EXPLANATORY MEMORANDUM TO

The Insolvency Practitioners and Insolvency Account (Fees) (Amendment) Order (Northern Ireland) 2009

S.R. 2009 No. 204

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 1st October 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").

2.2. The main purpose of this Order is to make provision for a flat rate fee of £25 to be charged for the administration of payments into the Insolvency Account of unclaimed funds and dividends in respect of dissolved companies which were formerly in administration or administrative receivership. The fee is set to cover the Insolvency Service administration costs associated with this activity. Provision to charge this new fee is permitted through a corresponding amendment being introduced by the Insolvency (Amendment) Regulations (Northern Ireland) 2009. The fee applies to each payment made into the Insolvency Account in respect of each administration or administrative receivership to which the payment in relates.

2.3. The Order updates the fees to be charged for the issue of cheques and other instruments and the making of electronic transfers of funds held in the Insolvency Account. It also introduces a new fee of £10 for transfers into or out of the Insolvency Account which are made using the Clearing House Automated Payments System ("CHAPs").

3. Background

3.1. The Insolvency (Amendment) Regulations (Northern Ireland) 2009 ("the 2009 Regulations") introduced new provisions concerning payments into the Insolvency Account. These allow payments of unclaimed funds and dividends, in respect of dissolved companies which were formerly in administration or administrative receivership, to be paid into the Insolvency Account, on payment of a fee. The existing mandatory requirement for such monies to be paid into the Insolvency Account where companies were formerly in voluntary liquidation is replaced by a discretionary provision enabling such monies to be paid in.

3.2. The new provisions in the 2009 Regulations are hereby matched by corresponding amendments to the principal Order, imposing a flat rate fee of £25 to cover the administration costs of the activities permitted. The fee is to accompany the payment in and is payable in respect of each administration or administrative receivership to which the payment in relates.

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

4.1. None.

5. Consultation

5.1. No formal consultation was carried out in relation to these amendments. The Insolvency Service wrote to Northern Ireland's 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 4 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. A Regulatory Impact Assessment was prepared for the 2005 Order. 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 Practitioners and Insolvency Services Account (Fees) (Amendment) Orders: S.I. 2007/133, which came into force on 1 April 2007, and S.I. 2008/672, 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. 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, 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.