

**2004 No. 593**

**INSOLVENCY**

**COMPANIES, ENGLAND AND WALES**

**INDIVIDUALS, ENGLAND AND WALES**

**The Insolvency Proceedings (Fees) Order 2004**

<i>Made</i> - - - -	<i>4th March 2004</i>
<i>Laid before Parliament</i>	<i>8th March 2004</i>
<i>Coming into force</i> - -	<i>1st April 2004</i>

The Lord Chancellor, in exercise of the powers conferred upon him by sections 414 and 415 of the Insolvency Act 1986(a), section 133 of the Bankruptcy Act 1914(b) and section 663(4) of the Companies Act 1985(c) and with the sanction of the Treasury hereby makes the following Order:

**Citation and commencement**

1. This Order may be cited as the Insolvency Proceedings (Fees) Order 2004 and shall come into force on 1st April 2004.

**Interpretation**

2.—(1) In this Order—

“the Act” means the Insolvency Act 1986 (any reference to a numbered section being to the section so numbered in that Act);

“the commencement date” is the date referred to in Article 1;

“individual voluntary arrangement” means a voluntary arrangement pursuant to Part VIII of the Act; and

“the Rules” means the Insolvency Rules 1986(d) (any reference to a numbered Rule being to the Rule so numbered in the Rules).

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(a) 1986 c.45.

(b) 1914 c.59. The Bankruptcy Act 1914 was repealed by Section 235 of, and Part III of Schedule 10 to the Insolvency Act 1985. By virtue of paragraph 10 of Schedule 11 to the Insolvency Act 1986, the Bankruptcy Act 1914 and secondary legislation made thereunder which was in force immediately prior to the 29th December 1986 remain in effect in relation to bankruptcy proceedings where the petition was presented before 29th December 1986.

(c) 1985 c.6. Section 663 of the Companies Act 1985 was repealed by section 235 of, and Part II of Schedule 10 to, the Insolvency Act 1985. By virtue of paragraph 4 of Schedule 11 to the Insolvency Act 1986, section 663(4) of the Companies Act 1985 (and orders made under it which were in force immediately prior to the 29th December 1986) remains in force in relation to a winding up by the court where the winding up commenced before the 29th December 1986.

(d) S.I. 1986/1925 amended by S.I. 1987/1919, S.I. 1989/397, S.I. 1991/495, S.I. 1993/602, S.I. 1995/586, S.I. 1999/359, S.I. 1999/1022, S.I. 2001/763, S.I. 2002/1307, S.I. 2002/2712 and S.I. 2003/1730.

(2) A reference to a fee by a means of letters and a number is a reference to the fee so designated in the table in Schedule 2.

### **Revocations and Transitional Provisions**

3. The instruments listed in the Schedule 1 to this Order are revoked to the extent set out in that Schedule.

### **Fees payable in connection with bankruptcies, individual voluntary arrangements and winding up**

4.—(1) Subject to paragraphs (2) and (3) and article 8, the fees payable to the Secretary of State in respect of proceedings under Parts I to XI of the Act and the performance by the official receiver or Secretary of State of functions under those Parts shall be determined in accordance with the provisions of Schedule 2 to this Order.

(2) Paragraph (1) and the provisions of Schedule 2 shall not apply to a bankruptcy where the bankruptcy order was made before the commencement date except insofar as is necessary to enable the charging of—

- (a) fee INV1; or
- (b) as regards an individual voluntary arrangement proposed by, or entered into by, the bankrupt, fees IVA1, IVA2 or IVA3.

(3) Paragraph (1) and the provisions of Schedule 2 shall not apply to a winding up by the court where the winding-up order was made before the commencement date except insofar as is necessary to enable the charging of fee INV1.

(4) Each request for the purchase of any government securities made by a trustee in bankruptcy under the Bankruptcy Act 1914 or a liquidator in a winding up under the provisions of the Companies Act 1985 shall be accompanied by a fee of £50.

### **Fees payable to an insolvency practitioner appointed under section 273**

5. Where a court appoints an insolvency practitioner under section 273(2) to prepare and submit a report under section 274 the court shall, on submission of the report, pay to the practitioner a fee of £310 (that sum being inclusive of Value Added Tax).

### **Deposits – winding up by the court and bankruptcy**

6.—(1) In this Article—

“appropriate deposit” means—

- (a) in relation to a winding-up petition to be presented under the Act the sum of £620;
- (b) in relation to a bankruptcy petition to be presented under section 264(1)(b) the sum of £310; or
- (c) in relation to a bankruptcy petition to be presented under sections 264(1)(a), (c) or (d) the sum of £370;

“order” means a winding-up, or as the case may be, bankruptcy order;

“petition” means a winding-up, or as the case may be, bankruptcy petition;

“relevant assets” means the assets of the company or, as the case may be the assets comprised in the estate of the bankrupt; and

“relevant fees” means in relation to winding-up proceedings fee W1 and in relation to bankruptcy proceedings fee B1 together with any fees payable under section 273.

(2) The deposit shall be security for the payment of the relevant fees and shall be used to discharge those fees to the extent that the relevant assets are insufficient for that purpose.

(3) Where a deposit is paid to the court, the court shall (except to the extent that a fee is payable by virtue of Article 5) transmit the deposit paid to the official receiver attached to the court.

(4) A deposit shall be repaid to the person who made it in a case where a petition is dismissed or withdrawn except in the case of a bankruptcy petition where it is required to pay any fees arising under Article 5.

(5) In any case where an order is made (including any case where the order is subsequently annulled, rescinded or recalled), any deposit made shall be returned to the person who made it save to the extent that the relevant assets are insufficient to discharge the fees for which the deposit is security.

#### **Deposits – official receiver acting as nominee in individual voluntary arrangement**

7.—(1) Where a proposal for an individual voluntary arrangement with the official receiver acting as nominee is notified to the official receiver, the notification shall be accompanied by a deposit of £335 as security for fee IVA1 and fee IVA2.

(2) The deposit shall be used to discharge fee IVA1 and fee IVA2.

(3) Where the official receiver declines to act in relation to a proposal of the kind mentioned in paragraph (1) the deposit mentioned in that paragraph shall be refunded to the person entitled to it

(4) Where the official receiver agrees to act as nominee in relation to a proposal of the kind mentioned in paragraph (1) but the proposal is rejected by the bankrupt's creditors, any balance of the deposit after deducting fee IVA2 shall be returned to the person who is entitled to it.

#### **Reduction and refund of fees – individual voluntary arrangement following bankruptcy**

8. Where proposals made by a bankrupt for an individual voluntary arrangement with the official receiver acting as supervisor are approved by the bankrupt's creditors, fee B1 shall be reduced to £812.50 and any payments made in respect of fee B1 which exceed that amount shall be refunded to the credit of the estate of the bankrupt.

#### **Value Added Tax**

9. Where Value Added Tax is chargeable in respect of the provision of a service for which a fee is prescribed by virtue of any provision of this Order (other than Article 5), there shall be payable in addition to that fee the amount of the Value Added Tax.

3rd March 2004

*Falconer of Thoroton, C.*

We concur

4th March 2004

*Nick Ainger,  
Jim Murphy,*  
Two of the Lords Commissioners of Her Majesty's Treasury

# SCHEDULE 1

## REVOCATIONS

Article 3

<i>Reference</i>	<i>Extent of revocation</i>
The Bankruptcy Fees Order 1984(a)	All the entries in the Schedule to that Order except for the entry relating to Fee 13 in Table B.
The Bankruptcy Fees (Amendment) Order 1985(b)	The whole Order.
The Companies (Department of Trade and Industry) Fees Order 1985(c)	The entries in the Schedule to that Order except for the entry relating to Fee 3.
The Insolvency Fees Order 1986(d)	The whole Order is revoked except in relation to any case where a winding-up or bankruptcy order is made under the Act before the commencement date but in such a case the Order shall continue to have effect with the deletion of all the entries in the Schedule to the Order except, in relation to a winding up by the court, that relating to Fee 10 in Part 1 of the Schedule and, in relation to a bankruptcy, that relating to Fee 13 in Part 2 of the Schedule.
The Insolvency Fees (Amendment) Order 1988(e)	The whole Order.
The Bankruptcy and Companies (Department of Trade and Industry) Fees (Amendment) Order 1990(f)	The whole Order.
The Insolvency Fees (Amendment) Order 1990(g)	The whole Order.
The Bankruptcy and Companies (Department of Trade and Industry) Fees (Amendment) Order 1991(h)	The whole Order.
The Insolvency Fees (Amendment) Order 1991(i)	The whole Order.
The Insolvency Fees (Amendment) Order 1992(j)	The whole Order.
The Insolvency Fees (Amendment) Order 1994(k)	The whole Order.
<i>Reference</i>	<i>Extent of Revocation</i>

(a) S.I. 1984/880 amended by S.I. 1985/1783, S.I. 1990/559 and S.I. 1991/494.

(b) S.I. 1985/1783.

(c) S.I. 1985/1784. amended by S.I. 1990/559 and S.I. 1991/494.

(d) S.I. 1986/2030 amended by S.I. 1988/95, S.I. 1990/560, S.I. 1991/496, S.I. 1992/34, S.I. 1994/2541 and S.I. 2001/761.

(e) S.I. 1988/95.

(f) S.I. 1990/559.

(g) S.I. 1990/560.

(h) S.I. 1991/494.

(i) S.I. 1991/496.

(j) S.I. 1992/34.

(k) S.I. 1994/2541.

The Insolvency Fees (Amendment) Order 2001 <sup>(a)</sup>	The whole Order.
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<sup>(a)</sup> S.I. 2001/761.

## SCHEDULE 2

Article 4

### FEES PAYABLE IN INSOLVENCY PROCEEDINGS

**1.—(1)** In this Schedule—

“the bankruptcy ceiling” means in relation to a bankruptcy, the sum which is arrived at by adding together—

- (a) the bankruptcy debts required to be paid under the Rules
- (b) any interest payable by virtue of section 328(4); and
- (c) the expenses of the bankruptcy as set out in Rule 6.224 other than—
  - (i) any sums spent out of money received in carrying on the business of the bankrupt; and
  - (ii) fee B2 in the Table set out in paragraph 2;

“chargeable receipts” means those sums which are paid into the Insolvency Services Account after first deducting any amounts paid into the Insolvency Services Account which are subsequently paid out to secured creditors in respect of their securities or in carrying on the business of the company or the bankrupt; and

“the insolvency legislation” means the Insolvency Act 1986(a), the Insolvency Rules 1986(b) and the Insolvency Regulations 1994(c).

(2) In this Schedule, references to the performance of the “general duties” of the official receiver on the making of a winding-up or bankruptcy order—

- (a) include the payment by the official receiver of any fees, costs or disbursements except for those associated with the realisation of assets or the distribution of funds to creditors; but
- (b) does not include anything done by the official receiver—
  - (i) in connection with the appointment of agents for the purposes of, or in connection with, the realisation of assets or
  - (ii) anything done in connection with or, for the purposes of, distributing assets to creditors.

**2.** Fees payable to the Secretary of State in respect of proceedings under Parts I to XI of the Act and the performance by the official receiver and the Secretary of State of functions under those Parts shall be determined in accordance with the provisions of the Table of Fees set out below—

**Table of Fees**

<b>Fees payable in respect of individual voluntary arrangements only</b>		
<i>Designation of Fee</i>	<i>Description of fee and circumstances in which it is charged</i>	<i>Amount of fee or applicable %</i>
IVA1	<b>Individual voluntary arrangement registration fee</b> On the registration of an individual voluntary arrangement by the Secretary of State there is payable a	

(a) 1986 c.45.

(b) S.I. 1986/1925 amended by S.I. 1987/1919, S.I. 1989/397, S.I. 1991/495, S.I. 1993/602, S.I. 1995/586, S.I. 1999/359, S.I.1999/1022, S.I. 2001/763, S.I. 2002/1307, S.I. 2002/2712 and S.I. 2003/1730.

(c) S.I. 1994/2507 amended by S.I. 2000/485, S.I. 2001/762, S.I. 2001/3649, S.I. 2003/1633 and S.I.2004/ 472.

	fee of—	£35
IVA2	<b>Individual voluntary arrangement – official receiver’s nominee fee</b> For the performance by the official receiver in relation to an individual voluntary arrangement of the functions of nominee there shall be payable on the agreement of the official receiver so to act a fee of—	£300
IVA3	<b>Individual voluntary arrangement – official receiver’s supervisor fee</b> For the performance by the official receiver in relation to an individual voluntary arrangement of the functions of supervisor, there shall be payable, a fee calculated as a percentage of any monies realised whilst he acts as supervisor at the rate of—	15%

#### Fees payable in bankruptcies only

<i>Designation of Fee</i>	<i>Description of fee and circumstances in which it is charged</i>	<i>Amount of fee or applicable %</i>
B1	<b>Bankruptcy - Official receiver’s administration fee</b> For the performance by the official receiver of his general duties as official receiver on the making of a bankruptcy order there shall be payable a fee of—	£1,625
B2	<b>Bankruptcy - Secretary of State’s administration fee</b> For the performance by the Secretary of State of her general duties under the insolvency legislation in relation to the administration of the estate of each bankrupt, there shall be payable a fee (up to a maximum of £100,000) calculated as a percentage of total chargeable receipts relating to the bankruptcy (but ignoring the first £2000 and that part of the total receipts which exceeds the bankruptcy ceiling) at the rate of—	17%

#### Fees payable in relation to winding up by the court only

<i>Designation of Fee</i>	<i>Description of fee and circumstances in which it is charged</i>	<i>Amount of fee or applicable %</i>
W1	<b>Winding up by the court - official receiver’s administration fee</b> For the performance by the official receiver of his general duties as official receiver on the making of a winding-up order there shall be payable a fee of—	£1,950
W2	<b>Winding up by the court - Secretary of State’s administration fee</b> For the performance by the Secretary of State of her general duties under the insolvency legislation in relation to the administration of the affairs of each company which is being wound up by the court, there shall be payable a fee (up to a maximum of £100,000) calculated	

as a percentage of total chargeable receipts relating to the company (but ignoring the first £2000) at the rate of— 17%

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**Fees payable in bankruptcies and both types of winding up**

<i>Designation of Fee</i>	<i>Description of fee and circumstances in which it is charged</i>	<i>Amount of fee or applicable %</i>
INV1	<b>Investment fee – all cases</b> Each request made by a trustee in bankruptcy or a liquidator in a compulsory or a voluntary winding up for the purchase of any government securities shall be accompanied by a fee of—	£50

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## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes provision for the charging of fees in relation to insolvency proceedings in England and Wales under the Insolvency Act 1986 and earlier legislation which remains in force in relation to cases which were commenced before the 29th December 1986, the date on which the Insolvency Act 1986 came into force. It seeks in all cases to simplify the fee structure applicable in relation to insolvency proceedings under Parts I to XI of the Insolvency Act 1986 and the previous legislation relating to insolvency by reducing the number of fees payable. Hence it is not possible to make a direct comparison between any specific fee prescribed by this Order and a specific fee charged under the Insolvency Fees Order 1986 or the earlier legislation.

Article 3 of, and Schedule 1 to, the Order make provision for the revocation of the Orders listed in the Schedule with some savings. In cases to which the Bankruptcy Act 1914 continues to apply, the only fee prescribed by the Bankruptcy Fees Order 1984 that will continue to be payable in such cases is Fee 13 as set out in Table B in the Schedule to that Order. As regards cases where a winding-up order was made under the provisions of the Companies Act 1985, the only fee prescribed by the Companies (Department of Trade and Industry) Fees Order 1985, which will continue to be payable is Fee 3 as set out in the Schedule to that Order. As regards any case where a bankruptcy order was made under the Insolvency Act 1986 before the date that this Order comes into force, only Fee 13 in Part 2 of the Schedule to the Insolvency Fees Order 1986, will continue to apply. (Provision is made in the Insolvency Practitioners and Insolvency Services Account (Fees) Order 2003 S.I. 2003/3363 for the payment of fees in respect of the issue of cheques and other matters relating to the operation of the Insolvency Services Account in relation to bankruptcies.). As regards cases where a winding-up order is made under the Insolvency Act 1986 before the date this Order comes into force, only Fee 10 in Part 1 of the Schedule to the Insolvency Fees Order 1986 will continue to be payable. (Again the Insolvency Practitioners and Insolvency Services Account (Fees) Order 2003 S.I. 2003/3363 makes provision for the payment of fees in relation to the issue of cheques and other matters relating to the operation of the Insolvency Services Account in relation to liquidations).

Article 4 of, and Schedule 2 to, the Order set out fees payable in relation to winding-up by the court, bankruptcies and individual voluntary arrangements. Article 5 prescribes the fees payable to insolvency practitioners under section 273 of the Insolvency Act 1986. Articles 6 and 7 make provision about the payment of deposits as security for the payment of fees in insolvency proceedings. Article 8 makes provision in relation to the repayment of fees. Article 9 makes provision regarding VAT payable on fees.

A regulatory impact assessment was prepared for the Enterprise Act 2002. This deals with the restructuring of the system of insolvency fees. Copies of this assessment are available from the Policy Unit, The Insolvency Service, 21 Bloomsbury Street, London WC1B 3QW.





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STATUTORY INSTRUMENTS

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