

EXPLANATORY MEMORANDUM TO
THE INSOLVENCY PRACTITIONERS AND INSOLVENCY SERVICES
ACCOUNT (FEES) (AMENDMENT) (No.2) ORDER 2005

2005 No. 3524

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

The Insolvency Practitioners and Insolvency Services Account (Fees) (Amendment) (No.2) Order 2005 (“the Order”) increases the fees payable to the Secretary of State in respect of his functions of monitoring and authorising insolvency practitioners and the recognition of bodies concerned with the professional supervision of those practitioners.

3. **Matters of Special Interest to the Joint Committee on Statutory Instruments**

None

4. **Legislative Background**

Section 270 of the Enterprise Act 2002 introduced section 415A into the Insolvency Act 1986, under which the Order is made. Section 415A made provision for the payment of fees in relation to the authorisation of insolvency practitioners and the recognition of professional bodies by the Secretary of State pursuant to existing sections 391 and 392 of the 1986 Act. The earliest order made under section 415A of the 1986 Act was S.I. 2003/3363, later amended by S.I. 2004/476 and S.I. 2005/523. Neither of the two latter Orders made any changes to the fees prescribed by the 2003 Order, which came into force on 1st April 2004.

5. **Extent**

This instrument applies to England, Wales and Scotland.

6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The new financial regime implemented on 1 April 2004 for the Insolvency Service and provided for by the coming into force of the Enterprise Act 2002, included a new fee regime that was intended to be simpler, fairer and more transparent and to match income to costs in line with the Treasury Fees and Charges Guide. There is a requirement under the Treasury Fees and Charges Guide to review fee levels annually but no fee changes were made on 1 April 2005. However, costing information now shows that there should be an adjustment to a number of fees from 1 April 2006.

7.2 When setting the fees for the regulation of insolvency practitioners for 1 April 2004 the Insolvency Service relied on assumptions about numbers of insolvency practitioners and on time previously recorded by staff carrying out the authorisation and regulation functions. An analysis of time recording since 1 April 2004 and a consequential change in these assumptions means that fees need to be amended because it has transpired that the costs of authorising and monitoring insolvency practitioners and the regulation of recognised professional bodies have been higher than originally expected.

7.3 The fee for authorisation and monitoring of insolvency practitioners is currently £2,000 per annum and is charged to those insolvency practitioners authorised by the Secretary of State (rather than by another body or person). The work requires mainly specialist insolvency staff. The staff resource has not increased since April 2004 but the number of insolvency practitioners authorised by the Secretary of State has reduced. To take account of this, the fee is therefore increased to £2,100 in line with inflation.

7.4 The fee for recognition of professional bodies is currently £100 per member and is levied on all insolvency practitioners through their recognised professional bodies. The time recording information on which the original fee was based has proved not to be a fair reflection of the time actually spent on this function and this fee was therefore considerably understated in the Service's original calculations. Since doubling the fee would be a significant increase, the fee is to be increased in two steps, £50 now with another, further £50 increase in April 2007.

7.5 The reasons for both increases have been fully explained and notified to the professional bodies.

8. Impact

A Regulatory Impact Assessment was prepared for the Enterprise Act 2002 but no regulatory impact assessment has been prepared for this Order.

9. Contact

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