

## **EXPLANATORY MEMORANDUM TO**

### **The Insolvency (Deposits) (Amendment) Order (Northern Ireland) 2009**

#### **S.R. 2009 No. 203**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 361 (2) and (3) of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") and is subject to the negative resolution procedure.
- 1.3. The rule is due to come into operation on 1st October 2009.

#### **2. Purpose**

- 2.1. This Order amends the Insolvency (Deposits) Order (Northern Ireland) 2006 (S.R. 2006 No. 55) ("the principal Order").
- 2.2. Article 2(2) of this Order increases the amount of the various deposits payable pursuant to Article 4 of the principal Order. Article 2(3) reduces the amount of the deposits payable under Article 5(1) of the principal Order in connection with the registration of an individual voluntary arrangement and the performance by the official receiver of the functions of nominee in relation to such an arrangement.

#### **3. Background**

- 3.1. The principal Order prescribes the amount of deposits required in respect of fees payable in connection with a winding up by the court or bankruptcy (Article 4) and in respect of the functions of the official receiver when acting as nominee in relation to an individual voluntary arrangement (Article 5). This Order increases the amount of the deposits payable pursuant to Article 4 of the principal Order: from £310 to £345 for a debtor's bankruptcy petition; from £370 to £415; for a creditor's bankruptcy petition; and from £620 to £690 for a company petition.
- 3.2. This Order also reduces from £335 to £315 the deposit payable under Article 5(1) of the principal Order in connection with the registration of an individual voluntary arrangement (IVA) and the performance by the official receiver of the functions of a nominee in relation to such an arrangement. Where an insolvency practitioner is appointed to supervise an IVA, that arrangement must be registered with the Insolvency Service and the IVA details are held on the Individual Insolvency Register. Initially there were one-off costs incurred in ensuring the accuracy of the information held on the register. The current costs are lower than originally estimated due to efficiencies achieved in dealing with higher levels of IVA registration. The reduction ensures that costs associated with this activity will continue to be fully covered.

#### **4. Matters of Special Interest to the Enterprise, Trade and Investment Committee**

4.1. None.

#### **5. Consultation**

5.1. While no formal consultation was carried out in relation to these amendments, the Insolvency Service wrote to Insolvency Practitioners and Recognised Professional Bodies on 26 March 2009, informing them of the draft Regulations, giving them an opportunity to comment on them. No feedback was received in the subsequent four weeks.

5.2. The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)) ("the 2005 Order") modernised the financial regime of the Service by simplifying the fee structure and ensuring increased transparency. The principles of the new financial regime included that Case Administration costs would be met by creditors. The 2005 Order was preceded by an extensive consultation exercise and the provisions relating to insolvency reform were generally welcomed. The changes proposed by these Regulations are designed to ensure that the principles of the financial regime which came into operation in March 2006 are being maintained, in particular, that fees are set to match costs.

#### **6. Position in Great Britain**

6.1. The equivalent legislation for England and Wales is The Insolvency Proceedings (Fees) (Amendment) Order 2008 (S.I. 2008/714). This came into force on 6 April 2008.

#### **7. Equality Impact**

7.1. An equality impact assessment has not been prepared as the proposed Regulations will not have any differential impact in terms of equality.

#### **8. Regulatory Impact**

8.1. A Regulatory Impact assessment has not been prepared as the Regulations do not impose any additional costs on business and do not impact on charities, social enterprise or voluntary bodies.

#### **9. Financial Implications**

9.1. The amendments to the amounts applicable will ensure that all costs associated with the various activities will be covered.

#### **10. Section 24 of the Northern Ireland Act 1998**

10.1. The regulations are considered to be compliant with section 24 of the Northern Ireland Act 1998, including that they are compatible with Community Law and Convention Rights as defined in the Human Rights Act 1998.

#### **11. EU Implications**

11.1. Not applicable.

#### **12. Additional Information**

12.1. Not applicable.