EXPLANATORY MEMORANDUM TO

THE INSOLVENCY PROCEEDINGS (FEES) (AMENDMENT) ORDER 2006

2006 No. 561

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Insolvency Proceedings (Fees) Order 2004 (S.I. 2004/593) ("the Principal Order") prescribes, amongst other things, the amount of deposits payable in respect of fees payable in connection with a winding up by the court or bankruptcy (Article 6) and in respect of the functions of the official receiver when acting as nominee in relation to an individual voluntary arrangement (Article 7). It also prescribes the fees payable upon registration of an individual voluntary arrangement by the Secretary of State (Schedule 2) and certain percentage fees payable in respect of the performance by the Secretary of State of his general duties under insolvency legislation in respect of those company or individual insolvencies that commenced prior to 1st April 2004. In this latter respect, the Principal Order saved the application of certain fees prescribed by orders otherwise revoked by provisions in Schedule 1 to the Principal Order. Those saved fees are calculated as percentages of fractions of certain amounts paid into the Insolvency Services Account and, under the Principal Order, were applied to amounts that exceeded £100,000.

2.2 The Insolvency Proceedings (Fees) (Amendment) Order 2006 ("the Order"), amends the Principal Order, and increases the amount of the deposits payable pursuant to Article 6 of the Principal Order. The Order reduces the deposit payable under Article 7 of the Principal Order in connection with the registration of an individual voluntary arrangement and the performance by the official receiver of the functions of a nominee in relation to such an arrangement. It also reduces the fee currently payable under Schedule 2 of the Principal Order to the Secretary of State for registration of an individual voluntary arrangement, from £35 to £15.

2.3 It also reduces certain percentage fees payable in respect of the performance by the Secretary of State of his general duties in respect of those company or individual insolvencies that commenced prior to 1st April 2004. These fees are calculated by reference to amounts paid into the Insolvency Services Account and by reference to fractions of amounts as they exceed certain thresholds. The Order reduces to nil fees payable in respect of any amounts that exceed £100,000.

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

There are no matters of special interest to the Joint Committee on Statutory Instruments

4. Legislative Background

The Order is made pursuant to sections 414 and 415 of the Insolvency Act 1986, section 133 of the Bankruptcy Act 1914 and section 663(4) of the Companies Act 1985. The 1914 Act and the 1985 Act and various fees orders made under them, have been repealed subject to certain savings including fees payable for the performance by the Secretary of State of his general duties in respect of those company or individual insolvencies that commenced prior to 29th December 1986. The Principal Order also revoked the Insolvency Fees Order 1986 (S.I. 1986/2030) except to the extent that it prescribed fees in respect of the same matter but applying to cases commenced after 29th December 1986 but before 1st April 2004. The powers are exercisable in each case by the Lord Chancellor with the sanction of the Treasury.

5. Extent

This instrument applies to England and Wales.

6. European Convention on Human Rights

No statement is required because the Order, although required to be laid after being made, is not subject to any further parliamentary proceedings and does not amend primary legislation.

7. Policy background

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. There is a requirement under the Treasury Fees and Charges Guide to review fee levels annually. Deposit levels have been increased in line with inflation since 1 April 2004. All increases since 1996 have been limited in this way. The policy is to progressivly reduce the gap between the administration fee and the deposit. This can be achieved by reducing the unit cost per case that is used to set the administration fee and increasing the deposit. The benefit of this approach is that it reduces the burden on creditors generally, who are currently cross subsidising the cost of administration through payment of the Secretary of State's fee. The differential between debtor and creditor deposits has been maintained.

All fees charged in respect of cases commenced before 1 April 2004, with the exception of the Secretary of State's fee, were revoked on 1 April 2004. The Secretary of State's fee was left in place primarily to recover sufficient fees to discharge the cost of completing cases with a pre-1 April 2004 insolvency order. The level of fee recovery since 1 April 2004 has meant that it is now possible to reduce the Secretary of State's fee by removing charges on all but the first two bands up to £100,000 with the result that no fees will be payable on receipts over £100,000. This recognises that those cases with assets of over £100,000 will have already made a significant contribution to subsidising the cost of those cases without assets.

Where an insolvency practitioner is appointed to supervise an indiviudal voluntary arrangement (IVA), that arrangement must be registered with the Insolvency Service. The IVA details are held on the Individual Insolvency Register which may now be

searched on line. During the year 2004 to 2005 there were some one-off costs incurred in ensuring the accuracy of the information held on the register but the current costs are now much lower than planned. This is due, in part, to the efficiencies achieved in dealing with much higher levels of IVA registration. A reduction to £15 will ensure all costs will continue to be covered.

8. Impact

No Regulatory Impact Assessment has been prepared for this Order.

9. Contact

Lesley Beech at the Insolvency Service. Tel: 020 7291 6704 or e-mail: lesley.beech@insolvency.gsi.gov.uk can answer any queries regarding the instrument.