

**EXPLANATORY MEMORANDUM TO
THE INSOLVENCY PRACTITIONERS AND INSOLVENCY SERVICES ACCOUNT
(FEES) (AMENDMENT) (NO.2) ORDER 2008**

2008 No. 672

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Insolvency Practitioners and Insolvency Services Account (Fees) Order 2003 (S.I. 2003/3363, as amended), (“the principal Order”), makes provision for the payment of fees in relation to the authorisation of insolvency practitioners under section 393 of the Insolvency Act 1986 and in respect of the operation of the Insolvency Services Account and payments into and out of that Account.

2.2 The Insolvency Practitioners and Insolvency Services Account (Fees) (Amendment) (No.2) Order 2008 (“the Order”) increases the fee payable to the Secretary of State in respect of his functions of monitoring and authorising insolvency practitioners from £2,500 to £2,550. The principal Order currently makes provision for the payment of fees in relation to the operation of the Insolvency Services Account. Two new fees (fee 2A and fee 2B) are inserted into the Schedule in the principal Order payable upon the making of any payments into the Insolvency Services Account under Regulation 3B or 3C of the Insolvency Regulations 1994 (S.I. 1994/2507 as amended).

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

There are no matters of special interest to the Joint Committee on Statutory Instruments

4. Legislative Background

Section 270 of the Enterprise Act 2002 introduced section 415A into the Insolvency Act 1986, under which the Order is made. Section 415A made provision permitting the Secretary of State by order to require the payment of fees in relation to the authorisation of insolvency practitioners under section 393 of the Insolvency Act 1986 and in respect of the operation of the Insolvency Services Account and payments into and out of that account.

5. Extent

This instrument applies to England and Wales and Scotland.

6. European Convention on Human Rights

No statement is required because the Order, although required to be laid after being made, is not subject to any further parliamentary proceedings and does not amend primary legislation.

7. Policy background

7.1 The new financial regime implemented on 1 April 2004 for the Insolvency Service and provided for by the coming into force of the Enterprise Act 2002, included a new fee regime that was intended to be simpler, fairer and more transparent and to match income to costs in line with the Treasury Fees and Charges Guide. There is a requirement under the Treasury Fees and Charges Guide to review fee levels annually. As a consequence, fee changes were made on 1 April 2006 to the Secretary of State's monitoring and authorisation function to increase the fee of £2,000 to £2,100. The fee was further increased to £2,500 on 1 April 2007 in order to bring the fee up to the level at which it would achieve full cost recovery. The increase made by the Order to £2,550 ensures that the fee continues to meet the full cost of that function.

7.2 During the initial consultation on the Insolvency Rules modernisation project in early 2006 members of the insolvency profession asked whether the Insolvency Service could do something to remedy the problem of what to do with unclaimed dividends in administrations and administrative receiverships. Insolvency practitioners provided the Insolvency Service with details of cases in which large numbers of employees had not cashed the cheques issued to them in respect of payments due to them and who have been unable to be traced by the respective office holders. The office holder often has no control over what the recipient of the payment does with the remittance, if anything at all. It is the monies that are left in the hands of the office holder that are causing the problems.

7.4 The Insolvency Service was persuaded that the problem could be resolved by amendments to the Insolvency Regulations 1994. The regulations have been extended to allow (the provision is not mandatory, merely permissive) administrators and administrative receivers to pay such monies into the Insolvency Services Account (ISA) as is provided for liquidators in the winding up of companies pursuant to Regulation 18 of those regulations. The change to the Insolvency Regulations 1994 is matched by a corresponding change to the principal Order which imposes a flat rate fee of £25 to cover the cost of the activity permitted by the change to the Insolvency Regulations. The fee is to accompany the payment in and will be payable in respect of each administration or administrative receivership to which the payment in relates.

8. Impact

A Regulatory Impact Assessment was prepared for the Enterprise Act 2002 but no regulatory impact assessment has been prepared for this Order.

9. Contact

Lesley Beech at the Insolvency Service, tel: 020 7291 6704 or e-mail: lesley.beech@insolvency.gsi.gov.uk can answer any queries regarding the instrument.