

**EXPLANATORY MEMORANDUM TO  
THE INSOLVENCY PROCEEDINGS (FEES) (AMENDMENT) ORDER**

**2010 No. 732**

**1.** This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

2.1 The instrument amends fees charged by The Insolvency Service (“the Service”) in respect of its services for insolvency case administration. As part of an annual fees review, changes will be made to the structure of insolvency fees to ensure more of the fee is recovered earlier in the process and to maintain a balance in the share of the cost of the regime between debtors and creditors. Overall, the cost of case administration has not increased in real terms and therefore the total amount which will be raised from fees will not increase in real terms.

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

3.1 Creditors or debtors that petition for bankruptcy or winding-up are required to pay a deposit into the court towards the cost of the administration of the case. This deposit is returned if sufficient assets are recovered. Changes to deposit levels mean debtors will pay £90 more for their deposit to file a petition for bankruptcy, which represents a 25% increase. Creditors will pay £170 more for their petition deposit to put an individual into bankruptcy and £285 more to put a company into compulsory liquidation, both represent a 40% increase on current deposit levels.

3.2 The deposit only represents a proportion of the case administration fee (£1,715 bankruptcy and £2,235 Company). The balance of the fee is payable when assets are realised. The process for recovering the case administration fee is set out in section 7, Policy background below. Asset levels and values have worsened in the current economic climate and the current fee structure means that the Service can no longer ensure that the case administration fees will be recovered.

3.3 With lower asset levels greater certainty for fee recovery can only be achieved by either increasing the deposit significantly and/or bringing forward increased Secretary of State fees. The Service has proposed a combination of deposit increases and Secretary of State fee changes after considering the impact of both on debtors and creditors. The Service has used the information available on current cases and the level of fee recoveries over recent years.

3.4 The increases in deposits will ensure that the cost of case administration is paid partly by the debtor and partly by creditors. For the most vulnerable in society who are struggling with relatively modest levels of debt, Debt Relief Orders are a low-cost alternative option to bankruptcy.

## **4. Legislative Context**

4.1 In respect of insolvency case administration, the Service must recover from customers the full cost of delivering these services. Fees and charges must be reviewed annually to ensure that full cost recovery can be achieved. The instrument is made to effect changes in fees in accordance with HM Treasury's fees and charges guidance contained within Managing Public Money.

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

5.1 This instrument applies to England and Wales.

## **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**

- *What is being done and why*

7.1 The Service operates on a net funded regime. In respect of insolvency case administration the Service must recover the full cost of delivering these services from customers. Fees and charges are reviewed annually to ensure that full cost recovery can be achieved and fees must be set to match cost.

This instrument amends the Insolvency Proceedings (Fee) (Amendment) Order 2004 (S.I. 2004/593) ("the principal Order"). The Service aims to recover the costs of case administration by setting case administration fees, which are matched to costs. While a case administration fee is charged in every case, the recoverability of that fee is determined by 3 elements:

- i. the deposit payable prior to an insolvency order being made,
- ii asset realisations in the individual case
- iii a Secretary of State fee which is charged on realisations

The fee structure introduced on 1 April 2004 required that creditors should bear the cost of official receiver administration through a combination of deposits, an administration fee and a general (Secretary of State) fee. The fee policy ensures that those who benefit from the insolvency regime, rather than the taxpayer, should fund the cost. In setting the fees, the Service ensures that a balance is found between the interests of both debtors and creditors. The levels of petition deposits were increased to provide for inflation in April 2006, April 2007, April 2008 and April 2009. However, only a small proportion of the fee is recovered at the outset of a case from the deposit. The Service then has to wait for assets to be realised before recovering the remainder of the fee. The economic downturn has reduced asset levels and values (especially property). This has led to a greater proportion of cases which do not generate enough money to cover the fee in the first place and a lessening of the effectiveness of the Secretary of State fee as a safety net. The Service therefore needs to move to a model in which the cash generated by the fees is both more certain and is realised earlier in the process. This will be achieved by:

- increasing the level of the cash deposit (beyond inflation) that is paid by the petitioner seeking the court order; and
- restructuring the Secretary of State fee to bring forward fee recovery.

The new structure to the Secretary of State fee for cases where insolvency orders are made on or after 6 April 2010 will secure increased cash from lower asset cases and will therefore impact on distributions to creditors in those low asset cases because the new Secretary of State fee scale recovers a larger percentage on the first asset realisations in a case.

- ***Consolidation***

7.2 The principal Order has been amended by five earlier statutory instruments, partly because of the need to modify fees and charges in line with the requirements of the regime referred to in 7.1. In the explanatory memorandum to the Insolvency Proceedings (Fees) Amendment Order 2009 (2009/645) the Service stated that it intended to produce a consolidated version of the fees order as part of its current project to consolidate all insolvency secondary legislation. However, the Service has not been able to consolidate the SIs relating to fees, as expected, in the consolidation project. The Service intends to consolidate the fees orders in its annual fees review for 2010/2011.

## **8. Consultation outcome**

8.1 The Enterprise Act 2002 modernised the financial regime of The Service by simplifying the fee structure and ensuring increased transparency and was preceded by an extensive consultation exercise. A Regulatory Impact Assessment was prepared for the Enterprise Act 2002. The changes proposed by this instrument are designed to maintain the principles of the financial regime introduced by the principal Order and in particular, that fees are set to match cost.

## **9. Guidance**

9.1 The Service has a communication strategy to notify proposed fee changes to users and stakeholders before the commencement of the Order. On 23 February 2010 the Business Minister Ian Lucas announced that as part of the Service's annual fees review, changes would be made to the insolvency fees structure to ensure more cash was recovered earlier in the process and also that the cost of the regime is shared by the debtor and creditors.

9.2 As part of a communications strategy the Service has written to the court clerks in all the High Courts and County Courts in England and Wales to notify them of the new deposit levels and has produced an information leaflet detailing all the fee changes to be issued to everyone presenting petitions between February and the end of April 2010. This information will therefore be available to potential bankrupts to petitioning creditor's solicitors who present petitions on behalf of their clients so that they are aware of the deposit increases.

9.3 The Service has also communicated deposit and fee changes to its National Consultative User Group which provides a forum for national user representative

organisations to discuss user issues and needs in relation to delivery of services by The Service. Its members include representatives from:

The Bankruptcy Advisory Service  
HM Courts Service  
Citizens Advice Agency  
The Institute of Credit Management  
Royal Courts of Justice Advice Bureau  
Max Recovery  
Benedict Mackenzie

9.4 Information has also been provided to insolvency practitioners through an article in the Service's "Dear IP" newsletter and to other enquirers and the public by publishing information on the Service's website. Information is also available through the Service's enquiry line (telephone and email).

9.5 A copy of the draft order has been made available at The Service's website at [www.insolvency.gov.uk](http://www.insolvency.gov.uk)

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies in that the fee charging policy has not changed.

10.2 The impact on the public sector is that fees charged will be matched to cost and the ability to recover case administration fees will be improved.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The changes in the fee structure aim to achieve full cost recovery of case administration. The fees will continue to be subject to annual review and the legislation may be further amended accordingly.

## **13. Contact**

Lesley Beech at The Insolvency Service Tel: 0207 291 6704 or email: [lesley.beech@insolvency.gsi.gov.uk](mailto:lesley.beech@insolvency.gsi.gov.uk) can answer any queries regarding the instrument.