

EXPLANATORY MEMORANDUM TO
The Insolvency Practitioners and Insolvency Account (Fees) (Amendment)
(No. 2) Order (Northern Ireland) 2009

S.R. 2009 No. 402

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 361A of the Insolvency (Northern Ireland) Order 1989, in concurrence with the Department of Finance and Personnel, and is subject to the negative resolution procedure.
- 1.3. The rule is due to come into operation on 28 December 2009.

2. Purpose

- 2.1. This Order amends the Insolvency Practitioners and Insolvency Account (Fees) Order (Northern Ireland) 2006 (S.R. 2006 No. 53)) ("the principal Order") to update the fees for the authorisation of insolvency practitioners.

3. Background

- 3.1. In 2008 the Insolvency Service undertook a comprehensive review of its costs 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. Article 3(3) of the principal Order specifies a single fee for both the cost of processing an application for authorisation and for the cost of monitoring the performance of authorised insolvency practitioners. This Order makes provision to introduce separate fees to cover the costs of these activities.
- 3.3. The fee for processing new applications for authorisation is fixed at £850.
- 3.4. The fee for monitoring the performance of a newly authorised insolvency practitioner for the first twelve months following authorisation is £1,550.
- 3.5. The fee for monitoring the performance of insolvency practitioners whose authorisation is being automatically renewed is £2,400 to be paid annually on the anniversary of the date of granting the authorisation. This is to cover the costs of monitoring the performance of the practitioner for the ensuing twelve month period.
- 3.6. The new fees reflect the current estimate of each of those costs and have been agreed by the Department of Finance and Personnel.

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 the Insolvency Practitioners authorised by DETI on 30 November 2009, informing them of the new fees to be applied.
- 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 2005 Order was preceded by an extensive consultation exercise and the provisions relating to insolvency reform were generally welcomed. The changes proposed by this Order 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 Insolvency Service in GB is making parallel amendments to the Insolvency Practitioners and Insolvency Services Account (Fees) Order 2003 (S.I. 2003/3363), which is the equivalent GB legislation, to be brought into force on 28 December 2009.

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 significant additional costs on business and do not impact on charities, social enterprise or voluntary bodies.

9. Financial Implications

- 9.1. The amendments to the amounts applicable will ensure that all costs associated with the various activities will be covered.

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, in that they are compatible with Community Law and Convention Rights as defined in the Human Rights Act 1998.

11. EU Implications

- 11.1. This Order makes the legislation comply with the provisions of Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market (OJ No. L 376/36, 21.12.2006) as it relates to the authorisation of insolvency practitioners.

12. Additional Information

- 12.1. Not applicable.