EXPLANATORY MEMORANDUM TO

THE INSOLVENCY PRACTITIONERS AND INSOLVENCY SERVICES ACCOUNT (FEES) (AMENDMENT) ORDER 2009

2009 No. 487

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument increases the fees charged by the Insolvency Service (The Service) in respect of its services for Insolvency Practitioner Regulation and Estate Accounting. More specifically, it increases fees to be paid in connection with the recognition by the Secretary of State of insolvency practitioners' professional bodies and in connection with authorisation by the Secretary of State to act as an insolvency practitioner. It inserts a new fee where unclaimed or undistributed dividends or other monies are paid into the Insolvency Services Account (ISA) following a voluntary winding up of a company and increases "banking fees" (i.e. periodic fees payable out of insolvent estates in respect of the payment of money into the ISA).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Fees Order is made to effect an up-rating in fees in accordance with HM Treasury's Fees and Charges guidance. The Insolvency Practitioner Regulation fees have increased due to additional resources that will be required to enable the Insolvency Service to deal with concerns about lack of transparency in pre-packaged business sales in administrations ("pre-packs"). The Estate Accounting fees have been increased in line with inflation since April 2004.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is not subject to either negative or affirmative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The new financial regime implemented on 1 April 2004 for the Insolvency Service and provided for by the coming into force of the Enterprise Act 2002, included a new fee regime that was intended to be simpler, fairer and more transparent and to match income to costs in line with the Treasury Fees and Charges Guide.

7.2 The Insolvency Service operates on a net funded regime. In respect of the Regulation of Insolvency Practitioners and Estate Accounting, the Service must recover the full cost of delivering these services from customers. Fees and charges must be reviewed annually to ensure that full cost recovery can be achieved.

Insolvency Practitioner Regulation

7.3 This Fees Order amends the Insolvency Practitioners and Insolvency Services Account (Fees) (Amendment) Order 2003 (S.I. 2003/3363) ("the principal Order"). Fees are payable in connection with the authorisation by the Secretary of State of an individual to act as an Insolvency Practitioner and the maintenance of that authorisation. The current annual fee of £2,550 is insufficient to cover the cost of the activity. The fee also now needs to cover costs relating to new work on pre-pack administrations. To achieve full cost in compliance with the Fees and Charges Guide the fee should be increased to £3,250. This is comparable to the Insolvency Practitioner Association membership and authorisation fees.

7.4 Section 391 of the Insolvency Act 1986 provides the machinery for "recognising" professional bodies whose members will be authorised to act as insolvency practitioners. Fees are payable by the Recognised Professional Bodies in connection with the maintenance of their recognition. The fee is currently £207 per person authorised to act as insolvency practitioner by virtue of membership of that body. To achieve full cost in compliance with the Fees and Charges Guide the fee should be increased to £300.

7.5 The increase in Insolvency Practitioner Regulation costs relates to the additional resources which will be required to enable the Insolvency Service to deal robustly with concerns about lack of transparency in pre-pack administrations. Statement of Insolvency Practice 16 ("SIP 16") came into force on 1 January 2009. In particular:

- SIP 16 statements will be sent to the Secretary of State at the same time as the administrator sends it to creditors.
- The Service will examine the SIP 16 statements to ensure they comply with the spirit as well as the letter of the law.
- The Service will provide feedback to the insolvency regulators where it discovers evidence of insolvency practitioners not reporting misconduct.
- The Service will work with the insolvency regulators to ensure that all necessary regulatory action is taken against any Insolvency Practitioner where there is evidence of abuse.

Estate Accounting

7.6 The Insolvency Regulations 1994 (S.I 1994/2507) (as amended) make provision allowing (but not requiring) payments with respect to unclaimed funds and dividends to be made by an administrator, an administrative receiver or a voluntary liquidator into the ISA. A flat rate fee of £25 to cover the cost of the activity is payable by an administrator or administrative receiver but there is currently no fee for voluntary liquidators. The fee will be extended to voluntary liquidators to ensure consistency for all voluntary users of the ISA.

7.7 Insolvency practitioners and official receivers are required by statute to use the ISA for estate banking and investment in relation to both bankruptcies and compulsory liquidations. The costs of carrying out estate account functions on cases being administered by official receivers are recovered through case administration fees. The costs of cases which are administered by insolvency practitioners who maintain an account in the ISA in liquidations and bankruptcies are recovered through banking fees. These fees have not been increased since 2004 but will now increase with inflation.

7.8 The cheque fee will be increased from £0.80 to £1. This fee has not been changed since 2004 but we want to encourage users of the ISA to request payments using the cheaper and more secure BACs facility (£0.15 per transaction) rather than cheques.

7.9 The total annual fees charged by the Service in relation to these activities are £1million for the Regulation of Insolvency Practitioners and £2.5million for Estate accounting.

- ***Consolidation***

7.10 The principal order has been amended by six earlier statutory instruments, some because of the need to modify fees and charges in line with the requirements of the regime referred to in 7.1. The Service intends to produce a consolidated version of the fees order as part of its current project to consolidate all insolvency secondary legislation.

8. Consultation outcome

8.1 The Service has not consulted on these fee changes. The Enterprise Act 2002 modernised the financial regime of the Insolvency Service by simplifying the fee structure and ensuring increased transparency. The principles of the new financial regime included that that both Insolvency Practitioner Regulation and Estate Accounting would be fully funded from fees. The Enterprise Act 2002 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 Enterprise Act 2002. The changes proposed by this statutory instrument are designed to ensure the principles of the financial regime which came into force in April 2004 are being maintained; in particular, that fees are set to match cost.

9. Guidance

9.1 The Insolvency Service has written to all Insolvency Practitioners authorised to act by the Secretary of State and all the Recognised Professional Bodies whose members are authorised to act as insolvency practitioners to explain to them the reasons for the fee changes and advise them of the new amounts payable.

9.2 The Service has prepared an article to be published in its "Dear IP" newsletter. This publication aims to notify and explain to the Insolvency Service's users, specifically Insolvency Practitioners, the detail and background to legislative changes. The Service has also communicated the fee amendments to its National Consultative User Group (NCUG). The Group provides a forum for national user representative organisations to discuss user issues and needs in relation to delivery of services by the Insolvency Service.

9.3 A copy of the draft order has been made available at the Insolvency Service's website at www.insolvency.gov.uk

10. Impact

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

10.2 The impact on the public sector is that fees charged will more accurately reflect cost.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The changes in the fee structure aim to achieve full cost recovery of the Official Receiver's Regulation of Insolvency Practitioner and Estate Accounting functions. The fees will continue to be subject to annual review and the legislation may be further amended accordingly.

13. Contact

Lesley Beech at The Insolvency Service Tel: 0207 291 6704 or email: lesley.beech@insolvency.gsi.gov.uk can answer any queries regarding the instrument.