

2016 No. 692

INSOLVENCY, ENGLAND AND WALES

FEES

The Insolvency Proceedings (Fees) Order 2016

Made - - - - - *29th June 2016*

Laid before Parliament *30th June 2016*

Coming into force in accordance with article 1

The Lord Chancellor, in exercise of the powers conferred by sections 414 and 415 of the Insolvency Act 1986(a), and with the sanction of the Treasury, makes the following Order.

Citation and commencement

1. This Order may be cited as the Insolvency Proceedings (Fees) Order 2016 and comes into force twenty-one days after the day on which it is laid.

Interpretation

2. In this Order—

“the Act” means the Insolvency Act 1986(b);

“chargeable receipts” means the sums which are paid into the Insolvency Services Account after deducting any amounts which are paid out to secured creditors or paid out in carrying on the business of the bankrupt or the company;

“the commencement date” means the date this Order comes into force;

“deposit” means—

- (a) on the making of a bankruptcy application, the sum of £550,
- (b) on the presentation of a bankruptcy petition, the sum of £990,
- (c) on the presentation of a winding up petition, other than a petition presented under section 124A(c) of the Act, the sum of £1,600,
- (d) on the presentation of a winding-up petition under section 124A of the Act, the sum of £5,000;

“official receiver’s administration fee” means the fee payable to the official receiver on the making of a bankruptcy or winding up order out of the chargeable receipts of the estate of the

(a) 1986 c.45.

(b) 1986 c.45.

(c) Section 124A was inserted by sections 60(3) of the Companies Act 1989 (c.40).

bankrupt or, as the case may be, the assets of the insolvent company for the performance of the official receiver's functions under the Act.

Fees payable in connection with individual voluntary arrangements, debt relief orders and bankruptcy and winding up

3. The fees payable to the Secretary of State in respect of the matters specified in column 1 of the Table of Fees in Schedule 1 (Fees payable in insolvency proceedings) are the fees specified in column 2 to that Table.

Deposit

4.—(1) On the making of a bankruptcy application, the debtor will pay a deposit to the adjudicator as security for the payment of the official receiver's administration fee.

(2) On the presentation of a bankruptcy petition or a winding-up petition, the petitioner will pay a deposit to the court as security for the payment of the official receiver's administration fee.

(3) Where a deposit is paid to the court, the court will transmit the deposit paid to the official receiver attached to the court.

(4) The deposit will be used to discharge the official receiver's administration fee to the extent that the assets comprised in the estate of the bankrupt or, as the case may be, the assets of the company are insufficient to discharge the official receiver's administration fee.

(5) Where a bankruptcy order or a winding up order is made (including any case where a bankruptcy order or a winding up is subsequently annulled, rescinded or recalled), the deposit will be returned to the person who paid it save to the extent that the assets comprised in the estate of the bankrupt or, as the case may be, the assets of the company are insufficient to discharge the official receiver's administration fee.

(6) The deposit will be repaid to the debtor where—

- (a) the adjudicator has refused to make a bankruptcy order,
- (b) 14 days have elapsed from the date of delivery of the notice of refusal, and
- (c) the debtor has not made a request to the adjudicator to review the decision.

(7) Where the debtor has made a request to the adjudicator to review the decision to refuse to make a bankruptcy order the deposit will be repaid to the debtor where—

- (a) the adjudicator has confirmed the refusal to make a bankruptcy order,
- (b) 28 days have elapsed from the date of delivery of the confirmation of the notice of refusal, and
- (c) the debtor has not appealed to the court against the refusal to make a bankruptcy order.

(8) Where the debtor has appealed to the court against the refusal to make a bankruptcy order the deposit will be repaid to the debtor where the appeal is dismissed or withdrawn.

(9) Where—

- (a) a deposit was paid by the petitioner to the court, and
- (b) the petition is withdrawn or dismissed by the court

that deposit, less an administration fee of £50, will be repaid to the petitioner.

Value Added Tax

5. Where Value Added Tax is chargeable in respect of the provision of a service for which a fee is payable by virtue of any provision of this Order, Value Added Tax must be paid on that fee.

Revocation

6. The enactments listed in Schedule 2 are revoked.

Transitional and saving provisions

7.—(1) This Order has no effect in respect of any fees payable in respect of—

- (a) the preparation and submission of a report under section 274 (action on report of insolvency practitioner) of the Act; and
- (b) bankruptcy orders and winding-up orders made following the making of a bankruptcy application or presentation of a petition before the commencement date.

(2) This Order has no effect in respect of any deposit paid on the making of a bankruptcy application or the presentation of a petition for bankruptcy or winding up before the commencement date.

Signed by authority of the Lord Chancellor

Edward Faulks
Parliamentary Under Secretary of State
Ministry of Justice

27th June 2016

We concur

Charlie Elphicke
Mel Stride

29th June 2016

Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1

Article 3

Fees payable in insolvency proceedings

Table of Fees

<i>Description of fee and circumstances in which it is charged</i>	<i>Amount of fee or applicable %</i>
Individual voluntary arrangement registration fee On the registration by the Secretary of State of an individual voluntary arrangement made under Part 8 of the Act, the fee of—	£15
Application for a debt relief order – official receiver's administration fee and costs of persons acting as approved intermediaries On the application for a debt relief order, for the performance of the official receiver's functions and for the payment of an amount not exceeding £10 in respect of the costs of persons acting as approved intermediaries under Part 7A of the Act, the fee of—	£90
Application for a bankruptcy order – adjudicator's administration fee On the application to the adjudicator for a bankruptcy order, for the performance of the adjudicator functions, the fee of—	£130
Bankruptcy – official receiver's administration fee following debtor's application	£1,990

On the making of a bankruptcy order on a debtor's application, for the performance of the official receiver's duties as official receiver the fee of—	
Bankruptcy – official receiver's administration fee following creditor's petition On the making of a bankruptcy order on a creditor's petition, for the performance of the official receiver's duties as official receiver the fee of—	£2,775
Bankruptcy – trustee in bankruptcy fee For the performance of the official receiver's duties while acting as trustee in bankruptcy of the bankrupt's estate a fee calculated as a percentage of chargeable receipts realised by the official receiver in the capacity of trustee in bankruptcy at the rate of—	15%
Bankruptcy – income payments agreement fee On entering into an income payments agreement with the official receiver under section 310A of the Act, the fee of—	£150
Bankruptcy –income payments order fee On the making of an income payments order by the court under section 310 of the Act, the fee of—	£150
Winding up by the court other than a winding up on a petition presented under section 124A – official receiver's administration fee On the making of a winding-up order, other than on a petition presented under section 124A, for the performance of the official receiver's duties as official receiver, including the duty to investigate and report on the affairs of bodies in liquidation, the fee of—	£5,000
Winding up by the court on a petition presented under section 124A – official receiver's administration fee On the making of a winding-up order on a petition presented under section 124A, for the performance of the official receiver's duties as official receiver, including the duty to investigate and report on the affairs of bodies in liquidation, the fee of—	£7,500
Winding up – liquidator fee For the performance of the official receiver's duties while acting as liquidator of the insolvent estate a fee calculated as a percentage of chargeable receipts realised by the official receiver in the capacity of liquidator at the rate of—	15%
Official receiver's general fee On the making of a bankruptcy order or the making of a winding up order by the court for the costs not recovered out of the official receiver's administration fee of administering— (a) bankruptcy orders, (b) winding up orders made by the court the fee of—	£6,000

SCHEDULE 2

Article 6

Revocations

<i>Orders revoked</i>	<i>References</i>	<i>Extent of revocation</i>
Insolvency Proceedings (Fees) Order 2004	S.I. 2004/593	The whole Order
Insolvency Proceedings (Fees) (Amendment) Order 2005	S.I. 2005/544	The whole Order
Insolvency Proceedings (Fees) (Amendment) Order 2006	S.I. 2006/561	The whole Order
Insolvency Proceedings (Fees) (Amendment) Order 2007	S.I. 2007/521	The whole Order
Insolvency Proceedings (Fees) (Amendment) Order 2008	S.I. 2008/714	The whole Order
Insolvency Proceedings (Fees) (Amendment) Order 2009	S.I. 2009/645	The whole Order
Insolvency Proceedings (Fees) (Amendment) Order 2010	S.I. 2010/732	The whole Order
Insolvency Proceedings (Fees) (Amendment) Order 2011	S.I. 2011/1167	The whole Order
Insolvency Proceedings (Fees) (Amendment) Order 2014	S.I. 2014/583	The whole Order
Insolvency Proceedings (Fees) (Amendment) Order 2015	S.I. 2015/1819	The whole Order
Insolvency Proceedings (Fees) (Amendment) Order 2016	S.I. 2016/184	The whole Order

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes new provision for charging fees in respect of insolvency proceedings in England and Wales under the Insolvency Act 1986.

The Order revokes the Insolvency Proceedings (Fees) Order 2004 (“the 2004 Order”), simplifies the fee structure by reducing the number of different fees and replaces the Secretary of State’s administration fee with an official receiver’s general fee. It also introduces a trustee in bankruptcy fee and a liquidator fee, such fees being charges where the official receiver realises assets of the insolvent estate while acting in the capacity of a trustee in bankruptcy or liquidator.

Article 3 of, and Schedule 1 to, the Order set out the fees payable: for applications for debt relief orders and bankruptcy orders; following the making of a bankruptcy order and winding up order by the court; where the official receiver realises assets acting as a trustee in bankruptcy or liquidator; and for the making or entering into an income payment agreement.

Article 4 makes provision for the payment of a deposit as security against payment of fees and the circumstances in which it will be returned to the person who paid it.

Article 5 sets out when VAT must be paid on fees.

Article 6 revokes the Insolvency Proceedings (Fees) Order 2004 S.I. 2004/593 and amending Orders to that Order.

Article 7 is a transitional provision. This Order does not apply to fees due in respect of bankruptcy orders and winding up orders made following a bankruptcy application made or petition presented before the commencement date, any deposit paid on the making of a bankruptcy application or the presentation of a petition before the commencement date or the fees payable in respect of a report prepared under section 274 of the Insolvency Act 1986.

A full impact assessment of the effect that the instrument will have on the costs of business and the voluntary sector is available from The Insolvency Service, 4 Abbey Orchard Street, London SW1P 2HT and is published on The Insolvency Service website www.gov.uk/government/organisations/insolvency-service. It is also published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

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