

Public Trustee

Cap. 248.

PUBLIC TRUSTEE (FEES) ORDER, 1938L.N.
1938/

Authority: This order was made on 3rd March, 1938 by the Governor-in-Executive Committee under section 11 of the *Public Trustee Act*.

Governor-in-Executive

Committee: This power is now vested in the Minister of Finance.

Commencement: 3rd January, 1939.

1. This Order may be cited as the *Public Trustee (Fees) Order, 1938*.

2. In this order and in the *Schedule* hereto (unless the context otherwise requires):

- (a) Words to which a meaning is assigned by the *Public Trustee Rules, 1938*, shall have the same respective meanings as in those rules.
- (b) Words referring to the acceptance of a trust shall be deemed to include a reference to an undertaking to administer an estate under section 5 of the Act.
- (c) The expression "Income of the trust property" includes any income arising under the trust.
- (d) The word "Will" includes any testamentary disposition.
- (e) The expression "gross capital value" where used in relation to the estate of a deceased person means the value of the estate without deduction for funeral or testamentary expenses or debts (other than debts specifically charged upon any property).
- (f) Reference to any section or part of any Act shall be deemed to include a reference to any statutory modification or re-enactment thereof.

3. Subject as hereinafter provided and subject to the provisions of any Act the fees mentioned in the *Schedule* to this order shall

be paid in respect of the duties of the Public Trustee and whether the Public Trustee is acting directly or as agent or attorney.

4. If at any time during the continuance of a trust in course of administration by the Public Trustee, any property (not arising from the accumulation of income of the trust property) shall become subject to the trust, in addition to the property comprised therein at the date of the acceptance thereof, there shall be paid in respect of the gross capital value of such additional property at the date on which it becomes subject to the trust a further fee of such amount as would have been payable in respect of that value if that value had formed part of the value of the property comprised in the trust at the date of such acceptance, and if this order had been in force at that date.

5. (1) Where it appears to the Public Trustee, upon accepting a trust, that the trust property consists wholly or partially of reversionary interests, or other property not in possession or not readily realisable (all which interests and property are hereinafter referred to as "reversionary property"), he may charge an additional fee, not exceeding \$4.80, upon acceptance of the trust.

(2) Where such additional fee is charged, then

(a) upon the acceptance of the trust the reversionary property shall be excluded from the trust property for the purpose of ascertaining the amount of the fee payable in pursuance of the *Schedule* hereto upon such acceptance, and the said fee shall be calculated and paid as if the trust property (if any) other than the reversionary property were alone comprised in the trust, and

(b) there shall be paid in respect of the gross capital value of the reversionary property, or any part thereof, at the date on which the same falls into possession or is realised, an acceptance fee of such an amount as would have been payable in respect of that value upon the acceptance of the trust if that value had formed part of the value of the trust property, in respect of which the fee upon acceptance has previously been paid, or become payable, and if this order had been in force at the date of such acceptance.

6. (1) In any case in which it appears to the Public Trustee that the circumstances of a trust or estate in course of

administration, or proposed to be administered, by him are, or probably will be, such as to render his duties in relation thereto exceptionally onerous, he may, with the approval of the Governor and subject as hereinafter provided charge a special fee in respect of the performance of such duties in addition to the fees payable in pursuance of the *Schedule* thereto.

(2) The Public Trustee may make the payment of, or an agreement to pay, such special fee a condition of his accepting a trust.

7. In any case in which it appears to the Public Trustee that the circumstances of a trust or estate in course of administration, or proposed to be administered, by him are, or probably will be, such as to render his duties in relation thereto exceptionally simple, or are otherwise of an exceptional character, he may, with the approval of the Governor, remit any part of any fee payable in respect of the performance of such duties in pursuance of the *Schedule* hereto.

8. In any case in which the Public Trustee is concerned with the same property or fund under more than one trust or estate in course of administration by him he may with the approval of the Governor, make such reduction in respect of each or any such trust or estate of any fee or fees payable upon such property or fund and the income thereof as he shall consider equitable.

9. The Public Trustee may, in his discretion, upon the application of any person appearing to be interested in the income or capital of the trust property, commute any fee which, in pursuance of the *Schedule* hereto, would, but for the commutation, become payable upon that income or upon the withdrawal or distribution of the whole or any part of that capital for a certain sum to be presently paid, and for determining that sum he shall cause a present value to be set on that fee, regard being had to the circumstances and contingencies affecting the rate at which, and the occasion upon which, such fee would, but for the commutation, be payable, and interest being reckoned at 4 per cent.

10. In either of the following cases, viz:

(a) Where in the opinion of the Public Trustee the income of the trust property is not liable to serious fluctuation, or

(b) Where the income of the trust property includes rent collected by the person entitled to such income, or by any co-trustee of the Public Trustee, or by an agent appointed by such person or co-trustee,

the Public Trustee may from time to time by agreement with the person for the time being interested in such income fix an annual income fee to be paid (in lieu of the income fee payable in pursuance of the *Schedule* hereto) in respect in case (a) of that income, or in case (b) of that rent. Such fixed annual income fee shall be of such amount as shall appear to the Public Trustee approximately equal to the average annual income fee which, if no such fee had been fixed, would be payable in respect of the income or rent affected.

11. The Public Trustee with the approval of the Governor (a) may agree to any mode of payment of any fee payable in pursuance of the *Schedule* hereto which shall seem to him just and reasonable, and (b) in any case of doubt or difficulty may compromise or otherwise settle any dispute which may arise as to his right to any such fee or as to the mode of calculation or the amount thereof.

12. For the purposes of the *Schedule* hereto – (a) the value of any property (other than cash) shall be the price which in the opinion of the Public Trustee such property would fetch if sold in the open market and (b) income shall mean the gross income of the trust property without deduction of income tax or other outgoings.

13. For the purpose of ascertaining the amount of any capital fee payable in pursuance of the *Schedule* hereto, the date of the acceptance of a trust shall be taken to be either the date upon which the trust is actually accepted or such day not more than 2 months earlier or later than that date, as the Public Trustee may determine in each particular case.

14. For the purpose of ascertaining the rate at which any acceptance fee or withdrawal fee is to be charged in pursuance of the *Schedule* hereto, and the amount of such fee, the sum of money or value in respect of which such fee is chargeable shall be taken to be that multiple of \$48 which shall be nearest to the actual amount of such sum of money or value.

SCHEDULE

DIVISION I. – CAPITAL FEES ON ACCEPTANCE

1. Upon the acceptance of the trust – a fee (hereinafter referred to an "acceptance fee") by way of percentage, or otherwise, upon the gross capital value of the trust property at the date of such acceptance (hereinafter in this division referred to as the "gross capital value"), as specified in this division.

2. Where the Public Trustee is acting (i) as executor or administrator only, or (ii) as executor or administrator and also as original trustee of a Will, or (iii) as administrator under Section 5 of the Act, the acceptance fee shall be at the following rate or rates per \$480 upon the gross capital value, namely:

	\$	c.
In respect of the first \$24,000	2	40
In respect of any excess over \$24,000 up to a total of \$120,000	1	68
In respect of any excess over \$120,000 up to a total of \$240,000	0	90
In respect of any excess over \$240,000 up to a total of \$360,000	2	48

In respect of any excess over \$360,000 0 24
but so nevertheless that the amount of the acceptance fee charged in respect of any trust under this paragraph shall not be less than \$24,000 where the gross capital value does not exceed \$1,200, or less than \$36 where the gross capital value exceeds \$1,200.

3. Where the Public Trustee is acting as original trustee of a Will (where not executor or administrator) or as substituted or additional trustee of any trust, the acceptance fee shall be at the following rate or rates per \$240 upon the gross capital value (excluding settled land and heirlooms), namely:

	\$	c.
In respect of the first \$24,000	1	68
In respect of any excess over \$24,000 up to a total of \$120,000	1	20
In respect of any excess over \$120,000 up to a total of \$240,000		60
In respect of any excess over \$240,000 up to a total of \$360,000		30
In respect of any excess over \$360,000		12

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but so nevertheless that the amount of the acceptance fee charged in respect of any trust under this paragraph shall not be less than \$24 where the gross capital value (excluding as aforesaid) does not exceed \$1,200, or less than \$36 where the gross capital value (excluding as aforesaid) exceeds \$1,200.

4. Where the Public Trustee is acting as original trustee of a trust created *inter vivos*, the acceptance fee shall be at the following rate or rates per \$480 upon the gross capital value (excluding settled land and heirlooms), namely:

	\$	c.
In respect of the first \$24,000	1	20
In respect of any excess over \$24,000 up to a total of \$120,000		90
In respect of any excess over \$120,000 up to a total of \$240,000		48
In respect of any excess over \$240,000 up to a total of \$360,000		24
In respect of any excess over \$360,000		12

but so nevertheless that the amount of the acceptance fee charged in respect of any trust under this paragraph shall not be less than \$18 where the gross capital value (excluding as aforesaid) does not exceed \$1,200, or less than \$24 where the gross capital value (excluding as aforesaid).

5. Where the Public Trustee is acting in any of the capacities specified in the two last preceding paragraphs and the trust property consists wholly or in part of settled land and heirlooms or either of them, there shall be an acceptance fee (additional to the acceptance fee, if any, charged under the two last preceding paragraphs) of \$12 if the gross capital value of the said land and heirlooms does not exceed \$2,400, and of \$24 if the said gross capital value exceeds \$2,400, and so that the acceptance fee charged under this paragraph shall discharge any minimum fee under the two last preceding paragraphs.

6. Where the Public Trustee is acting as Custodian Trustee only of any trust the acceptance fee (other than the minimum fee, which shall be charged in full), shall be one-half of the acceptance fee which would be charged if the Public Trustee were appointed at the same time to be an ordinary trustee of the same trust.

7. Where the Public Trustee is acting as trustee of land held in undivided shares and vested in him upon trust for sale the acceptance fee shall be at the same rate or rates per \$480 upon the gross capital value, and with the same respective minimum fees, as specified in paragraph 3 preceding. Provided that a proper proportion of the acceptance fee (including the minimum fee), computed

at the average rate, shall be remitted in respect of land of which the sale is completed within one year from the acceptance of the trust and the proceeds of sale are absolutely distributable, but so that in no case shall the acceptance fee be reduced below \$4.80.

8. Where the Public Trustee is acting (a) as trustee of a mortgage previously vested in an infant, or (b) as trustee of an open space of land held in undivided shares, or (c) as trustee of a trust created by an estate owner for the purpose of over-reaching an equitable interest or power, the acceptance fee shall be such sum (not being less than \$18) as the Public Trustee shall determine having regard to the probable extent of his duties in each particular case.

9. No acceptance fee shall be charged in respect of an annuity purchased in or transferred into the name of the Public Trustee by any other person.

DIVISION II. – CAPITAL FEES ON WITHDRAWAL

1. Upon the withdrawal (whether upon distribution amongst the beneficiaries or otherwise) of any capital from the trust property – a fee (hereinafter referred to as a "withdrawal fee") by way of percentage, or otherwise, upon the gross capital value of the property withdrawn, as hereinafter specified in this division.

2. The withdrawal fee shall be at the rate of \$1.20 per \$480 (but so that the total of withdrawal fees in any one trust shall not exceed \$2,400) in all trusts except (a) that specified in paragraph 6 of Division I, in which the withdrawal fee shall be at the rate of \$0.60 per \$480 (but so that the total of withdrawal fees in any one trust shall not exceed \$1,200), and (b) those specified in paragraph 8 of Division I in which the withdrawal fee shall be such sum (not being less than \$2.40 as the Public Trustee shall determine having regard to the extent of his duties in each particular case. Provided that in so far as the property withdrawn consists of settled land or heirlooms a nominal fee of \$2.40 shall be substituted in respect of such property and upon each such withdrawal for the aforesaid percentage fee.

3. No withdrawal fee shall be charged upon property held by the Public Trustee upon a declaration of trust for one beneficiary only and withdrawn for the purpose of transfer to a new trust accepted by the Public Trustee.

4. No withdrawal fee shall be charged in respect of an annuity purchased in or transferred into the name of the Public Trustee by any other person.

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DIVISION III. – INCOME FEES

1. Except as hereinafter provided – an income fee by way of percentage upon the annual income of the trust property at such of the following rates as shall be applicable, viz.:

- (a) In respect of the first \$9,600 of such income $\frac{1}{2}$ per cent.
- (b) In respect of any excess over \$9,600 $\frac{1}{4}$ per cent.

2. Provided as follows:

- (a) Where income is paid direct to the person entitled, or to his Bank, or is collected by such person, the income fee in respect of the first \$2,400 of such income shall be at the rate of $\frac{1}{4}$ per cent in lieu of $\frac{1}{2}$ per cent;
- (b) The income fee in respect of the income of settled land, and in respect of the income of the trust property comprised in any of the trusts specified in paragraph 8 of Division I, shall be such annual sum (if any) as the Public Trustee from time to time shall determine having regard to the extent of his duties in each particular case;
- (c) Where in pursuance of a personal covenant in that behalf contained in a trust instrument income is paid direct to the person entitled, or to his Bank, without any intervention on the part of the Public Trustee no income fee shall be charged except in a case where the covenant is made with the Public Trustee, and in such last mentioned case the income fee shall not be charged in respect of any part of that income at a higher rate than $\frac{1}{8}$ per cent.

3. No income fee shall be charged where the income otherwise chargeable is less than \$9.60 per annum; save as aforesaid the minimum income fee shall be \$0.24.

DIVISION IV – MANAGEMENT FEES

1. Upon any investment by the Public Trustee by way of mortgage of, or charge on, property – a fee, payable out of the capital of the trust property, at the rate of \$1.20 per \$480 upon the amount of the money advanced.

2. Upon the sale or purchase by the Public Trustee of stocks, funds, shares or securities (except Treasury Bills) – a fee, payable in like manner as the expenses of the sale or purchase, by way of percentage upon the amount of the purchase money at such of the following rates as shall be applicable, viz.:

- (a) Where the stocks, funds, shares or securities sold or purchased are of a nature authorised by any statute for the investment of trust funds – \$0.36 per \$480.
- (b) Where the stocks, funds, shares or securities sold or purchased are not of such a nature – \$0.72 per \$480.

Such fee to be in addition to the amount of any commission refunded by any broker acting in the sale or purchase and retained by the Public Trustee, and the minimum fee for any such sale or purchase to be $\frac{1}{6}$.

3. Upon the sale or purchase or renewal by the Public Trustee of Treasury Bills – a fee of \$0.36 per \$480, payable in like manner as the expenses of the sale or purchase or renewal, upon the purchase money or upon the amount renewed, but so that the maximum fee shall be \$12 and the minimum fee \$0.36.

4. Upon the exercise of any option for the conversion or exchange of any stocks, funds, shares or securities into or for other stocks, funds, shares or securities – a fee, payable in the like manner as a fee upon purchase, at the rate of \$0.36 per \$480, upon the nominal value of the stocks, funds, shares or securities converted or exchanged, but so that the maximum fee for any such conversion or exchange shall be \$12 and the minimum fee shall be \$0.36.

5. Upon the sale or purchase by the Public Trustee of any land – a fee, payable out of the capital of the trust property, at the rate of \$0.60 per \$480 upon the amount of the purchase money. Provided that if upon any such sale or purchase any part of the purchase money shall remain upon mortgage the fee otherwise payable under paragraph 1 or under paragraph 6 of this Division upon such mortgage shall not be payable.

6. Upon the raising by the Public Trustee of any money by mortgage of or charge upon any trust property – a fee at the rate of \$1.20 per \$480 upon and payable out of the amount so raised.

7. Provided that where the Public Trustee is acting under the direction of a tenant-for-life or statutory owner of settled land, given pursuant to the statutory power of the tenant-for-life or statutory owner in that behalf, or where the Public Trustee is Custodian Trustee only there shall be payable fees equal to $\frac{1}{2}$ of the fees respectively payable under paragraphs 1, 2, 5 and 6 of this Division.

8. Upon the sale by the Public Trustee of a business – a fee payable out of the purchase money upon the amount thereof at such of the following rates as may be applicable, viz.:

(a) In respect of purchase money for goodwill – $2\frac{1}{2}$ per cent.

(b) In respect of purchase money for any assets (not being land or goodwill) – $\frac{1}{2}$ per cent.

Provided that no fee shall be payable under this paragraph where the Public Trustee is Custodian Trustee only.

9. Upon any special visit made on behalf of the Public Trustee to any beneficiary under a trust for any purpose relating to the trust or the duties of the Public Trustee thereunder – such fee not exceeding \$2.52 and payable out of the income or the capital of the trust property as the Public Trustee may determine in each particular case.

10. Upon the inspection of any land or buildings – such fee (not exceeding \$0.24 per \$480 on the gross capital value of the property inspected) as the Public Trustee having regard to the time and trouble involved may determine in each particular case, such fee to be payable out of the income or the capital of the trust property as he may think proper.

11. In respect of the collection of the rents of any land or buildings:

(a) Where such rents are collected by an agent acting under the Public Trustee – a fee at the rate of \$0.36 per \$480 on the amount of the gross rents collected. Provided that this fee shall not be payable where the Public Trustee is Custodian Trustee only.

(b) Where such rents are collected by the Public Trustee – a fee at the rate of \$0.72 per \$480 on the amount of the gross rents collected. Provided that this fee shall not be payable where the Public Trustee is Custodian Trustee only.

Such fees to be payable out of the rents so collected.

12. Upon the recovery by the Public Trustee from the Commissioner of Income Tax of any sum in respect of income tax – a fee on and payable out of the sum recovered at such rate not exceeding 2 per cent, as the Public Trustee may determine in each particular case.

13. Upon taking out special probate or administration in respect of settled land of the settlement whereof the Public Trustee is trustee – a fee of \$12 where the value of the settled land does not exceed \$4,800, and a fee of \$24 where it exceeds \$4,800, such fee to be payable out of the capital of the trust property.

DIVISION V. – AUDIT FEES

Upon the performance by the Public Trustee of all his duties under Section 14 of the Act in any particular case, such inclusive fee, not being less than \$1.20, or more than \$24 as the Public Trustee shall determine, regard being had to the time and trouble involved, the value of the estate and the other circumstances.

DIVISION VI. – REGISTRATION AND INQUIRY FEES

In Respect of Trusts of which the Public Trustee is a Trustee

1. For the entry in the appropriate register or book of a notice received of any dealing with a beneficial interest in trust property, or of the exercise or release of any power relating to the trust or estate – a fee of \$0.60 (such fee to cover any necessary acknowledgment of the notice).
2. For any replies or statements furnished for the purpose of any dealing (actual or intended) with a beneficial interest in trust property – a fee not exceeding \$1.20 in respect of any such dealing.