EXPLANATORY MEMORANDUM TO THE

INSOLVENCY PROCEEDINGS (FEES) (AMENDMENT) ORDER 2005

2005 No. 544

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Insolvency Proceedings (Fees) Order 2004 (S.I. 593/2004) was made under powers in the Insolvency Act 1986 and makes provision for the charging of fees in relation to insolvency proceedings in England and Wales under the Insolvency Act 1986 and earlier legislation which remains in force in relation to cases which were commenced before the 29th December 1986, the date on which the Insolvency Act 1986 came into force. This instrument makes further changes to that Order.

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

None.

4. Legislative background

4.1 The power to make The Insolvency Proceedings (Fees) (Amendment) Order 2005 is contained in sections 414 and 415 of the Insolvency Act 1986. An order made under those sections shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament. The power is exercised by the Lord Chancellor, with the concurrence of the Treasury. Policy responsibility for the Order lies with the Secretary of State for Trade and Industry.

4.2 The SI amends The Insolvency Proceedings (Fees) Order 2004 (S.I. 593/2004), which came into effect on 1 April 2004 to take account of changes to the Insolvency Act 1986 by the Enterprise Act 2002.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State for Competition, Consumers and Markets has made the following statement regarding Human rights.

6.2 In my view the provisions of the Insolvency (Amendment) Rules 2005 are compatible with the Convention rights.

7. Policy background

7.1 The principles of the financial regime for the Insolvency Service were agreed with Ministers and the Treasury in July 2001. On 1 April 2004, 7 statutory instruments came into force, which modernised the financial regime of The Insolvency Service.

7.2 Following the House of Lords opinions (judgment) in the case of Buchler and another v Talbot and another and others which is known as the Leyland DAF Limited case, The Insolvency Service had to reassess the correct basis of charging the liquidation fees, costs and charges (including the official receiver's remuneration) to the estates of companies in liquidation where assets are covered by floating charges.

7.3 The consequences of the new fees regime and the impact of the Leyland DAF Limited decision prompted an internal review of fees. The draft orders continue to follow the agreed principles for the financial regime of The Insolvency Service in that Creditors will pay for the full costs of OR administration via deposits, an administration fee and a new general (SoS) fee chargeable only on compulsory insolvencies – this will involve some case cross subsidy, but eliminate cross-function subsidy.

7.4 Schedule 2 is amended to exclude certain functions from the definition of the general functions of the Official Receiver. The purpose of this provision is to provide clarity, in that it now specifies what activities are **not** covered by the official receiver's administration fees.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Steve Quick at the Department of Trade and Industry, Insolvency Service. Tel: 020 7291 6747 or e-mail. Steve.Quick@insolvency.gsi.gov.uk can answer any queries regarding the instrument.