EXPLANATORY MEMORANDUM TO

THE DISQUALIFIED DIRECTORS COMPENSATION ORDERS (FEES) (SCOTLAND) ORDER 2016

2016 No. 1048

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy in conjunction with the Insolvency Service and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Disqualified Directors Compensation Orders (Fees) (Scotland) Order 2016 (the "Order") makes provision in Scotland for the Secretary of State to charge a fee to cover the costs of fulfilling his statutory duty to distribute compensation awards to creditors.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 110 of the Small Business, Enterprise and Employment Act 2015 ("SBEEA") inserted sections 15A – 15C into the Company Directors Disqualification Act 1986 ("CDDA"). The provisions gave the Secretary of State the power to apply to court for an order requiring a disqualified director to compensate creditors for the loss incurred as a result of the conduct for which he or she was disqualified. Alternatively, the Secretary of State can accept a voluntary undertaking from a disqualified director to the same effect. The provision came into force on 1 October 2015.

4.2 The CDDA allows the court to order the compensation award to be paid to the Secretary of State for the benefit of creditors. The Secretary of State must then perform the function of distributing the compensation award to creditors. That work will be done by the Insolvency Service.

4.3 In accordance with HM Treasury's fees and charges guidance, Managing Public Money, the fee structure established by this Order is intended to recover from creditors the full cost of delivering the Secretary of State's function.

5. Extent and Territorial Application

5.1 This instrument extends to Scotland only.

5.2 The instrument applies to compensation orders made by courts in Scotland and compensation undertakings in cases where the courts in Scotland would have had jurisdiction to make a compensation order.

6. European Convention on Human Rights

6.1 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 aim of the fee is to ensure, in accordance with HM Treasury policy, full cost recovery for the Insolvency Service of the Secretary of State distributing compensation awards to creditors.

7.2 Distributing compensation awards to creditors will require a number of actions by the Insolvency Service including, but not limited to, liaising with the office-holder to establish what has been paid out of the estate and to whom, inviting creditors to prove their debts, receiving and admitting proofs of debt before then calculating and making distribution. To ensure full cost recovery, the fee for distributing compensation awards will be charged on a time-and-rate basis at the same levels as set out in the provincial rates in Schedule 2 to the Insolvency Regulations 1994 (S.I. 1994/2507 (as amended)) for remuneration of the Official Receiver when making distributions as liquidator or trustee.

7.3 The fee payable by a creditor will be deducted from the compensation award before funds are distributed to the creditor. The fee will be calculated by dividing the total cost of distributing the compensation award to creditors by the number of creditors.

Consolidation

7.4 None.

8. Consultation outcome

8.1 Between 15 July and 16 September 2013 the Department of Business, Innovation & Skills carried out a consultation entitled Transparency and Trust: enhancing the transparency of UK company ownership and increasing trust in UK business. Included in the consultation were proposals for securing better compensation for creditors in cases involving misconduct by directors.

8.2 The previous Government's response to the consultation was published in April 2014. The consultation showed that around two thirds of respondents broadly supported the proposal to give courts the power to make compensatory awards against directors it has disqualified. Most respondents agreed it would help make directors more accountable for their actions.

8.3 There has been no further consultation with regard to the Order.

9. Guidance

9.1 Guidance will be issued to stakeholders and to all other interested parties via the Insolvency Service's website.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

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

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The compensation regime introduced by SBEEA and the fees introduced by the Order will be subject to internal review by April 2020 and the legislation may be amended accordingly.

13. Contact

13.1 Pabitar Powar at the Insolvency Service (Telephone: 020 7596 6152 or email: pabitar.powar@insolvency.gsi.gov.uk) can answer any queries regarding the instrument.