

2009 No. 1497 (L. 14)

SUPREME COURT OF ENGLAND AND WALES

The Non-Contentious Probate Fees (Amendment) Order 2009

<i>Made</i> - - - -	<i>10th June 2009</i>
<i>Laid before Parliament</i>	<i>18th June 2009</i>
<i>Coming into force</i> - -	<i>13th July 2009</i>

The Lord Chancellor, with the consent of the Treasury, makes the following Order in exercise of the powers conferred by section 92 of the Courts Act 2003(a).

In accordance with section 92(5) and (6) of that Act the Lord Chancellor has consulted the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court, the Head of Civil Justice, the Deputy Head of Civil Justice and the Civil Justice Council.

Citation and commencement

1. This Order may be cited as the Non-Contentious Probate Fees (Amendment) Order 2009 and comes into force on 13th July 2009.

Amendment of the Non-Contentious Probate Fees Order 2004

2. The Non-Contentious Probate Fees Order 2004(b) is amended as follows.

3. For Schedule 1A(c) (which specifies the remission of fees), substitute Schedule 1A (Remissions and part-remissions) set out in the Schedule to this Order.

Signed by authority of the Lord Chancellor

4th June 2009

We consent,

10th June 2009

Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice

Tony Cunningham
Frank Roy
Two of the Lords Commissioners of Her Majesty's Treasury

(a) 2003 c. 39; section 92 was amended by paragraphs 308 and 345 of Schedule 4 to the Constitutional Reform Act 2005 (c.4) from 1 October 2005.
(b) S.I. 2004/3120 (L.22), amended by S.I. 2007/2174 (L.14), 2008/2854 (L.20) and by paragraph 1(2) of Schedule 11 to the Constitutional Reform Act 2005 (c.4) from a date to be appointed.
(c) Schedule 1A was inserted by S.I. 2007/2174 and amended by S.I. 2008/2854.

“SCHEDULE 1A

Remissions and part-remissions

Interpretation**1.—(1)** In this Schedule—

“child” means a child or young person in respect of whom a party is entitled to receive child benefit in accordance with section 141, and regulations made under section 142, of the Social Security Contributions and Benefits Act 1992**(a)**;

“child care costs” has the meaning given in the Criminal Defence Service (Financial Eligibility) Regulations 2006**(b)**;

“couple” has the meaning given in section 3(5A) of the Tax Credits Act 2002**(c)**;

“disposable monthly income” has the meaning given in paragraph 5;

“excluded benefits” means—

(a) any of the following benefits payable under the Social Security Contributions and Benefits Act 1992—

(i) attendance allowance paid under section 64;

(ii) severe disablement allowance;

(iii) carer’s allowance;

(iv) disability living allowance;

(v) constant attendance allowance paid under section 104 or paragraph 4 or 7(2) of Schedule 8 as an increase to a disablement pension;

(vi) council tax benefit;

(vii) any payment made out of the social fund;

(viii) housing benefit;

(b) any direct payment made under the Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2003**(d)** or the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2004**(e)**;

(c) a back to work bonus payable under section 26 of the Jobseekers Act 1995**(f)**;

(d) any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983**(g)**;

(e) any pension paid under the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006**(h)**;

(f) any payment made from the Independent Living Funds; and

(g) any financial support paid under an agreement for the care of a foster child;

(a) 1992 c.4; sections 141 and 142 were amended by sections 1(1)(a), 1(1)(b) and 1(2) of the Child Benefit Act 2005 (c.6).

(b) S.I. 2006/2492, to which there are amendments not relevant to this Order.

(c) 2002 c.21. Section 3(5A) was inserted by paragraph 144 of Schedule 24 to the Civil Partnership Act 2004 (c.33).

(d) S.I. 2003/762.

(e) S.I. 2004/1748.

(f) 1995 c.18; section 26(3) is amended by paragraphs 228 and 230 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1).

(g) S.I. 1983/686, amended by S.I. 2001/420; there are other amending instruments but none is relevant.

(h) S.I. 2006/606, amended by S.I. 2006/1455.

“the Funding Code” means the code approved under section 9 of the Access to Justice Act 1999(a);

“gross annual income” means total annual income, for the 12 months preceding the application for remission or part remission, from all sources other than receipt of any of the excluded benefits;

“gross monthly income” means total monthly income, for the month in which the application for remission or part remission is made, from all sources other than receipt of any of the excluded benefits;

“the Independent Living Funds” has the meaning given in the Criminal Defence Service (Financial Eligibility) Regulations 2006(b);

“LSC” means the Legal Services Commission established under section 1 of the Access to Justice Act 1999(c);

“partner” means a person with whom the party lives as a couple and includes a person with whom the party is not currently living but from whom the party is not living separate and apart;

“party” means the individual who would, but for this Schedule, be liable to pay the fee required under this Order;

(2) Paragraphs 2, 3 and 4 do not apply to a party who is in receipt of funding provided by the LSC for the purposes of the proceedings for which a certificate has been issued under the Funding Code.

Full remission of fees – qualifying benefits

2.—(1) No fee is payable under this Order if, at the time when a fee would otherwise be payable, the party is in receipt of a qualifying benefit.

(2) The following are qualifying benefits for the purpose of sub-paragraph (1) —

- (a) income support under the Social Security Contributions and Benefits Act 1992;
- (b) working tax credit, provided that no child tax credit is being paid to the party;
- (c) income-based jobseeker’s allowance under the Jobseekers Act 1995;
- (d) guarantee credit under the State Pension Credit Act 2002(d); and
- (e) income-related employment and support allowance under the Welfare Reform Act 2007(e).

Full remission of fees – gross annual income

3.—(1) No fee is payable under this Order if, at the time when the fee would otherwise be payable, the party has the number of children specified in column 1 of the following table and—

- (a) if the party is single, the gross annual income of the party does not exceed the amount set out in the appropriate row of column 2; or
- (b) if the party is one of a couple, the gross annual income of the couple does not exceed the amount set out in the appropriate row of column 3.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Number of children of fee-paying party</i>	<i>Single</i>	<i>Couple</i>
no children	£13,000	£18,000

(a) 1999 c.22; section 9 was amended by S.I. 2005/3429.

(b) S.I. 2006/2492, amended by S.I. 2007/2937; there are other amending instruments but none is relevant.

(c) Section 1 was amended by S.I. 2005/3429.

(d) 2002 c.16.

(e) 2007 c.5.

1 child	£15,930	£20,930
2 children	£18,860	£23,860
3 children	£21,790	£26,790
4 children	£24,720	£29,720

(2) If the party paying the fee has more than 4 children then the relevant amount of gross annual income is the amount specified in the table for 4 children plus the sum of £2,930 for each additional child.

Full and part remission of fees – disposable monthly income

4.—(1) No fee is payable under this Order if, at the time when the fee would otherwise be payable, the disposable monthly income of the party is £50 or less.

(2) The maximum amount of fee payable is—

- (a) if the disposable monthly income of the party is more than £50 but does not exceed £210, an amount equal to one-quarter of every £10 of the party’s disposable monthly income up to a maximum of £50; and
- (b) if the disposable monthly income is more than £210, an amount equal to £50 plus one-half of every £10 over £200 of the party’s disposable monthly income.

(3) Where the fee that would otherwise be payable under this Order is greater than the maximum fee which a party is required to pay as calculated in sub-paragraph (2), the fee will be remitted to the amount payable under that sub-paragraph.

Disposable monthly income

5.—(1) A party’s disposable monthly income is the gross monthly income of the party for the month in which the fee becomes payable (“the period”) less the deductions referred to in sub-paragraphs (2) and (3).

(2) There is to be deducted from the gross monthly income—

- (a) income tax paid or payable in respect of the period;
- (b) any contributions estimated to have been paid under Part 1 of the Social Security Contributions and Benefits Act 1992 in respect of the period;
- (c) either—
 - (i) monthly rent or monthly payment in respect of a mortgage debt or hereditary security, payable in respect of the only or main dwelling of the party, less any housing benefit paid under the Social Security Contributions and Benefits Act 1992; or
 - (ii) the monthly cost of the living accommodation of the party;
- (d) any child care costs paid or payable in respect of the period;
- (e) if the party is making bona fide payments for the maintenance of a child who is not a member of the household of the party, the amount of such payments paid or payable in respect of the period; and
- (f) any amount paid or payable by the party, in respect of the period, in pursuance of a court order.

(3) There will be deducted from the gross monthly income an amount representing the cost of living expenses in respect of the period being—

- (a) £315; plus
- (b) £244 for each child of the party; plus
- (c) £159, if the party has a partner.

Resources of partners

6.—(1) For the purpose of determining whether a party is entitled to the remission or part remission of a fee in accordance with this Schedule, the income of a partner, if any, is to be included as income of the party.

(2) The receipt by a partner of a qualifying benefit does not entitle a party to remission of a fee.

Application for remission or part remission of fees

7.—(1) An application for remission or part remission of a fee must be made to the court officer at the time when the fee would otherwise be payable.

(2) Where a claim for full remission of fees is made, the party must provide documentary evidence of, as the case may be—

- (a) entitlement to a qualifying benefit; or
- (b) gross annual income and, if applicable, the children included for the purposes of paragraph 3.

(3) Where a claim for full or part remission of fees under paragraph 4 is made, the party must provide documentary evidence of—

- (a) such of the party's gross monthly income as is derived from—
 - (i) employment;
 - (ii) rental or other income received from persons living with the party by reason of their residence in the party's home;
 - (iii) a pension; or
 - (iv) a state benefit, not being an excluded benefit; and
- (b) any expenditure being deducted from the gross monthly income in accordance with paragraph 5(2).

Remission in exceptional circumstances

8. 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 financial hardship, the Lord Chancellor may reduce or remit the fee in that case.

Refunds

9.—(1) Subject to sub-paragraph (3), where a party has not provided the documentary evidence required by paragraph 7 and a fee has been paid at a time when, under paragraphs 2, 3 or 4, it was not payable, the fee will be refunded if documentary evidence relating to the time when the fee became payable is provided at a later date.

(2) Subject to sub-paragraph (3), when a fee has been paid at a time where the Lord Chancellor, if all the circumstances had been known, would have reduced or remitted the fee under paragraph 8, the fee or the amount by which the fee would have been reduced, as the case may be, will be refunded.

(3) No refund will be made under this paragraph unless the party who paid the fee applies within 6 months of paying the fee.

(4) The Lord Chancellor may extend the period of 6 months mentioned in sub-paragraph (3) if the Lord Chancellor considers that there is a good reason for an application being made after the end of the period of 6 months.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Non-Contentious Probate Fees Order 2004 (S.I. 2004/3120 (L.22)) as follows:

- (a) Schedule 1A is replaced by an amended Schedule 1A so that the provisions for remission and part-remission of fees are consistent with those that apply in other court fee orders.
- (b) it increases the amounts that may be deducted from a party's gross monthly income for living expenses. The amount that a party may deduct rises from £296 to £315. The amount for each child of the party rises from £228 to £244 and the amount that may be deducted if the party has a partner rises from £150 to £159.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

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The Non-Contentious Probate Fees (Amendment) Order 2009

£5.50