

2009 No. 645

INSOLVENCY, ENGLAND AND WALES

FEEES

The Insolvency Proceedings (Fees) (Amendment) Order 2009

<i>Made</i> - - - -	<i>12th March 2009</i>
<i>Laid before Parliament</i>	<i>13th March 2009</i>
<i>Coming into force</i> - -	<i>6th April 2009</i>

The Lord Chancellor, in exercise of the powers conferred by sections 414(1) and (5) and 415(1) and (4) of the Insolvency Act 1986(a), section 663(4) of the Companies Act 1985(b) and section 133 of the Bankruptcy Act 1914(c) and with the sanction of the Treasury, makes the following Order—

Citation and commencement and interpretation

1. This Order may be cited as the Insolvency Proceedings (Fees) (Amendment) Order 2009 and comes into force on 6th April 2009.

2. In this Order, “the principal Order” means the Insolvency Proceedings (Fees) Order 2004(d).

Amendments to the Insolvency Proceedings (Fees) Order 2004

3. Subject to article 7 of this Order, the principal Order is amended as set out in articles 4 to 6 of this Order.

4.—(1) In article 4—

- (a) in the heading after “bankruptcies,” insert “debt relief orders,”;
- (b) in paragraph (1), after “in respect of” insert “the costs of persons acting as approved intermediaries under Part 7A of the Act,”; and
- (c) in paragraph (4), for “a fee of £50” substitute “the appropriate amount of fee INV1”.

(2) In article 5, for “£345” substitute “£360”.

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- (a) 1986 c. 45. The Act was amended by section 108 of, and Schedules 17, 18 and 19 and Part 1 of Schedule 20 to, the Tribunals, Courts and Enforcement Act 2007 (2007 c.15) which made provision, in particular, for the insertion of a new Part 7A into the Act introducing debt relief orders.
 - (b) 1985 c.6. Section 663 of the Companies Act was repealed by section 235 of, and Part II of Schedule 10 to, the Insolvency Act 1986. 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 29th December 1986) remain in force in relation to a winding up by the court where the winding up commenced before 29th December 1986.
 - (c) 1914 c.59. The Bankruptcy Act 1914 was repealed by section 235 of, and Part III of Schedule 10 to, the Insolvency Act 1986. By virtue of paragraph 10 of Schedule 11 to the Insolvency Act 1986, the Bankruptcy Act 1914 and secondary legislation under it which was in force immediately prior to 29th December 1986 remain in effect in relation to bankruptcy proceedings where the petition was presented before 29th December 1986.
 - (d) S.I. 2004/593; relevant amending instruments are S.I. 2005/544, 2006/561, 2007/521 and 2008/714.

(3) In article 6(1), in the definition of “appropriate deposit”—

(a) in sub-paragraph (a), for “£690” substitute “£715”;

(b) in sub-paragraph (b), for “£345” substitute “£360”;

(c) in sub-paragraph (c), for “£415” substitute “£430”.

(4) In article 7(1), for “£310”, substitute “£315”.

5. In Schedule 2, in paragraph 1(1), immediately after the definition of “chargeable receipts” insert—

““excepted bankruptcy” means a bankruptcy where the bankruptcy order was made on or before 31st March 2005;

“excepted winding-up” means a winding up by the court of a company where the winding up order was made on or before 31st March 2005;”.

6.—(1) In Schedule 2, the Table of Fees is amended as follows.

(2) In respect of the fee designated as IVA1, for “£10” prescribed as the amount of that fee, substitute “£15”.

(3) In respect of the fee designated as B2, in the description of fee and circumstances in which it is charged in the second column insert after “bankruptcy ceiling” (and within the brackets) “and receipts which on or after 6th April 2009 relate to an excepted bankruptcy”.

(4) Immediately before the heading “Fees payable in relation to winding up by the court only”, insert—

“Fees payable in relation to debt relief orders

<i>Designation of Fee</i>	<i>Description of fee and circumstances in which it is charged</i>	<i>Amount of fee</i>
DRO1	Application for a debt relief order – official receiver’s administration fee and costs of persons acting as approved intermediaries For the performance by the official receiver of his functions, and for the payment of an amount not exceeding £10 in respect of the costs of persons acting as approved intermediaries, under Part 7A of the Act, there shall be payable in connection with an application for a debt relief order, a fee of—	£90”

(5) In respect of the fee designated as W2, in the description of fee and circumstances in which it is charged in the second column insert after “£2000” (and within the brackets) “and receipts which on or after 6th April 2009 relate to an excepted winding up”.

(6) In respect of fee INV1, substitute—

“INV1	Investment fee on purchase or sale of government securities—
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For each purchase or sale of any government securities made at the request of a trustee in bankruptcy or a liquidator in a compulsory or voluntary winding up—

(a) in respect of a purchase, where the cost of the securities (including accrued interest, if any)—

(i) does not exceed £5,000, a fee of—

£50

(ii) exceeds £5,000, a fee of—

£50 plus 0.3% of the cost in excess of £5,000

(b) in respect of a sale, where the proceeds of sale of the securities (including accrued interest, if any) exceed £5,000, a fee of—

£50 plus 0.3% of the proceeds in excess of £5,000”

Transitional provisions

7.—(1) The amendments made by this Order shall apply as follows.

(2) The amendment made by article 4(1)(c) to article 4(4) of the principal Order increasing the fee with respect to the purchase of government securities and introducing a fee for the sale of government securities 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 only apply where the request to purchase or sell is made on or after 6th April 2009 and, in the case of a sale, only where the request to purchase the securities which are to be sold was also made after on or after 6th April 2009.

(3) The amendment made by article 4(2) to article 5 of the principal Order shall only apply to reports submitted to the court in respect of debtor’s petitions presented on or after 6th April 2009.

(4) The amendments made by article 4(3), increasing the amounts of appropriate deposit prescribed by article 6 of the principal Order, shall only apply to petitions presented on or after 6th April 2009.

(5) The amendment made by article 4(4), increasing the amount of security deposit prescribed by article 7(1) of the principal Order, shall only apply to notifications sent to the official receiver on or after 6th April 2009.

(6) The amendment made by article 6(2) to fee IVA1 shall only apply to a voluntary arrangement under Part 8 of the Insolvency Act 1986 in respect of which information required to

be submitted to the Secretary of State by virtue of Part 5 of the Insolvency Rules 1986(a) is first submitted in relation to that arrangement on or after 6th April 2009.

(7) The amendment made by article 6(6) to fee INV1, increasing the fee for the purchase of government securities and introducing a fee for the sale of government securities, shall only apply where the request to purchase or sell is made on or after 6th April 2009 and, in the case of a sale, only where the request to purchase the securities which are to be sold was also made on or after 6th April 2009.

9th March 2009

Jack Straw
Lord Chancellor and Secretary of State for Justice
Ministry of Justice

We concur

12th March 2009

Frank Roy
Tony Cunningham
Two of the Lord's Commissioners of Her Majesty's Treasury

(a) S.I. 1986/1925, amended by S.I. 1987/1919, 1989/397, 1991/495, 1993/602, 1995/586, 1999/359, 1999/1022, 2001/763, 2002/1307, 2002/2712, 2003/1730, 2004/584, 2004/1070, 2005/527, 2006/1272, 2007/1974 and 2008/737.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to the Insolvency Proceedings (Fees) Order 2004 (S.I. 2004/593) (“the principal Order”). It increases existing bankruptcy and winding up fees and introduces two new fees. The first new fee becomes payable upon the sale of government securities. The second new fee follows on from the introduction of debt relief orders into the Insolvency Act 1986 (c.45) by the Tribunals, Courts and Enforcement Act 2007 (c.15).

Section 251B of the Insolvency Act 1986 (making of application for a debt relief order) provides for payment of a fee in connection with an application for a debt relief order. Section 415 of the Insolvency Act 1986 permits the charging of fees in respect of the costs of persons acting as approved intermediaries and the costs of the performance by the official receiver of functions in relation to such orders under Part 7A of the Insolvency Act 1986.

This Order makes an application for a debt relief order subject to the payment of a fee of £90. This is prescribed by Article 6(4), which inserts a new item into the Table of Fees in Schedule 2 to the principal Order.

Article 4(1)(a) and (b) provides for the fee to be charged in respect of an application for a debt relief order to be as set out in Schedule 2.

Article 4(1)(c) modifies the fee structure in respect of the purchase and sale of government securities made by trustees in bankruptcy appointed under the Bankruptcy Act 1914 and by liquidators appointed under the Companies Act 1985. These fees apply where the bankruptcy or winding up order was made before 29th December 1986.

Article 4(2) increases the fee payable to an insolvency practitioner appointed under section 273 of the Insolvency Act 1986 to prepare a report under section 274 of that Act.

Article 4(3) increases the amount of the various deposits payable pursuant to article 6 of the principal Order.

Article 4(4) increases the deposit payable under article 7(1) of the principal Order in connection with the registration of a voluntary arrangement and the performance by the official receiver of the functions of nominee in relation to such arrangement.

Article 5 inserts two new definitions into paragraph 1(1) of Schedule 2 to the principal Order, “excepted bankruptcy” and “excepted winding-up”. These are for the purpose of excusing payment of the Secretary of State’s administration fees B2 and W2 in respect of receipts on or after 6th April 2009 where the bankruptcy or winding up order was made on or before 31st March 2005.

Article 6 makes various amendments to the Table of Fees in Schedule 2 to the principal Order. It increases the fee payable to Secretary of State to register an individual voluntary arrangement, fee IVA1, from £10 to £15. It provides for the fee payable in respect of applications for debt relief orders. It modifies fee INV1 payable on the purchase and sale of government securities made by trustees in bankruptcy and liquidators appointed under the Insolvency Act 1986.

Article 7 makes transitional arrangements, preventing a new fee from being charged when the event which causes the fee to be payable happens before 6th April 2009.

No regulatory impact assessment has been prepared for this Order.

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STATUTORY INSTRUMENTS

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£4.00