

2016 No. 184

INSOLVENCY, ENGLAND AND WALES

FEES

The Insolvency Proceedings (Fees) (Amendment) Order 2016

<i>Made</i> - - - -	<i>11th February 2016</i>
<i>Laid before Parliament</i>	<i>22nd February 2016</i>
<i>Coming into force</i> - -	<i>6th April 2016</i>

The Lord Chancellor, in exercise of the powers conferred by section 415 of the Insolvency Act 1986(a) and with the sanction of the Treasury, makes the following Order—

Citation and commencement

1.—(1) This Order may be cited as the Insolvency Proceedings (Fees) (Amendment) Order 2016 and comes into force on 6th April 2016.

(2) In this Order any reference to a numbered article or Schedule is a reference to that article of, or Schedule to, the Insolvency Proceedings (Fees) Order 2004(b).

Amendments to the Insolvency Proceedings (Fees) Order 2004

2. The Insolvency Proceedings (Fees) (Amendment) Order 2004 is amended as follows.

3. In article 4(1) (fees payable in connection with bankruptcies, debt relief orders, individual voluntary arrangements and winding up) before “official receiver” insert “adjudicator,”.

4. Omit article 5 (fees payable to an insolvency practitioner appointed under section 273).

5. In article 6 (deposits-winding up by the court and bankruptcy)—

(a) in paragraph (1) under the definition of “appropriate deposit”—

(i) in sub-paragraph (b) for “under section 264(1)(b)” substitute “by the personal representative of a deceased debtor”;

(ii) at the end of sub-paragraph (b) omit “or” and insert—

“(ba) in relation to a bankruptcy application to be made under section 263H(c) the sum of £525; or”.

(b) in paragraph (2)—

(a) 1986 c.45.

(b) S.I. 2004/593, amended by S.I. 2005/544, 2006/561, 2007/521, 2008/714, 2009/645, 2010/732, 2011/1167, 2014/583 and 2015/1819.

(c) Section 263H was inserted by the Enterprise and Regulatory Reform Act 2013 (c.24), Schedule 18, paragraph 1.

- (i) before “a bankruptcy or winding-up petition is presented” insert “a bankruptcy application is made or”;
- (ii) before “the petitioner” insert “the applicant or (as the case may be)”.
- (c) in paragraph (4) omit from “except” until the end of the paragraph.
- (d) after paragraph (4) insert—
 - “(4A) The deposit will be repaid to the debtor where—
 - (a) the adjudicator has refused to make a bankruptcy order,
 - (b) 14 days have elapsed from the date of delivery of the notice of refusal, and
 - (c) the debtor has not made a request to the adjudicator to review the decision.
 - (4B) Where the debtor has made a request to the adjudicator to review the decision to refuse to make a bankruptcy order the deposit will be repaid to the debtor where—
 - (a) the adjudicator has confirmed the refusal to make a bankruptcy order,
 - (b) 28 days have elapsed from the date of delivery of the confirmation of the notice of refusal, and
 - (c) the debtor has not appealed to the court against the refusal to make a bankruptcy order.
 - (4C) Where the debtor has appealed to the court against the refusal to make a bankruptcy order the deposit will be repaid to the debtor where the appeal is dismissed or withdrawn.”.

6. In Schedule 2 (fees payable in insolvency proceedings) in the Table of Fees before the fee designated as B1 insert—

“BAF1	<p>Application for a bankruptcy order – adjudicator’s administration fee</p> <p>On the application to the adjudicator for a bankruptcy order, for the performance of the adjudicator functions, there is payable the fee of—</p>	£130”
-------	---	-------

Transitional Provision

7. The amendment made by article 4 of this Order does not apply to petitions presented before 6th April 2016.

Signed by authority of the Lord Chancellor

11th February 2016

Shailesh Vara
Parliamentary Under Secretary of State
Ministry of Justice

We concur

8th February 2016

George Hollingbery
Mel Stride
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to the Insolvency Proceedings (Fees) Order 2004 (the “principal Order”).

Section 263H of the Insolvency Act 1986 (“the Act”) introduces a new procedure for a debtor in England and Wales to apply for bankruptcy. Instead of petitioning the court, a debtor will apply to the adjudicator for a bankruptcy order. Section 263J(1) of the Act provides for a payment of a fee and a deposit (as security for payment of the official receiver’s administration fee) to accompany the application. Section 415 of the Act permits the charging of fees by the adjudicator in performance of the adjudicator’s functions under the Act.

Article 3 inserts a reference to the adjudicator into article 4 of the principal Order.

Article 4 omits article 5 of the principal Order following revocation by the Enterprise and Regulatory Reform Act 2013, Schedule 19, paragraph 9(1) of sections 273 and 274 of the Act (requirement for an insolvency practitioner to prepare and submit a report to the court).

Article 5 introduces a requirement for the debtor to pay a deposit on the making of a bankruptcy application to the adjudicator and sets out the mechanism for repaying it to the debtor where the adjudicator refuses to make a bankruptcy order. A personal representative of a deceased debtor will still be required to petition the court and pay a deposit to the court on presenting the petition. The deposit will remain at the level currently required to be paid by a debtor petitioning the court. Other amendments set out in article 3 relate to the new terminology relating to the making of a bankruptcy application.

Article 6 introduces an adjudicator fee which is inserted into Schedule 2 of the principal Order. This is a fee payable to the adjudicator to cover the adjudicator’s costs of administering the bankruptcy application.

Article 7 is a transitional provision. The requirement for the insolvency practitioner to prepare and file a report under sections 273 and 274 of the Act and the associated fee payable on submission of that report under article 5 of the principal Order will continue to apply to debtor petitions presented prior to 6th April 2016.

A full impact assessment of the effect that the instrument will have on the costs of business and the voluntary sector is available from The Insolvency Service, 4 Abbey Orchard Street, London SW1P 2HT and is published on The Insolvency Service website www.gov.uk/government/organisations/insolvency-service. It is also published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

© Crown copyright 2016

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

£4.25

UK2016021520 02/2016 19585

<http://www.legislation.gov.uk/id/uksi/2016/184>

ISBN 978-0-11-114382-7



9 780111 143827