

**EXPLANATORY MEMORANDUM TO**  
**THE INSOLVENCY PROCEEDINGS (FEES) ORDER 2016**  
**2016 No. 692**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The Insolvency Proceedings (Fees) Order 2016 (the “Order”) replaces the Insolvency Proceedings (Fees) Order 2004 S.I.2004/593. This Order makes provision for the charging of various fees in relation to insolvency proceedings in England and Wales.

2.2 This Order:

- Increases the deposits payable when applying to the adjudicator for a bankruptcy order or when presenting a petition to the Court for a bankruptcy order or for the winding up of a company.
- Increases the official receiver’s administration fee payable on winding up and on bankruptcy.
- Sets out the official receiver’s general fee payable in a bankruptcy and in a winding up.
- Sets out the fee payable when a petition presented to the court for individual bankruptcy or for the winding up of a company is subsequently withdrawn or dismissed and the deposit is returned.
- Sets out the fee payable to the official receiver for calculating and agreeing an income payments agreement or obtaining an income payments order under sections 310A and 310 of the Insolvency Act 1986.
- Sets out the fee payable when the official receiver performs duties as the trustee or as the liquidator and realises assets.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

3.1 None.

*Other matters of interest to the House of Commons*

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

4.1 The fees prescribed by this Order cover the costs of official receivers in performing their duties as official receivers and as trustees or as liquidators. Sections 414 and 415 of The Insolvency Act 1986 permit the Lord Chancellor, with the assent of Her

Majesty's Treasury, to fix fees for company insolvencies and for bankruptcy proceedings for tasks carried out by the Official Receiver or the Secretary of State.

- 4.2 This Order revokes the Insolvency Proceedings (Fees) Order 2004 and all its subsequent amendments.
- 4.3 In accordance with the requirements of HM Treasury's fees and charges guidance Managing Public Money, the Insolvency Service must operate a fee structure which recovers from its customers the full cost of delivering winding up and bankruptcy services. The Order will help ensure that The Service's fee structure is more closely aligned to the requirements of HM Treasury whilst also providing a more transparent and simpler breakdown of official receivers' funding.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

### *What is being done and why*

- 7.1 In 2014 the Chief Secretary to the Treasury wrote to the Secretary of State to express concern that some of the Insolvency Service's fees were not wholly compliant with the Managing Public Money guidelines, in particular the Secretary of State fee which, in providing a cross subsidy mechanism for cases, was in effect an unapproved levy on creditors in those cases with assets.
- 7.2 For some years there has been a decline in case numbers, particularly in debtor petition bankruptcies, therefore fewer cases with assets against which cost recovery could be made. Although the Insolvency Service has made significant reductions to its cost base, the consequence of the fall in case numbers has been that the Insolvency Service has incurred deficits which have required funding from the public purse. It has not been possible to totally eradicate deficits due to the volatility in both case numbers and asset levels and because some overhead costs cannot be reduced quickly enough.
- 7.3 It is recognised that the Insolvency Service needs a funding structure for official receivers that is more resilient to future fluctuations in its customer base without the need to rely on tax payer funds and which adheres to the long held principle that creditors should bear the cost of official receiver administration through a combination of deposit, administration fee and a general fee. Since 2014 The Insolvency Service, together with HMT officials have been reviewing its fee structure, in particular those fees charged for the work of the official receiver and especially the Secretary of State fee which appeared to be contrary to the Managing Public Money guidelines.
- 7.4 It was agreed that the Insolvency Service and HMT officials would work together to undertake a review of how The Service is funded and develop a regime that meets the needs of those affected by insolvency whilst reflecting the overarching principles contained within Managing Public Money.

- 7.5 The aim of the fee changes is to eliminate deficits, provide greater transparency, reduce the cross subsidy from asset rich cases, provide a greater return to creditors, better match individual case income to costs and bring the Insolvency Service closer to full cost recovery as required by HMT.
- 7.6 Currently, the costs of official receivers carrying out all their duties are recovered through the official receiver's administration fee which is charged against assets realised. However, not all cases have any or sufficient assets from which to recover the administration fee (cases with little or no assets at all constitute approximately 50% of all cases) so a Secretary of State Administration Fee is charged against those estates which have assets to cover the shortfall. The Secretary of State fee is charged as a percentage of asset realisations on a banded basis and is capped at £80,000. The Insolvency Service cannot refuse to accept cases where there are no assets, so in around 50% of all cases, the only payment received is the petition deposit.
- 7.7 The current fee structure does not offer long term stability and has led to significant volatility in relation to fee recoveries. The current structure is complex, relies on future unpredictable asset realisations materialising over a number of years to sustain income. Its cross subsidy is not transparent as it funds different types of case that do not sufficiently relate to fees charged for the work undertaken.
- 7.8 That review was concluded in October 2015. A new financial structure for official receivers was agreed which provides greater transparency, reduces the cross subsidy from asset rich cases and provides a greater return to creditors. The fee changes introduced by this instrument are those required to enable the new financial structure for official receivers to be implemented.
- 7.9 The fees prescribed by this order:
- Offer better financial stability as regards fee collection,
  - Do not increase risks to the taxpayer,
  - Ensure that the public policy requirement to make debt relief accessible to those who need it is met and;
  - Are compliant with MPM principles.
- 7.10 Creditors or debtors who petition for bankruptcy or winding up are required to pay a deposit into court or lodge a deposit with the adjudicator. The deposit, which represents only a proportion of the administration costs, is returned if sufficient assets are recovered. Changes mean that debtors who apply for bankruptcy will pay £25 more, creditors will pay £165 more to petition for an individual's bankruptcy and £250 more to petition for the winding up of a company.
- 7.11 The official receiver's administration fee will increase by £785 where a creditor petitions for an individual's bankruptcy and by £2,480 in winding up of companies. The fee will increase by £2,500 where the Secretary of State petitions for winding up of a company on public interest grounds under section 124A Insolvency Act 1986.
- 7.12 The official receiver's general fee replaces the Secretary of State fee that has been charged on all asset realisations since 2004. The general fee is an identified amount of cross subsidy between cases and is a separate single fee of £6,000, unlike the Secretary of State fee which was charged throughout the life of a case up to a maximum of £80,000.

## ***Consolidation***

7.13 None.

## **8. Consultation outcome**

8.1 As is customary with fee changes of this nature, no consultation has been undertaken.

## **9. Guidance**

9.1 Guidance will be issued to key stakeholders via the courts and the adjudicator's office, by notification directly to insolvency practitioners and to all other interested parties via the Insolvency Service's website.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is that any such organisation that presents a petition to make someone bankrupt or to liquidate a company will incur additional upfront costs. Creditors in some cases with significant assets may see an increase in dividend payment made to them. The impacts on business are out of scope of the Business Impact Target.

10.2 The impact on the public sector is that fees charged will more accurately reflect costs.

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

## **11. Regulating small business**

11.1 The impact assessment describes how creditors will be affected following the fee changes.

11.2 The legislation applies to activities that are undertaken by small businesses.

11.3 A small and micro business assessment is included in the impact assessment. This shows that the increase in fees and deposits will not have a disproportionate impact on small business and the abolition of the Secretary of State fee will for cases with sufficiently high assets result in more returns to creditors, including small businesses.

## **12. Monitoring & review**

12.1 The changes to the fee structure for official receivers aim to achieve full cost recovery. The fees will be subject to annual review and the legislation may be further amended.

## **13. Contact**

13.1 Denis Lockwood at the Insolvency Service can answer any queries regarding the instrument. Telephone: 01702 442316 or email: [denis.lockwood@insolvency.gsi.gov.uk](mailto:denis.lockwood@insolvency.gsi.gov.uk).