

EXPLANATORY MEMORANDUM TO

The Insolvency Practitioners and Insolvency Account (Fees) (Amendment) Order (Northern Ireland) 2011

S.R. 2011 No. 389

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 361A of the Insolvency (Northern Ireland) Order 1989, in concurrence with the Department of Finance and Personnel and is subject to the negative resolution procedure.

2. Purpose

- 2.1. This Order amends the Insolvency Practitioners and Insolvency Account (Fees) Order (Northern Ireland) 2006 (S.R. 2006 No. 53) ("the principal Order").
- 2.2. Article 3 of this Order increases the fees charged by the Department in respect of its services for Insolvency Practitioner Regulation and Estate Accounting. More specifically, it increases fees to be paid by recognised professional bodies in connection with the authorisation of members of those bodies to act as insolvency practitioners (IPs).
- 2.3. It also introduces a new fee where unclaimed dividends or undistributed balances are paid into the Insolvency Account following the voluntary winding up of a company and increases the fees payable by IPs acting as trustees or liquidators for processing payments into and out of the Insolvency Account.
- 2.4. It replicates for Northern Ireland provisions contained in equivalent legislation currently in force in England and Wales.

3. Background

- 3.1. Article 350 of the Insolvency (Northern Ireland) Order 1989 provides for the Department to recognise professional bodies whose members are authorised to act as insolvency practitioners. Fees are payable by the Recognised Professional Bodies (RPB) in connection with the maintenance of their recognition. The current fee is charged at £50 per member of each RPB authorised to act as an insolvency practitioner by virtue of their being a member of that RPB. This is being increased to £60 per member to achieve full cost of the service provided by the Department in administering the maintenance of this recognition.
- 3.2. The Insolvency (Amendment) Regulations (Northern Ireland) 2009 ("the 2009 Regulations") introduced new provisions concerning payments into the Insolvency Account. This is an account maintained by the Insolvency Service with the Bank of Ireland, made up of separate estate accounts containing the proceeds from the sale of assets in bankruptcies and

liquidations. The 2009 Regulations allow payments of unclaimed funds and dividends, in respect of dissolved companies which were formerly in administration or administrative receivership, to be paid into the Insolvency Account, on payment of a fee. A mandatory requirement for such monies to be paid into the Insolvency Account where companies were formerly in voluntary liquidation was replaced by a discretionary provision enabling such monies to be paid in.

- 3.3. The new provisions in the 2009 Regulations were matched by corresponding amendments to the principal Order, imposing a flat rate fee of £25 to cover the administration costs of each payment into the Account, but only for payments made by an administrator or administrative receiver. This Order introduces a fee for any such payment being made by a voluntary liquidator, which will provide for consistency for all voluntary users of the Insolvency Account.
- 3.4. The official receiver and IPs are required by statute to use the Insolvency Account for estate banking in relation to both bankruptcies and compulsory liquidations. The official receiver's administration costs including banking costs are recovered through case administration fees. The banking costs of cases administered by IPs are recovered through a banking fee. This is payable out of their respective estate accounts.
- 3.5. Article 4(a) increases the banking fee from £15 to £18.
- 3.6. Article 4(e) increases from £0.80 to £1.00 the fee payable for the issue or reissue of any cheque, money or payable order in respect of monies in the Insolvency Account.

4. Consultation

- 4.1. While no formal consultation was carried out in relation to these amendments, the Insolvency Service wrote to Insolvency Practitioners and Recognised Professional Bodies and the advice sector on 18th August, informing them of the draft Order, and giving them an opportunity to comment. Only one response was received. Citizens Advice Bureau acknowledged that there were valid reasons to raise fees but they are not in favour of the proposals due to the current economic climate and the amount of debt in society.
- 4.2. 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. One of the principles of the new financial regime was that case administration costs would be met by creditors and debtors. The 2005 Order was preceded by an extensive consultation exercise and the provisions relating to insolvency reform were generally welcomed. The changes proposed by this Order 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.

5. Equality Impact

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

6. Regulatory Impact

- 6.1. A Regulatory Impact assessment has not been prepared as these Rules will not impose any additional burden on business and will not impact on charities, social enterprise or voluntary bodies.

7. Financial Implications

- 7.1. None

8. Section 24 of the Northern Ireland Act 1998

- 8.1. This Order is 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.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. The equivalent legislation for England and Wales is embodied in the Insolvency Practitioners and Insolvency Services Account (Fees) (Amendment) Order 2009 (S.I. 2009/487), which came into force on 6 April 2009.

11. Additional Information

- 11.1. Not applicable.