EXPLANATORY MEMORANDUM TO

THE INSOLVENCY PROCEEDINGS (FEES) (AMENDMENT) ORDER 2014

2014 No. 583

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 Insolvency Proceedings (Fees) (Amendment) Order 2014 (the "Order") makes amendments to the Insolvency Proceedings (Fees) Order 2004 S.I.2004/593 ("the Principal Order"). The Order increases the deposit payable on presentation of a petition to the court for the winding up of a company and on presentation of a petition by a creditor for the bankruptcy of an individual and increases the official receiver's administration fee payable on winding up and payable on bankruptcy.

2.2 The Order introduces a requirement to pay a larger deposit and a larger administration fee on the presentation of a petition for winding up a company on grounds of public interest.

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

3.1 The Insolvency Service ("the Service") receives funding from the Department of Business, Innovation and Skills to conduct fact finding investigations into companies where it is in the public interest to do so. Investigations can result in the Secretary of State petitioning for the winding up of the company on grounds of public interest. The petition deposit and administration fee were previously the same as that paid by creditors petitioning the court for a winding up order. In order to more accurately reflect the higher level of official receiver's costs associated with companies wound up in the public interest, the deposit will increase to £5000 where a petition is presented for winding up a company on the grounds of public interest. The deposit is paid to the Service and will fund the official receiver's administration fee. An administration fee of £5000 will be payable to reflect the additional costs involved in winding up a company in the public interest, such fee to be payable out of the deposit. This ensures that in all cases where a company is wound up in the public interest, the official receiver makes a full recovery in respect of his administration fee. None of this fee will fall upon creditors.

4. Legislative Context

4.1 The Service must recover from customers the full cost of delivering winding up and bankruptcy services. Fees and charges must be reviewed annually to ensure that full cost recovery can be achieved. Winding up and bankruptcy deposit levels have not been increased since June 2011. These increases are in line with inflation. The deposit in relation to debtor petitions for bankruptcy is not being increased because of the potential impact on vulnerable debtors.

4.2 This Order is made to effect changes in fees in accordance with HM Treasury's fees and charges guidance contained within Managing Public Money.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

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

7.1 The Service operates on a net funded regime. The Service must recover the full cost of administering insolvency from customers. The Service aims to recover the costs of administering insolvency by setting administration fees, which are matched to costs. While an administration fee is charged in every case, the recoverability of that fee is determined by 3 elements:

i. the deposit payable prior to an insolvency order being made;
ii. asset realisations in each case; and
iii. a Secretary of State fee which is charged on asset realisations.

7.2 The fee structure introduced on 1 April 2004 required that creditors should bear the cost of official receiver administration through a combination of deposit, an administration fee and a general (Secretary of State) fee. The fee policy ensures that those who benefit from the insolvency regime, rather than the taxpayer, should fund the cost. In setting the fees, the Service ensures that a balance is found between the interests of both debtors and creditors. The levels of petition deposits were increased to provide for inflation in April 2006, April 2007, April 2008, April 2009,above inflation in April 2010 then in April 2011.

7.3 In 2011, as a result of the economic downturn reducing asset levels and values (especially property), in addition to an increase in deposits, the Service moved to a model in which cash generated by the fees was more certain and realised earlier in the process.

7.4 Official receiver's administration fees have not been increased since 2010 in compulsory winding up proceedings and since 2007 in relation to bankruptcy.

7.5 The deposit and fee increases bring the Service closer to full cost recovery as required by HM Treasury.

7.6 The Order increases the petition deposit in cases where a company is wound up in the public interest to £5000 to reflect the higher costs associated with such cases. The deposit is paid to the Service and will fund the official receiver's administration fee, a fee that will also increase to £5000 in respect of those cases.

7.7 The Principal Order has been amended by seven earlier Statutory Instruments, partly because of the need to modify fees and charges in line with the requirements of the regime referred to in 7.1.

7.8 The Service is undertaking a fundamental review of insolvency fee structures. It is not envisaged that this will lead to a significant change in funding structures before 2016. The Service intends to produce a consolidated version of the fees order following the review of insolvency fee structures.

8. Consultation outcome

8.1 As is customary with fee changes of this nature, no consultation has been undertaken.

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 Service's website.

10. Impact

10.1 An impact assessment has been produced and will be available on The Insolvency Service website.

10.2 The impact on the public sector is that fees charged will more accurately reflect cost and the increase in the deposit payable will ensure that a greater proportion of the administration fee is recovered.

11. Regulating small business

11.1 No specific impact on small businesses is foreseen.

12. Monitoring & review

12.1 The increase in fees and introduction of a higher fee in winding up in the public interest aims to achieve full cost recovery. The fees will continue to be subject to annual review and the legislation may be further amended accordingly.

13. Contact

Clare Quirk at The Insolvency Service (Tel: 0151 625 2153 or e-mail: Clare.Quirk@insolvency.gsi.gov.uk) can answer any queries regarding the Order.