**EXPLANATORY MEMORANDUM TO**

**The Insolvency (Deposits) (Amendment) Order (Northern Ireland) 2011**

**S.R. 2011 No. 391**

## 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(2) and (3) of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") and is subject to the negative resolution procedure.

## 2. Purpose

2.1. This Order amends the Insolvency (Deposits) Order (Northern Ireland) 2006 (S.R. 2006 No. 55) ("the principal Order").

2.2. Article 2(2) of this Order increases the amount of the various deposits payable pursuant to Article 4 of the principal Order. It replicates for Northern Ireland provisions contained in equivalent legislation currently in force in England and Wales.

## 3. Background

3.1. 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.

3.2. Creditors or debtors who petition for bankruptcy or winding-up are required to pay a deposit into the court towards the cost of the administration of the case. This deposit is returned if sufficient assets are recovered. The principal Order prescribes the amount of deposits required in connection with a winding up by the court or bankruptcy (Article 4) and in respect of the functions of the official receiver when acting as nominee in relation to an individual voluntary arrangement (Article 5). This Order increases the amount of the deposits payable pursuant to Article 4 of the principal Order: from £345 to £525 for a debtor's bankruptcy petition; from £415 to £700 for a creditor's bankruptcy petition; and from £690 to £1,165 for a company petition.

3.3. Chargeable fees are recovered in the first instance from the realisation of available assets. Where assets are insufficient the administration fee is recovered in part from the deposit paid by the debtor or creditor in presenting their petition. Asset levels and values have reduced considerably in the current economic climate and the current structure for deposits no longer guarantees that the Insolvency Service will recover the case administration fees. It has been considered necessary to move to a model whereby the cash generated by the fees is both more certain and is realised earlier in the process. This will be achieved by increasing the level of the cash deposit to be paid by the petitioner seeking the court order.

3.4. The amendments proposed by this Order are aimed at both increasing the receipts to the Department, particularly from the administration of lower value insolvencies, and at realising them at an earlier stage.

3.5. Based on information available from current cases, the increases proposed are designed to ensure that case administration costs will be paid partly by the debtors and partly by the creditors. For the most vulnerable in society who are struggling with relatively modest levels of debt, Debt Relief Orders provide a low-cost alternative option to bankruptcy.

## 4. Consultation

4.1. While no formal consultation was carried out in relation to these amendments, the Insolvency Service wrote to Insolvency Practitioners and Recognised Professional Bodies on on 18th August, informing them of the draft Order, and giving them an opportunity to comment. Only one response was received. Citizens Advice Bureau acknowledged that there were valid reasons to raise fees but they are not in favour of the proposals due to the current economic climate and the amount of debt in society.

4.2. 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. One of the principles of the new financial regime was that case administration costs would be met by creditors and debtors. 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.

## 5. Equality Impact

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

## 6. Regulatory Impact

6.1. A Regulatory Impact assessment has not been prepared as the proposed amendments will not impose any disproportionate burden on business and will not impact on charities, social enterprise or voluntary bodies.

## 7. Financial Implications

7.1. None

## 8. Section 24 of the Northern Ireland Act 1998

8.1. This Order is 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.

## 9. EU Implications

9.1. Not applicable.

## 10. Parity or Replicatory Measure

10.1. The equivalent legislation for England and Wales is embodied in the Insolvency Proceedings (Fees) (Amendment) Order 2011 (S.I. 2011/1167) which came into force on 1 June 2011.

## 11. Additional Information

11.1. Not applicable.