EXPLANATORY MEMORANDUM TO

THE INSOLVENCY PRACTITIONERS AND INSOLVENCY SERVICES ACCOUNT (FEES) (AMENDMENT) ORDER 2012

2012 No. 2264

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills 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 for the operation of the Insolvency Services Account ("ISA"), a bank account maintained by BIS at the Bank of England through which funds must be passed in liquidations and bankruptcies. Fee adjustments are made following on from an annual ISA fees review, to ensure that the account is operated, moving forward, at as close to financial break even as possible.

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

3.1. The fee increases above the rate of inflation, to which the instrument gives effect are due to the need to prevent any increase in the amount of an existing deficit associated with the operation of the ISA. That deficit is the result of a combination of IT write-offs and declining case numbers. The amount of the deficit can only be controlled by a combination of increased banking fees above inflation and reduced costs**.**

4. Legislative Context

4.1. The instrument amends the Insolvency Practitioners and Insolvency Services Account (Fees) Order 2003 (S.I 2003/3363) **(the "Principal Order").**

4.2. The Insolvency Service ("The Service") maintains a record in relation to each bankruptcy and company insolvency estate and handles all receipts into, and payments out of, the ISA. This is done through Estate Accounts Services ("EAS"), which is a fee funded part of The Service. Income is generated from quarterly banking fees and other smaller transactional fees. EAS also provide services in relation to the accounts, including the handling of unclaimed dividends, the crediting of interest and the provision of six-monthly statements to insolvency practitioners. Where EAS provide services to official receivers (office holders appointed by the Secretary of State and allocated to one or more courts with insolvency jurisdiction) in relation to cases which they are administering, the costs of

those services are funded from case administration fees, which effectively transfer costs from EAS to Official Receiver Services, which has overall responsibility for administering those functions. Fees need to be set at a level to recover the cost of providing banking services to both insolvency practitioners and official receivers.

4.3. In accordance with "Managing Public Money" (Treasury guidance on the management of public funds), The Service is required to perform an annual review of the charging levels for fee funded businesses. The fee increases provided for by this instrument follow from the results of the 2011-12 Estates Accounting Services Fees Review.

5. Territorial Extent and Application

5.1. This instrument applies to England and Wales only.

6. European Convention on Human Rights

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

7. Policy background to the instrument

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

7.1 The policy objectives of this measure are to increase banking fees so as to prevent any increase in the amount of the above-mentioned deficit moving forward and to operate the ISA on as near break even as possible from 2014/15 onwards. The achievement of those policy objectives is subject to there being no further substantial fluctuations in case numbers and/or insolvency asset values.

- ***Consolidation***

7.2 The Principal Order has been amended by a number of earlier statutory instruments, partly because of the need to adjust fees and charges in line with above-mentioned requirements. In the explanatory memorandum to the Insolvency Practitioners and Insolvency Services Account (Fees) (Amendment) Order 2009 (2009/487) the Service stated that it intended to produce a consolidated version of the fees order as part of its current project to consolidate all insolvency secondary legislation. In view of an ongoing cost cutting programme, The Service has not been able to allocate resources to consolidate in this financial year but intends to review the position in relation to consolidation in its annual fees review for 2013/2014.

- ***Commencement Date***

7.3 The commencement date for this instrument is 1 October 2012.

8. Consultation Outcome

8.1. No formal consultation has been undertaken on these fee changes**,** although informal discussions about the changes will have taken place with interested parties including the insolvency profession.

9. Guidance

9.1. Guidance will be issued to stakeholders via information issued to the courts, by notification to insolvency practitioners and to all other interested parties via The Insolvency Service website.

10. Impact

10.1. The impact on business, charities or voluntary bodies is not expected to be significant.

10.2. There is not expected to be any significant impact on the public sector.

10.3. An impact assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1. The legislation does not apply to small business.

12. Monitoring and Review

12.1. The Insolvency Service monitors the efficient working of the insolvency framework and evaluates legislative changes to the insolvency legislation. The success criteria for this instrument are to prevent any increase in the amount of an existing deficit associated with the operation of the ISA and to. ensure the ISA is operated at as near a break-even basis as possible from 2014-15 onwards . The outcome will be subject to review on the third anniversary of the coming into force date as part of an overall evaluation of new legislative proposals put forward by the Insolvency Service.

13. Contact

13.1. Stephen Parcej at The Insolvency Service (Tel: 0207 291 6761 or e-mail: Stephen.parcej@insolvency.gsi.gov.uk) can answer any queries regarding the instrument.