failure and the Court may, either in chambers or after adjourning into Court, give such directions as it thinks proper, including if necessary, directions for the discharge of the judicial trustee and the appointment of another and the payment of costs.

(2) Without prejudice to paragraph (1) of this Rule, where the judicial trustee has failed to comply with the Act or with these Rules or with any direction of the Court made in accordance with these Rules or has otherwise misconducted himself in relation to the trust the Court may disallow any remuneration claimed in any subsequent account.

(3) If the Court is satisfied that the judicial trustee has failed to pay any sum into the trust account within a reasonable period of time it may charge him with interest at the rate currently payable in respect of judgment debts on that sum while in his possession.

**SPECIAL PROVISIONS RELATING TO OFFICIALS OF THE COURT**

15. An official of the Court shall not be appointed or act as judicial trustee—

- (a) for any persons in their capacity as members or debenture holders of, or being in any other relation to, any corporation or unincorporated body, or any club, or
- (b) of a trust which involves the carrying on of any trade or business unless the Court, with or without special conditions to ensure the proper supervision of the trade or business, specifically directs.

16.—(1) The appointment of an official of the Court as a judicial trustee shall be an appointment of the holder of that office for the time being, and no further order or appointment shall be necessary by reason only of the person appointed dying or ceasing to hold office.

(2) Any property vested in an official of the Court as a judicial trustee shall, on his dying or ceasing to hold office, vest in the person appointed to succeed him without any conveyance, assignment or transfer.

## DISTRICT REGISTRIES

17.—(1) Notwithstanding any provisions contained in the Rules of the Supreme Court, an originating summons may be issued out of a district registry for the purpose of an application to appoint a judicial trustee.

(2) Where a judicial trustee is appointed on a summons or motion or in a cause or matter proceeding in a district registry all proceedings with respect to the trust and the administration thereof under the Act or these Rules shall, subject to paragraph (3) of this rule, be taken in the district registry.

(3) The Court may transfer any trust of which there is a judicial trustee from a district registry to Chancery Chambers or from Chancery Chambers to a district registry, or from one district registry to another, according as it appears convenient for the administration of the trust.

*Fees*

18. Where in any matter proceeding under these Rules a fee would be payable under the Order for the time being in force relating to Supreme Court Fees, that fee shall be paid.

## REVOCATIONS

19.—(1) The Judicial Trustee Rules 1972 are hereby revoked (a).

(2) The provisions of the rules in force immediately before the commencement of the Judicial Trustee Rules 1972 shall continue to apply to proceedings taken before that date in a county court.

Dated 4th March 1983.

*Hailsham of St. Marylebone, C.*

We consent,

*Lane, C.J.,  
J. F. Donaldson, M.R.,  
P. B. Spark,  
W. M. H. Williams,*

Dated 28th February 1983.

*J. A. Cope,  
Donald Thompson,  
Two of the Lords Commissioners  
of Her Majesty's Treasury.*

Dated 8th March 1983.

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(a) S.I. 1972/1096.

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**EXPLANATORY NOTE**

*(This Note is not part of the Rules.)*

These Rules replace the Judicial Trustee Rules 1972. The principal changes made are:—

- (a) an injunction may be sought in appropriate circumstances (Rule 3);
- (b) the requirement to file a statement as well as an affidavit in support of an application is abolished (Rule 3);
- (c) a new category of “corporate trustee” is created (Rule 2). Separate provision is made for the preparation of their accounts and they are exempted from automatic audit by the Court (Rule 13);
- (d) the special scale of fees is discontinued. Only those fees payable elsewhere in the Supreme Court will be paid.

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