

EXPLANATORY MEMORANDUM TO

The Insolvency (Fees) (Amendment No. 2) Order (Northern Ireland) 2011

S.R. 2011 No. 390

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 (1), (3) and (4) of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") and is subject to the affirmative resolution procedure.

2. Purpose

- 2.1. This Order amends the Insolvency Fees (Northern Ireland) Order 2006 (S.R. 2006 No. 54) ("the principal Order") and updates the nature and level of fees to be set for the current and next financial year in relation to insolvency proceedings under the 1989 Order.
- 2.2. It replicates for Northern Ireland provisions contained in equivalent legislation currently in force in England and Wales. The fees charged for the activities of the Insolvency Service cover the full costs of Official Receiver (OR) case administration, banking services and the registration and regulation of Insolvency Practitioners.

3. Background

- 3.1. Fees for insolvency case administration are set to recover costs. The Insolvency Service undertakes an annual review of its costs and receipts and calculates a contemporary set of fees on a full cost recovery basis as stipulated above, to conform to guidance from the Department of Finance and Personnel. The provisions of this Order emanate from the latest review.
- 3.2. Article 3 of this Order updates Article 5 of the principal Order which prescribes the fees payable to insolvency practitioners appointed under Article 247(2) of the 1989 Order. The amount payable is increased from £345 to £450.
- 3.3. Article 4 updates Article 6 of the principal Order which provides for a reduction in the fees payable by a bankrupt to the OR when acting as supervisor of an approved individual voluntary arrangement. The amount of £462.50 is increased to £525 to correspond to a similar increase in the OR case administration fee.
- 3.4. Chargeable fees are recovered in the first instance from the realisation of available assets. Where assets are insufficient, the administration fee is recovered in part from the deposit paid by the debtor or creditor in presenting their petition. Asset levels and values have reduced considerably in the current economic climate and the current structure for fees and deposits no longer guarantees that the Insolvency Service will

recover the case administration fees. It has been considered necessary to move to a model whereby the cash generated by the fees is both more certain and is realised earlier in the process. This will be achieved by increasing the level of the cash deposit to be paid by the petitioner seeking the court order. The Insolvency (Deposits) (Amendment) Order (Northern Ireland) 2011, made simultaneously with this Order, increases the level of the cash deposit to be paid by the petitioner seeking the court order. This Order revises the case administration fees recoverable from the balance of the assets of the insolvent estates.

- 3.5. For administering a bankruptcy, the fee increases from £925 to £1,050 and the fee for compulsory liquidation cases increases from £1,615 to £1,800.
- 3.6. Since the majority of cases have insufficient assets to enable the full case administration fee to be recovered, an additional fee is applied to those cases with assets over £2,000. A figure of 17% is currently used to calculate this fee against the balance of the estate.
- 3.7. The economic downturn has led to a greater proportion of cases which do not generate enough money to cover the Department's costs. This Order introduces a new scale of percentages, designed to bring increased levels of receipts to the Department from the administration of lower value insolvencies. The cap on the total amount of the fees to be charged against any single case remains at £80,000. The application of this fee is known as cross-subsidisation, whereby the income from the higher value insolvencies is used to cover, as far as possible, the unrecovered fees of the lower value insolvencies. It is the Department's policy to eventually discontinue this process.

4. Consultation

- 4.1. While no formal consultation was carried out in relation to these amendments, the Insolvency Service wrote to Insolvency Practitioners, 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. The principles of the new financial regime included 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 the proposed amendments will not impose any disproportionate 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 Proceedings (Fees) (Amendment) Order 2010 (S.I. 2010/732) which came into force on 6 April 2010.

11. Additional Information

- 11.1. Not applicable.