EXPLANATORY MEMORANDUM TO

THE INSOLVENCY PROCEEDINGS (FEES) (AMENDMENT) ORDER 2015

2015 No. 1819

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 2015 (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 to the court of a petition by a creditor for individual bankruptcy.

The Order increases the official receiver's administration fee payable on winding up and payable on bankruptcy.

The Order makes changes to the scale of charges used to calculate the fee payable to the Secretary of State in bankruptcy and in a company wound up by the court.

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

3.1 The fee structure introduced on 1 April 2004 requires that creditors should bear the cost of official receiver administration through a combination of deposit, administration fee and a general (Secretary of State) fee.

3.2 Creditors or debtors who petition for bankruptcy or winding up are required to pay a deposit into court. The deposit, which represents only a proportion of the case administration costs, is returned if sufficient assets are recovered. Changes mean that creditors will pay £75 more to petition for an individual's bankruptcy and £100 more to petition for the winding up of a company.

3.3 The official receiver's administration fee will increase by £120 in winding up of companies and by £140 in bankruptcies. [This is offset by reductions in the Secretary of State fee.]

3.4 The Secretary of State fee is charged on asset realisations and subsidises the cost of other cases where assets are insufficient to meet the costs of administration. Charges are made according to Secretary of State fee bands applicable to insolvency orders made after 6 April 2010. Changing these fee bands will reduce the average Secretary of State fee received per case which will reduce the cross subsidy between cases.

4. Legislative Context

4.1. The Service must recover from customers the full cost of delivering winding up and bankruptcy services. Fees and charges are reviewed annually to ensure that full cost recovery can be achieved. This Order is made to effect changes in fees in accordance with HM Treasury's fees and charges guidance contained within Managing Public Money.

4.2 The deposit in relation to debtor petitions for bankruptcy is not being increased because of the potential impact on vulnerable debtors.

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 fee structure introduced on 1 April 2004 requires debtors and creditors to bear the cost of case administration rather than the taxpayer. The costs of administering insolvent estates are met through a combination of deposit, administration fee and a general (Secretary of State) fee which is charged when assets are realised in cases with sufficient assets.

7.2 The aim of the fee changes is to eliminate deficits, better match individual case income to costs and bring the Insolvency Service closer to full cost recovery as required by HM Treasury.
The intended effect is to create a fairer and more transparent funding structure in official receiver cases.

7.3 The Principal Order has been amended by eight earlier Statutory Instruments.

7.4 The Service is undertaking a fundamental review of its funding regime. It is not envisaged that this will lead to a significant change in funding structures before 2016.

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 costs.

11. Regulating small business

11.1. The impact assessment describes how creditors, including small businesses, will be better off following fee changes. Increases in petition deposits will be offset by reduced Secretary of State fees charged on cases with sufficiently high assets which will result in more returns to creditors.

12. Monitoring and Review

12.1. The increase in fees aims to achieve full cost recovery. The fees will continue to be subject to annual review and the legislation may be further amended.

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.