

EXPLANATORY MEMORANDUM TO
THE INSOLVENCY PRACTITIONERS AND INSOLVENCY SERVICES ACCOUNT
(FEES) (AMENDMENT) ORDER 2019

2019 No. 1427

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Insolvency Practitioners and Insolvency Services Account (Fees) (Amendment) Order 2019 (“the Order”) makes amendments to the Insolvency Practitioners and Insolvency Services Account (Fees) Order 2003 S.I. 2003/3363 (“the Principal Order”).
- 2.2 The Order increases the annual fee paid by each recognised professional body (“RPB”) to the Secretary of State, in respect of the maintenance of its recognition, from £360 per licensed Insolvency Practitioner it regulates to £470.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The annual fee increase shown in section 2.2 above is higher than the cost of inflation since the fee was last amended. However, as detailed in section 7.2 below, this fee increase takes into account the cost of overseeing RPBs and use of regulatory powers given to the Secretary of State in the Small Business, Enterprise and Employment Act 2015. The increase represents full cost recovery.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 This instrument extends to England, Wales and Scotland.
- 4.2 There is no disproportionate impact on Scotland as the fee increase is proportionate to the number of insolvency practitioners that are regulated by each RPB.

5. European Convention on Human Rights

- 5.1 As the instrument is not subject to further parliamentary procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This Order is made to effect changes in fees to ensure that the Insolvency Service recovers the full cost of delivering oversight regulation of the insolvency profession from the RPBs it oversees in line with HM Treasury's fees and charging guidance contained within Managing Public Money.

7. Policy background

What is being done and why?

- 7.1 The current fee regime, introduced by the Principal Order on 1 April 2004, requires an RPB to bear the cost of oversight regulation through the payment of an annual fee calculated by reference to the number of members whom it has authorised to act as insolvency practitioners as at 1st January in each year.
- 7.2 The last fee increase in 2015 (see 7.3 below) took place alongside the introduction of new powers introduced by the Small Business Enterprise and Employment Act 2015. These included information gathering powers and a wide range of sanctioning powers being powers to direct, impose a financial penalty upon, reprimand and revoke recognition of an RPB. As such the Secretary of State's oversight responsibilities have increased significantly since 2015. At the time of the last fee increase the new powers were untested. The fee increase under the Order is above the rate of inflation but reflects the Insolvency Service's experience, since 2015, of the actual cost of overseeing the RPBs. The increased fee has been set to ensure full recovery of these costs from the RPBs.
- 7.3 The Principal Order has been amended by nine earlier Statutory Instruments, the latest amendment having been in 2015 (The Insolvency Practitioners and Insolvency Services Account (Fees) (Amendment) Order 2015) when the annual fee was amended from £300 to £360.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 No consolidation is required as a result of this amendment.

10. Consultation outcome

- 10.1 As is customary for fee changes of this nature, no consultation has been undertaken.

11. Guidance

- 11.1 Guidance will be issued to stakeholders, by notification to RPBs and to all other interested parties, via the Insolvency Service's website.

12. Impact

- 12.1 The impact on small businesses is detailed in section 13 below. There is no impact on charities and voluntary bodies.

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

12.3 No formal impact assessment has been produced for this legislation as the impacts have been assessed to be less than the £5m per annum.

13. Regulating small business

13.1 The legislation applies to activities undertaken by small businesses in that the fee is charged directly to the RPBs who then, in turn, pass the fee on to the individual Insolvency Practitioners they authorise.

13.2 Around half of Insolvency Practitioners work for small businesses with less than 49 employees. However, the fee increase is linked to the number of Insolvency Practitioners regulated and not the size of the Insolvency Practitioner's business. The fee is charged directly to the Insolvency Practitioner and not their business.

14. Monitoring & review

14.1 The increase in fees aims to achieve full cost recovery in line with HMT Managing Public Money principles. The fees will continue to be subject to a review annually and the legislation may be further amended.

15. Contact

15.1 Joseph Sullivan at the Insolvency Service Telephone: 0207 637 6495 or email: Joseph.sullivan@insolvency.gov.uk can be contacted with any queries regarding the instrument.