

# The Highly Contentious 'Non-Contentious Probate (Fees) Order 2018'

March 2019



While it may appear that Brexit is the only topic of conversation in government today, at the beginning of February Parliament met to discuss [The Non-Contentious Probate \(Fees\) Order 2018](#), which unlike its name has been highly contentious since its inception.

The order, which comes into force on 1 April 2019, is unfortunately no April Fool, and sets out a new sliding scale structure for probate fees.

Since 2014, there has been a flat fee of £215 when applying for probate in person or £155 when applying via a solicitor. From 1 April, the fee will depend on the net value of the estate i.e. the value of the estate less any debts due at the date of death.

Value of Estate	New Fee	Difference*
£50,000 and below	£0	-
£50,000 to £300,000	£250	£35
£300,000 to £500,000	£750	£535
£500,000 to £1m	£2,500	£2,285
£1m to £1.6m	£4,000	£3,785
£1.6m to £2m	£5,000	£4,785
Above £2m	£6,000	£5,785

\* difference between the new fee and the personal application fee of £215.

While the order may come as good news for estates valued at less than £50,000, many estates will see a substantial increase in probate fees.

## The contentious issue

The order has been criticised for several reasons; mainly because it increases the probate fee in line with the value of the estate. This increase has been described as an “enhanced fee” by Justice Minister [Lucy Frazer](#). However, it is essentially just another tax. The fee is payable in addition to [Inheritance Tax](#), which currently stands at 40%. It has therefore been labelled a “stealth tax” and even a “death tax”.

It has been argued that the fees need to be increased to fund the additional work the court must undertake when issuing a [Grant of Probate](#) for larger estates. This is not strictly true as a high value estate may not necessarily have more assets than a lower value estate. Some MPs have even agreed that the Probate Registry doesn't necessarily do more work when issuing a Grant of Probate for larger estates.

## Is there anything positive about the order?

The original proposal was to increase probate fees so that larger estates would face fees of up to £20,000. This caused a furious outcry from many interested parties and the proposal was then scrapped in light of the impending general election on 8 June 2017. These estates will now pay £6,000; a saving of £14,000 compared to the earlier proposal.

## Who pays and when?

This fee is payable when making an application for a Grant of Probate. This means it is payable before many of the deceased's accounts or investments have been realised. The query then arises as to who will pay the fee? The bereaving family? Allegedly some Ministers have brushed off the fee increase and have suggested that the

family can simply apply for a loan to pay the “enhanced fee”.

As of 1 April 2019, careful consideration is needed when planning the distribution of your estate, to ensure that your beneficiaries aren't left with an upfront cost of up to £6,000. For more information contact Lalita or James today.

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