EXPLANATORY MEMORANDUM TO

THE INSOLVENCY PROCEEDINGS (FEES) (AMENDMENT) ORDER 2016

2016 No. 184

1. Introduction

1.1 This explanatory memorandum has been prepared by Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 The Insolvency Proceedings (Fees) (Amendment) Order 2016 (the "Order") makes amendments to the Insolvency Proceedings (Fees) (Amendment) Order 2004 S.I.2004/593 (the "Principal Order"). The Principal Order makes provision for the charging of various fees in relation to insolvency proceedings.

2.2 A new process is being introduced in England and Wales from 6th April 2016 whereby a debtor will apply to the Adjudicator for a bankruptcy order instead of petitioning the court. This Order sets out the fee to be paid to the Adjudicator by a debtor on making an application for a bankruptcy order.

2.3 It also makes provision for the deposit, previously paid to the court, to be paid to the Adjudicator and makes arrangements for the return of the deposit where the Adjudicator refuses to make a bankruptcy order.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The fee prescribed by this Order is to cover the costs of the Adjudicator considering the bankruptcy application and making a decision on whether to make a bankruptcy order.

3.2 Currently a fee together with a deposit is payable to the court on presentation of a debtor's bankruptcy petition to cover the costs of the court dealing with the bankruptcy petition. The court fee is currently £180 and thus is £50 higher than the planned adjudicator fee. However a minority of debtors (currently estimated to be about 15%) have their court fees remitted because of their personal circumstances (after a costly assessment process). The deposit cannot be remitted. As was made clear in Parliament during passage of the Enterprise and Regulatory Reform Bill, none of the Adjudicator's fee will be remitted, because, unlike the courts, the Department does not have scope for the shortfall in income to be by cross subsidy from other fees.

3.3 To assist debtors, there will be a facility for the adjudicator fee and the deposit to be paid in instalments before the bankruptcy application is made. This facility does not require legislation to put it in place.

Other matters of interest to the House of Commons

3.4 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 71 of the Enterprise and Regulatory Reform Act 2013 ("ERRA") amends the Insolvency Act 1986 ("IA 1986") to provide for a new process by which an individual applies for their own bankruptcy in England and Wales. Currently debtors petition the court for their bankruptcy. Under the new process, debtors will apply via an online system to an Adjudicator who will consider the application and, if appropriate, make a bankruptcy order. The Adjudicator is a new role, based within the Insolvency Service.

4.2 Section 263J of the IA1986 (introduced by section 71 of ERRA) provides that a bankruptcy application is not regarded as having been made unless any fee or deposit required in connection with the application by an order under section 415 has been paid to such person and within such period as may be prescribed. The Insolvency (Amendment) Rules 2016 prescribe that a fee and deposit must be paid to the Adjudicator on the making of a bankruptcy order. This Order prescribes the fee. The deposit is prescribed by Article 6 of the Principal Order.

4.3 In accordance with the requirements of HM Treasury's fees and charges guidance Managing Public Money, the Insolvency Service must operate a fee structure which recovers from its customers the full cost of delivering the Adjudicator's functions. The Order is made to introduce the fee for the work of the Adjudicator.

4.4 The following statutory instruments are also relevant to the implementation of the debtor bankruptcy application process and will come into force on or before 6th April 2016: The Enterprise and Regulatory Reform Act 2013 (Commencement No. 9 and Savings Provisions) Order 2016; The Insolvency (Amendment) Rules 2016; and The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016.

5. Extent and Territorial Application

5.1 This instrument applies to England and Wales.

5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The aim of the fee is to ensure full cost recovery for the Insolvency Service of the Adjudicator considering the bankruptcy application and reaching a decision as required by HM Treasury. The debtor application fee is set out in a Review of the Insolvency Service Fees signed off by the Chief Secretary to the Treasury on 22 October 2015.

7.2 Detailed analysis has been carried out of the total anticipated costs of the function of the Adjudicator including, staff costs, utility costs, stationery costs, IT provision, travel and subsistence costs, disbursements and other overheads. The fee level is set to recover these total costs against the case numbers forecast of 9,000 debtor bankruptcies in 2015/16. It is set at level which should not result in over-recovery. It will be subject to regular review. There is no scope for varying the fee from case to case as the same processes/work must be carried out for each debtor making an application to the Adjudicator for a bankruptcy order.

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

7.4 The Insolvency Service is undertaking a fundamental review of its funding regime and it is anticipated that this review will be completed shortly. However, it is important to have the new fee in place for 6th April 2016 when the new debtor application process commences and the Insolvency Service is not yet in a position to implement the full review.

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 by the Adjudicator's office and to all other interested parties via the Insolvency Service's website.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is minimal impact on the public sector. The court fee, which is subject to remission, is being replaced with a fee which represents full cost recovery.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The fees will be subject to annual review to ensure full cost recovery and the legislation may be further amended.

13. Contact

13.1 Paul Baxter at the Insolvency Service – Tel: 0113 200 1773 or email: Paul.Baxter@insolvency.gsi.gov.uk – can answer any queries regarding the instrument.