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STATUTORY INSTRUMENTS

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**2007 No. 1745 (L. 13)**

**MENTAL CAPACITY, ENGLAND AND WALES**

**The Court of Protection Fees Order 2007**

<i>Made</i>	- - - -	<i>16th July 2007</i>
<i>Laid before Parliament</i>		<i>19th July 2007</i>
<i>Coming into force</i>	- -	<i>1st October 2007</i>

The Lord Chancellor makes this Order in exercise of the powers conferred by section 54(1) and (2) and 65(1) of the Mental Capacity Act 2005<sup>(1)</sup>, with the consent of the Treasury and after consulting in accordance with section 54(3) of that Act:

**Citation and commencement**

1. This Order may be cited as the Court of Protection Fees Order 2007 and comes into force on 1 October 2007.

**Interpretation**

2. In this Order—

“the Act” means the Mental Capacity Act 2005;

“appellant” means the person who brings or seeks to bring an appeal;

“court” means the Court of Protection;

“P” means any person (other than a protected party) who lacks or, so far as consistent with the context, is alleged to lack capacity to make a decision or decisions in relation to any matter that is the subject of an application to the court and references to a person who lacks capacity are to be construed in accordance with the Act;

“protected party” means a party or an intended party (other than P or a child) who lacks capacity to conduct the proceedings;

“the Regulations” means the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007<sup>(2)</sup>; and

“the Rules” means the Court of Protection Rules 2007<sup>(3)</sup>.

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(1) 2005 c.9.  
(2) S.I. 2007/1253.  
(3) S.I. 2007/1744.

### **Schedule of fees**

3. The fees set out in the Schedule to this Order shall apply in accordance with the following provisions of this Order.

#### **Application fee**

4.—(1) An application fee shall be payable by the applicant on making an application under Part 9 of the Rules (how to start proceedings) in accordance with the following provisions of this article.

(2) Where permission to start proceedings is required under Part 8 of the Rules (permission), the fee prescribed by paragraph (1) shall be payable on making an application for permission.

(3) The fee prescribed by paragraph (1) shall not be payable where the application is made under —

- (a) rule 67 of the Rules (applications relating to lasting powers of attorney) by—
  - (i) the donee of a lasting power of attorney, or
  - (ii) a person named in a statement made by the donor of a lasting power of attorney in accordance with paragraph 2(1)(c)(i) of Part 1 of Schedule 1 to the Act,

and is solely in respect of an objection to the registration of a lasting power of attorney; or

- (b) rule 68 of the Rules (applications relating to enduring powers of attorney) by—
  - (i) a donor of an enduring power of attorney,
  - (ii) an attorney under an enduring power of attorney, or
  - (iii) a person listed in paragraph 6(1) of Part 3 of Schedule 4 to the Act,

and is solely in respect of an objection to the registration of an enduring power of attorney.

(4) The fee prescribed by paragraph (1) shall not be payable where the application is made by the Public Guardian.

(5) Where a fee has been paid under paragraph (1) it shall be refunded where P dies within five days of the application being filed.

#### **Appeal fee**

5.—(1) An appeal fee shall be payable by the appellant on the filing of an appellant's notice under Part 20 of the Rules (appeals) in accordance with the following provisions of this article.

(2) The fee prescribed by paragraph (1) shall not be payable where the appeal is—

- (a) brought by the Public Guardian; or
- (b) an appeal against a decision of a nominated officer made under rule 197 of the Rules (appeal against a decision of a nominated officer).

(3) The fee prescribed by paragraph (1) shall be refunded where P dies within five days of the appellant's notice being filed.

#### **Hearing fees**

6.—(1) A hearing fee shall be payable by the applicant where the court has—

- (a) held a hearing in order to determine the case; and
- (b) made a final order, declaration or decision.

(2) A hearing fee shall be payable by the appellant in relation to an appeal where the court has—

- (a) held a hearing in order to determine the appeal; and

(b) made a final order, declaration or decision in relation to the appeal.

(3) The fees prescribed by paragraphs (1) and (2) shall not be payable where the hearing is in respect of an application or appeal brought by the Public Guardian.

(4) The fee prescribed by paragraph (2) shall not be payable where the hearing is in respect of an appeal against a decision of a nominated officer made under rule 197 of the Rules (appeal against a decision of a nominated officer).

(5) The fee prescribed by paragraph (1) shall not be payable where the applicant was not required to pay an application fee under Article 4(1) by virtue of Article 4(3).

(6) The fees prescribed by paragraphs (1) and (2) shall be payable by the applicant or appellant as the case may be within 30 days of the date of the invoice for the fee.

### **Fee for request for copy of court document**

7.—(1) A fee for a copy of a court document shall be payable by the person requesting the copy of the document.

(2) A fee for a certified copy of a court document shall be payable by the person requesting the certified copy of the document.

(3) The fees prescribed by paragraphs (1) and (2) shall be payable at the time the request for the copy is made to the court.

### **Exemptions**

8.—(1) Subject to paragraph (2) no fee shall be payable under this Order by a person who, at the time when a fee would otherwise become payable, is in receipt of any qualifying benefit.

(2) Paragraph (1) does not apply to a person who has an award of damages in excess of £16,000 which has been disregarded for the purposes of determining eligibility for that benefit.

(3) The following are qualifying benefits for the purposes of paragraph 1 above—

(a) income support under the Social Security Contributions and Benefits Act 1992(4);

(b) working tax credit, provided that —

(i) child tax credit is being paid to the person, or to a couple (as defined in section 3(5) (A) of the Tax Credits Act 2002(5)) which includes the person; or

(ii) there is a disability element or severe disability element (or both) to the tax credit received by the person;

(c) income-based jobseeker's allowance under the Jobseekers Act 1995(6);

(d) guarantee credit under the State Pensions Credit Act 2002(7);

(e) council tax benefit under the Social Security Contributions and Benefits Act 1992; and

(f) housing benefit under the Social Security Contributions and Benefits Act 1992.

### **Reductions and remissions in exceptional circumstances**

9. Where it appears to the Lord Chancellor that the payment of any fee prescribed by this Order would, owing to the exceptional circumstances of the particular case, involve undue hardship, he may reduce or remit the fee in that case.

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(4) 1992 c.4.  
(5) 2002 c.21.  
(6) 1995 c.18.  
(7) 2002 c.16.

**Transitional provision**

**10.**—(1) In this article “Court of Protection” means the office of the Supreme Court called the Court of Protection which ceases to exist under section 45(6) of the Act.

(2) Where a hearing that takes place on or after 1 October 2007 was listed by the Court of Protection before 1 October 2007, no hearing fee shall be payable under Article 6.

Signed by authority of the Lord Chancellor

26th July 2007

*Catherine Ashton*  
Parliamentary Under-Secretary of State  
Ministry of Justice

We consent

16th July 2007

*Frank Roy*  
*Claire Ward*  
Two of the Lord Commissioners of Her  
Majesty’s Treasury

SCHEDULE

Article 3

FEES TO BE TAKEN

<i>Column 1</i>	<i>Column 2</i>
<b><i>Application fee (Article 4)</i></b>	£400.00
<b><i>Appeal fee (Article 5)</i></b>	£400.00
<b><i>Hearing fees (Article 6)</i></b>	£500.00
<b><i>Copy of a document fee (Article 7(1))</i></b>	£5.00
<b><i>Certified copy of a document fee (Article 7(2))</i></b>	£25.00

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**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order provides for fees to be charged in connection with the Court of Protection established by the Mental Capacity Act 2005 (c.9).

Article 10 provides that where a hearing that takes place on or after 1 October 2007 was listed by the former Court of Protection (which ceases to exist under section 45(6) of the Act), no hearing fee is payable.