EXPLANATORY MEMORANDUM TO

THE INSOLVENCY PROCEEDINGS (FEES) (AMENDMENT) ORDER 2024

2024 No. 963

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Justin Madders MP, Minister of State in the Department of Business and Trade confirms that this Explanatory Memorandum meets the required standard.

2.2 Christopher Pleass, Director of Finance, Commercial, Sustainability and Property, at the Insolvency Service confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 John Curbison at the Insolvency Service, telephone: 0300 3046962 or email: john.curbison@insolvency.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Insolvency Proceedings (Fees) (Amendment) Order 2024 (the 'Order') amends the Insolvency Proceedings (Fees) Order 2016, S.I. 2016/692 (the 'Principal Order').

4.2 The Order increases:

- The official receiver's general fee
- The official receiver's administration fee
- The deposit and administration fee payable when a company is wound up in accordance with section 124A of the Insolvency Act 1986.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument is England and Wales.

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

5. Policy Context

What is being done and why?

5.1 The Principal Order, made on 30 June 2016, sets out the fees charged on the making of bankruptcy and compulsory winding up orders to cover the cost of administering the case by the official receiver. In line with the Managing Public Money principles, fees are set at a level designed to cover the cost of the service provided. Recovery of

costs in this way supports the long held principle that those that benefit from the service, should bear the cost of the services and not the taxpayer.

5.2 The administration fee covers the official receiver's basic costs of dealing with the insolvency and is charged in every case. The administration fee is charged on the making of bankruptcy and compulsory winding up orders but is not paid in full upfront. Instead, a deposit is paid representing part of the fee, with the balance of the fee being recovered from money received when assets are sold. The general fee is a fixed fee, designed to cross subsidise cases where there are insufficient assets to cover the costs.

5.3 These fees have not been increased since 2016. Over 70% of cases have insufficient asset values to recover all the official receiver's administration costs. The Insolvency Service continues to take steps to significantly reduce its operating costs, however, at this point in time fee income does not adequately cover the official receiver's costs, giving rise to the risk that the taxpayer will need to make good the official receiver's operating deficit unless fee income is increased.

5.4 This Order:

- Increases the administration fee for a bankruptcy order following an application by the debtor, from £1,900 to £2,390.
- Increases the administration fee for bankruptcy order following an application by a creditor, from £2,775 to £3,300.
- Increases the administration fee for winding up orders from £5,000 to £6,000.
- Increases the general fee for all cases from £6,000 to £7,200.

5.5 These increases are set at around 20%, which is slightly lower than an inflationary adjustment, and do not impact the upfront cost of applying for bankruptcy or a compulsory liquidation.

5.6 This Order also increases the deposit fee where a petition is presented to the court to wind up a company on grounds of public interest under section 124A of the Insolvency Act 1986, and the administration fee where the court makes an order to wind up the company on such grounds.

5.7 The deposit and administration fees for these cases have not been increased since 2016. Whilst there are only a small number of public interest winding up orders made each year, usually fewer than 100, the nature of the work involved is more complex and takes longer to complete.

5.8 This Order:

- Increases the deposit payable on the presentation of a winding up petition under section 124A by 170%, from £5,000 to £13,500.
- Increases the administrative fee where a company is wound up under section 124A by 80%, from £7,500 to £13,500.

Although these increases are above inflation, they will better reflect the cost of these complex and exceptional cases.

What was the previous policy, how is this different?

5.9 These changes do not involve a change in policy, only an increase in the fees charged.

6. Legislative and Legal Context

How has the law changed?

6.1 The Principal Order prescribes fees to cover the costs of official receivers in performing certain duties under the Insolvency Act 1986. This Order amends the Principal Order to increase relevant fees.

6.2 In accordance with the requirements of HM Treasury's fees and charges guidance, Managing Public Money, the official receiver must operate a fee structure which recovers the full cost of delivering compulsory winding up and bankruptcy services. This Order will help to ensure the fee structure remains closely aligned to Managing Public Money requirements in recovering the official receiver costs in providing these statutory services.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes.]

7. Consultation

Summary of consultation outcome and methodology

7.1 As is customary with fee changes of this nature, no formal consultation has been undertaken. Informal discussions have taken place with key stakeholders, including the Ministry of Justice, HM Revenue & Customs and HM Treasury.

8. Applicable Guidance

8.1 Guidance will be issued to key stakeholders during October 2024. Guidance will be issued directly to insolvency practitioners and to all other interested parties via the government website and other media forms used to communicate with insolvency stakeholders.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full impact assessment has not been produced for this instrument because it does not fall within the scope of the better regulation framework.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies from these changes because there is no change to the cost for presenting a petition or application to the court for compulsory winding up or bankruptcy, except for winding up petitions on grounds of public interest under section 124A of the Insolvency Act which is payable by the Secretary of State. Creditors will incur the cost of the increased administration fees from reduced distributions.

9.3 The legislation does not disproportionately impact small or micro businesses.

9.4 The impact on the public sector is minimal. HM Revenue and Customs are a frequent petitioning creditor in bankruptcy and liquidation cases and the fee increases may have a small impact on the cases they choose to enforce. The fee for presenting a winding up petition under section 124A of the Insolvency Act 1986 will increase from £5,000 to £13,500. This fee is payable by the Secretary of State, but the number of petitions presented each year is very low, usually fewer than 100 each year. A portion

of the increase to certain fees charged by the registrar of companies will cover the increased cost of winding up petitions brought under section 124A of the Insolvency Act 1986. This increase to registrar fees follows amendments to section 1063 of the Companies Act 2006 made by the Economic Crime and Corporate Transparency Act 2023 which provides that the costs of relevant Secretary of State functions under the Insolvency Act 1986 and relevant functions carried out by the Insolvency Service with regard to their investigation and enforcement activities may be taken into account by the Secretary of State when setting fees.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the Insolvency Service, in line with the Managing Public Money principles, will monitor the performance of service costs and will review if necessary. A statutory review clause has not been utilised as this charge represents a small inflationary increase and will be kept under review as part of the Insolvency Service's internal accounting practices.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The deposit and administration fee for a company wound up in the public interest are set at a level above inflation. This reflects the complex and exceptional nature of these cases, and the extra time and cost of completing this work and is consistent with cost recovery.

11.2 A related SI, the Insolvency (Amendment) Regulations 2024, is being laid within the same timeframe. It contains provisions relating to the increase of the official receiver's remuneration when supervising the activities of a special manager; acting as interim receiver or provisional liquidator; and when making a distribution to creditors.

12. European Convention on Human Rights

12.1 As the instrument is not subject to further parliamentary procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").