

EXPLANATORY MEMORANDUM TO

The Insolvency (Fees) (Amendment) Order (Northern Ireland) 2009

S.R. 2009 No. 201

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 361 (1), (3) and (4) of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") and is subject to the affirmative resolution procedure.
- 1.3. The rule is due to come into operation on 01 October 2009.

2. Purpose

- 2.1. The fees charged for the activities of the Insolvency Service cover the full costs of Official Receiver case administration, banking services and the registration and regulation of Insolvency Practitioners.
- 2.2. This Order amends the Insolvency Fees (Northern Ireland) Order 2006 (S.R. 2006 No. 54) ("the principal Order") and updates the nature and level of fees to be set for the current and next financial years in relation to insolvency proceedings under the 1989 Order.
- 2.3. It replicates for Northern Ireland provisions contained in equivalent legislation currently in force in England and Wales.

3. Background

- 3.1. Fees for insolvency case administration are set to recover costs. In 2008 the Insolvency Service undertook a comprehensive review of its costs and receipts and calculated a contemporary set of fees on a full cost recovery basis, to conform to guidance from the Department of Finance and Personnel (DFP). The provisions of this Order emanate from that review.
- 3.2. The Order increases the fees payable to insolvency practitioners under Article 5 of the Principal Order from £310 to £345. It also reduces the fee payable under Schedule 2 paragraph 2 of the Principal Order, for the registration of an individual voluntary arrangement, from £35 to £15.
- 3.3. For administering a bankruptcy, the fee for 2008-09 remains set at £925, but the fee for compulsory liquidation cases increases from £1,495 to £1,615. The fees are recovered in part from the deposit paid by the debtor or creditor in presenting their petition, with the balance recovered from any assets available in a particular case.
- 3.4. Not all cases have sufficient assets to enable the case administration fee to be recovered and therefore an additional fee had been applied to those cases with assets over £2,000. For 2008-09 this fee remains at its current level of 17%, but the cap on the total amount of the fee to be charged against each case is reduced from £100,000 to £80,000.

- 3.5. In any case where a bankruptcy order was made under the 1989 Order before the date that this Order comes into operation, only Fee 19 in Part 2 of the Schedule to the Insolvency Fees Order (Northern Ireland) 1991, will continue to apply. (Provision is made in the Insolvency Practitioners and Insolvency Account (Fees) Order (Northern Ireland) 2006 (S.R. 2006 No.53) for the payment of fees in respect of the issue of cheques and other matters relating to the operation of the Insolvency Account in relation to bankruptcies.).
- 3.6. As regards cases where a winding-up order was made under the 1989 Order before the date this Order comes into operation, only Fee 8 in Part 1 of the Schedule to the Insolvency (Fees) Order (Northern Ireland) 1991 will continue to be payable. (Again the Insolvency Practitioners and Insolvency Account (Fees) Order (Northern Ireland) 2006 makes provision for the payment of fees in relation to the issue of cheques and other matters relating to the operation of the Insolvency Account in relation to liquidations).
- 3.7. Article 3 of this Order updates Article 5 of the principal Order which prescribes the fees payable to insolvency practitioners appointed under Article 247(2) of the 1989 Order. The amount payable is increased from £310 to £345 to correspond with a similar increase in the deposit payable pursuant to Article 2 of the Insolvency (Deposits) (Amendment) Order (Northern Ireland) 2009.

4. Matters of Special Interest to the Enterprise, Trade and Investment Committee

- 4.1. None.

5. Consultation

- 5.1. While no formal consultation was carried out in relation to these amendments, the Insolvency Service wrote to Insolvency Practitioners and Recognised Professional Bodies on 26 March 2009, informing them of the draft Regulations, giving them an opportunity to comment on them. No feedback was received in the subsequent four weeks.
- 5.2. The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)) ("the 2005 Order") modernised the financial regime of the Service by simplifying the fee structure and ensuring increased transparency. The principles of the new financial regime included that Case Administration costs would be met by creditors. The 2005 Order was preceded by an extensive consultation exercise and the provisions relating to insolvency reform were generally welcomed. The changes proposed by these Regulations are designed to ensure that the principles of the financial regime which came into operation in March 2006 are being maintained, in particular, that fees are set to match costs.

6. Position in Great Britain

- 6.1. The equivalent legislation for England and Wales is embodied in two Insolvency Proceedings (Fees) (Amendment) Orders: (i) S.I. 2007/521, which came into force on 1 April 2007, and (ii) S.I. 2008/714, which came into force on 6 April 2008.

7. Equality Impact

- 7.1. An equality impact assessment has not been prepared as the proposed Regulations will not have any differential impact in terms of equality.

8. Regulatory Impact

- 8.1. A Regulatory Impact assessment has not been prepared as the Regulations do not impose any additional costs on business and do not impact on charities, social enterprise or voluntary bodies.

9. Financial Implications

- 9.1. None

10. Section 24 of the Northern Ireland Act 1998

- 10.1. The regulations are considered to be compliant with section 24 of the Northern Ireland Act 1998, including that they are compatible with Community Law and Convention Rights as defined in the Human Rights Act 1998.

11. EU Implications

- 11.1. Not applicable.

12. Additional Information

- 12.1. Not applicable.