EXPLANATORY MEMORANDUM TO

THE INSOLVENCY (AMENDMENT) REGULATIONS 2024

2024 No. 722

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Kevin Hollinrake MP, Minister of State in the Department of Business and Trade, confirms that this Explanatory Memorandum meets the required standard.

2.2 Christopher Pleass, Director of Finance, Commercial, Sustainability and Property, at the Insolvency Service confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 John Curbison at the Insolvency Service, telephone: 0300 3046962 or email: john.curbison@insolvency.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Insolvency (Amendment) Regulations 2024 (the 'Regulations') amend the Insolvency Regulations 1994, S.I. 1994/2507, (the 'Principal Regulations') to increase the official receiver's remuneration when supervising the activities of a special manager; acting as interim receiver or provisional liquidator; and when making a distribution to creditors.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 The Principal Regulations, which came into force on 24 October 1994, set out the remuneration that may be claimed by the official receiver when making a distribution to creditors when acting as liquidator or trustee, realising assets on behalf of the holder of a fixed and/or floating charge, supervising a special manager, and acting as provisional liquidator or interim receiver. This work is not covered by any of the other fees charged in an insolvency case.

5.2 The remuneration is charged on an hourly rate basis, based on the Insolvency Service grade of individuals carrying out the work, and only applies to cases where the duties set out above have been carried out.

5.3 The level of remuneration has not increased since 2009 and no longer covers the Insolvency Service's operating costs.

5.4 These increases do not impact the upfront cost of applying for bankruptcy or a winding up.

What was the previous policy, how is this different?

5.5 These changes do not involve a change of policy, they only increase the fees chargeable and reflect updates to the Insolvency Service grading structure.

6. Legislative and Legal Context

How has the law changed?

6.1 The Principal Regulations prescribe the hourly rates of remuneration the official receiver and their officers are entitled to when carrying out certain activities. These Regulations amend the Principal Regulations to increase those rates.

6.2 In accordance with the requirements of HM Treasury's fees and charges guidance, Managing Public Money, the official receiver must operate a fee structure which recovers the full cost of delivering compulsory liquidation and bankruptcy services. These Regulations will help to ensure the fee structure remains closely aligned to those requirements and enables the official receiver to cover the full cost of the work undertaken.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 As is customary with fee changes of this nature, no formal consultation has been undertaken. Informal discussions have taken place with key stakeholders, including the Ministry of Justice, HM Revenue & Customs and HM Treasury.

8. Applicable Guidance

8.1 Guidance will be issued to key stakeholders. Guidance will also be issued directly to insolvency practitioners and all other interested parties via the government website.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because it does not fall within the scope of the better regulation framework.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities, or voluntary bodies because there is no change to the cost for presenting a petition for bankruptcy or compulsory liquidation. Fees will be recovered from assets realised on estates.

9.3 The legislation does not disproportionately impact small or micro businesses.

9.4 The impact on the public sector is minimal.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the Insolvency Service, in line with the Managing Public Money principles, will monitor the performance of service costs and will review if necessary.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 202 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").