

**EXPLANATORY MEMORANDUM TO
THE INSOLVENCY (AMENDMENT) REGULATIONS 2009**

2009 No. 482

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. Purpose of the instrument

2.1 The instrument increases the fees charged by the Insolvency Service in respect of its services for Insolvency Case Administration. More specifically, the Official Receiver's remuneration when he supervises a special manager; acts as interim receiver or provisional liquidator and when acting as liquidator or trustee he makes a distribution to creditors, are increased by inflation.

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

3.1 None.

4. Legislative Context

4.1 The regulations are made to effect an up-rating in fees in line with inflation since April 2004. The regulations are made by the Secretary of State.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is not subject to either negative or affirmative resolution procedure nor does it amend primary legislation, no statement is required.

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.

7.2 These Regulations amend the Insolvency Regulations 1994 (S.I. 1994/2507) ("the principal Regulations"). The Official Receiver is entitled to remuneration when he supervises a special manager; acts as interim receiver or provisional liquidator and when acting as liquidator or trustee he makes a distribution to creditors. The rates of

remuneration payable by virtue of Regulation 35 of the Insolvency Regulations 1994 are hourly rates according to the grade of the officer acting and they have been increased to ensure the recovery of the costs of the functions in respect of which the remuneration is payable.

7.3 The total fees charged by the Insolvency Service in relation to this activity is in the region of £1million per year.

- ***Consolidation***

7.4 The principal regulations have been amended by eight earlier statutory instruments, some because of the need to modify fees and charges in line with the requirements of the regime referred to in 7.1. The Insolvency Service intends to produce a consolidated version of the regulations as part of its current project to consolidate all insolvency secondary legislation.

8. Consultation outcome

8.1 The Insolvency Service has not consulted on these fee changes. The Enterprise Act 2002 modernised the financial regime of the Service by simplifying the fee structure and ensuring increased transparency. The principles of the new financial regime included that that Case Administration costs would be met by creditors. The Enterprise Act 2002 was preceded by an extensive consultation exercise and the provisions relating to insolvency reform were generally welcomed. A Regulatory Impact Assessment was prepared for the Enterprise Act 2002. The changes proposed by this statutory instrument are designed to ensure the principles of the financial regime which came into force in April 2004 are being maintained. In particular, that fees are set to match cost.

9. Guidance

9.1 The instrument makes changes to the hourly rates of remuneration charged by the Official Receiver. The draft instrument has been published on the Insolvency Service's website.

10. Impact

10.1 No impact on the private or voluntary sector is foreseen.

10.2 The impact on the public sector is that fees charged will more accurately reflect cost.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The changes in the fee structure aim to achieve full cost recovery of the Official Receiver's case administration functions. The fees will continue to be subject to annual review and the legislation may be further amended accordingly.

13. Contact

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