

1976/137



**THE PUBLIC TRUST OFFICE REGULATIONS 1958,
AMENDMENT NO. 9**

DENIS BLUNDELL, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 31st day of May 1976

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Public Trust Office Act 1957, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Public Trust Office Regulations 1958, Amendment No. 9, and shall be read together with and deemed part of the Public Trust Office Regulations 1958* (hereinafter referred to as the principal regulations).

(2) These regulations shall come into force on the 1st day of June 1976.

2. Professional fees and charges—The principal regulations are hereby amended by revoking regulation 7, and substituting the following regulation:

“7. The Public Trustee may fix by scale or otherwise the professional fees and charges payable in respect of legal or accounting services rendered by professional officers of the Public Trust Office:

“Provided that where the charge for any service, if rendered by a solicitor or accountant (not being a member of the staff of the Public Trust Office) to his client, would be determined in accordance with a scale for the time being approved or recommended by the New Zealand

*S.R. 1958/66

Amendment No. 1 (*Revoked by S.R. 1962/209*)
 Amendment No. 2 (*Revoked by S.R. 1964/6*)
 Amendment No. 3 (*Revoked by S.R. 1965/124*)
 Amendment No. 4 (*Revoked by S.R. 1966/218*)
 Amendment No. 5 S.R. 1966/218
 Amendment No. 6 S.R. 1971/154
 Amendment No. 7 S.R. 1973/165
 Amendment No. 8 S.R. 1974/262

Law Society or the New Zealand Society of Accountants, the charge made for that service when rendered by a professional officer of the Public Trust Office shall not exceed the amount payable for that service in accordance with the provisions of the said scale:

“Provided also that the Public Trustee may reduce or waive any such fee or charge to meet the special circumstances of any case.

3. Capital commission—The principal regulations are hereby amended by revoking regulation 17, and substituting the following regulations:

“17. **Capital commission in estates**—(1) Subject as hereafter provided in this regulation, the commission to be charged on the gross capital of any testate or intestate estate, or upon the gross capital of any estate managed under the Domestic Proceedings Act 1968 or any other estate with respect to which specific provision for the Public Trustee’s charges is not made, shall be as follows:

	Percent
On the first \$60,000	3
On the next \$60,000	2½
On the next \$60,000	2
On all in excess of \$180,000	1½

“Provided that, in any estate to which this regulation applies, the rate of commission on book debts collected by the Public Trustee shall be 5 percent unless some other person has been employed by the Public Trustee for the purpose of the collection and paid a commission for his services, in which case the Public Trustee’s commission shall be reduced to 2½ percent.

“(2) The regulation shall apply to:

“(a) Any asset that is or will be realised or transferred or delivered in kind to or retained by any person entitled thereto, being a devisee, legatee, next of kin, beneficiary, or other person of a like character:

“(b) Any asset abandoned to or sold by a mortgagee thereof:

“(c) Any advance to a beneficiary forgiven by will or brought into hotchpot:

“(d) Any asset of an estate managed by the Public Trustee under Part V of the Act that is realised or is handed over to the person entitled thereto or his personal representative on the termination of the management.

“(3) The commission under this regulation shall be estimated and charged within one year of the Public Trustee becoming entitled to administer or manage an estate:

“Provided that the Public Trustee may, if there are special or unusual circumstances or if hardship would be caused, defer charging commission in whole or in part till such later time or times as he shall determine:

“Provided also that, if the value is underestimated in respect of any asset, the Public Trustee shall charge the balance of the commission on the realisation or transfer or other disposition of the asset:

“Provided further that, where commission under this regulation in respect of any asset will be payable from some other asset of an estate and that other asset is distributable before the time when the first-mentioned asset is transferred or otherwise disposed of as aforesaid, commission shall be finally payable as if the first-mentioned asset had

been transferred to a beneficiary entitled thereto on the date (as fixed by the Public Trustee) when the asset from which the commission is payable became distributable.

"(4) Where the Public Trustee is administrator or trustee of any assets of an estate that are not immediately distributable but are held on a continuing trust or trusts, whether pursuant to the terms of the will or other instrument or in accordance with any rule of law, the Public Trustee, in addition to the commission payable under subclause (1) of this regulation, shall be entitled to make an annual charge in each year after the first year of administration of 0.2 percent of the gross value as determined by the Public Trustee of the assets that are from time to time held on the continuing trust or trusts; and to make such charge against the assets so held or against the assets of the estate that are primarily liable for testamentary expenses, as the Public Trustee thinks fit:

"Provided that the total charge made under this subclause and under subclause (1) of this regulation shall not exceed 5 percent.

"17A. Capital commission in estates of protected patients and protected persons—(1) Subject as hereafter provided in this regulation, the commission to be charged on the gross capital of any assets that form part of any estate managed under the Mental Health Act 1969 or the Aged and Infirm Persons Protection Act 1912 and are disposed of or collected shall be as follows:

	Percent
On the first \$60,000	3
On the next \$60,000	2½
On the next \$60,000	2
On all in excess of \$180,000	1½

"Provided that in any estate to which this regulation applies, the rate of commission on book debts collected by the Public Trustee shall be 5 percent unless some other person has been employed by the Public Trustee for the purpose of the collection and paid a commission for his services, in which case the Public Trustee's commission shall be reduced to 2½ percent.

"(2) Without restricting subclause (1) of this regulation, the assets on which commission is payable in accordance with that subclause in respect of any estate to which that subclause applies shall include:

"(a) Any asset that is realised or that is disposed of by way of settlement or trust for the benefit of a person other than the protected patient or protected person.

"(b) Any asset abandoned to or sold by a mortgagee thereof.

"(3) The Public Trustee, in addition to the commission that is payable pursuant to subclauses (1) and (2) of this regulation, shall be entitled to make an annual charge of 0.5 percent on the gross value as determined by the Public Trustee of the assets from time to time under management.

"17B. Rules for charging capital commission—(1) The following rules shall apply to the charging of capital commission under these regulations:

"(a) In computing the commission on capital realised, cash collected or received shall be included:

“(b) In computing the commission on capital realised from the sale of property, no deduction shall be made in respect of legal or equitable charges thereon or the expenses of realisation thereof:

“Provided that, as regards any life policy on the security on which the insurance office has made an advance to the deceased person in his lifetime, this paragraph shall not apply, and commission shall be charged only on the net amount received as the proceeds of the policy:

“(c) In computing the charge on any asset that has not been realised, the value from time to time of the asset shall be as determined by the Public Trustee.

“(2) Nothing in regulations 17 and 17A of these regulations shall restrict the application of regulation 33 of these regulations.”

4. Commission payable under regulation 18—Regulation 18 of the principal regulations is hereby amended by omitting the expression “1 percent”, and substituting the expression “2 percent”.

5. Commission payable under regulation 19—(1) Regulation 19 of the principal regulations is hereby amended by omitting from paragraph (a) the expression “1 percent”, and substituting the expression “2 percent”.

(2) The said regulation 19 is hereby further amended by revoking paragraph (b), and substituting the following paragraph:

“(b) Where the capital consists of cash which the Public Trustee is required to invest otherwise than in the Common Fund, commission shall be payable in accordance with regulation 17 hereof, and the commission under this paragraph (b) shall be payable on distribution or transfer of the assets, except that if the trust is perpetual, commission shall be payable on receipt of the capital fund.”

6. Commission payable under regulation 21—Regulation 21 of the principal regulations is hereby amended by omitting the expression “1½ percent”, and substituting the expression “3 percent”.

7. Fee for discharging mortgage—Regulation 27 of the principal regulations is hereby amended by revoking subclause (1), and substituting the following subclause:

“(1) The fee to be charged by the Public Trustee for discharging a mortgage under section 87 of the Property Law Act 1952 and receiving and holding the proceeds (if any), and whether principal or interest, for the person entitled shall be such fee (not exceeding \$100) as is fixed by the Public Trustee.”

8. Revocations—Regulations 23, 26, and 28 of the principal regulations are hereby revoked.

9. Commission on insolvent estates—The principal regulations are hereby amended by revoking regulation 32, and substituting the following regulation:

“32. When an estate is administered as insolvent (whether under Part XVII of the Insolvency Act 1967 or under section 31 of the Administration Act 1969) the Public Trustee may increase the charges otherwise payable under these regulations to an amount not exceeding 5 percent.”

P. G. MILLEN,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

Regulation 2 revises regulation 7 of the principal regulations so as to enable the Public Trustee to fix the professional fees and charges in respect of both legal and accounting services rendered by professional officers of the Public Trust Office. These fees and charges are not to exceed the comparable fees and charges that are fixed in accordance with scales approved or recommended by the New Zealand Law Society or the New Zealand Society of Accountants.

Regulation 3 substitutes new regulations 17, 17A, and 17B for the existing regulation 17. The effect of this change and of the revocation of regulation 23 is to eliminate the differing rates of commission that were chargeable on realised assets and on assets that were transferred in specie to beneficiaries. One scale of commission rates is now applicable whether assets are realised or transferred. In respect of the estates of protected patients and protected persons, commission is only payable where an asset is realised or settled on a trust for the benefit of a person other than the protected person, but the Public Trustee will be entitled to charge an annual management fee of 0.5 percent. In the case of other estates, commission will in general be payable in the first year of administration and in the case of continuing trusts, the Public Trustee will be entitled to charge an annual fee of 0.2 percent on the value of the assets subject to the continuing trust. The total charge by way of commission and the annual charges must not exceed 5 percent.

Other changes to commission rates are:

- (a) The rates under regulations 18 and 19 of the principal regulations are increased from 1 percent to 2 percent.
- (b) The rate under regulation 21 of the principal regulations is increased from $1\frac{1}{2}$ percent to 3 percent.
- (c) The maximum rate that can be charged under regulation 32 of the principal regulations for the administration of insolvent estates is now fixed at 5 percent overall.

Regulation 7 amends regulation 27 of the principal regulations to enable the Public Trustee to fix, with a maximum of \$100, the fee to be charged for discharging a mortgage under section 87 of the Property Law Act 1952.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 31 May 1976.

These regulations are administered in the Public Trust Office.