

EXPLANATORY MEMORANDUM TO
THE INSOLVENCY PRACTITIONERS AND INSOLVENCY SERVICES ACCOUNT
(FEES) (AMENDMENT) ORDER 2015

2015 No. 1977

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Innovations 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 Practitioners and Insolvency Services Account (Fees) (Amendment) Order 2015 (“the Order”) makes amendments to the Insolvency Practitioners and Insolvency Services Account (Fees) Order 2003 S.I. 2003/3363 (“the Principal Order”).
- 2.2 The Order increases the fee on an application to the Secretary of State for recognition of a professional body (RPB). RPBs license and regulate their member insolvency practitioners.
- 2.3 The Order also increases the annual fee paid by each RPB to the Secretary of State in respect of the maintenance of that recognition.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The annual fee increase shown in section 2.2 above is higher than the cost of inflation since the fee was last amended. However, as detailed in section 7.1 below, this fee increase also takes into account the new regulatory measures in the Small Business, Enterprise and Employment Act 2015.

Other matters of interest to the House of Commons

- 3.2 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 The Insolvency Service must recover the full cost of delivering oversight regulation of the insolvency profession from the RPBs that it oversees. This Order is made to effect changes in fees in accordance with HM Treasury’s fees and charging guidance contained within Managing Public Money.

5. Extent and Territorial Application

- 5.1 This instrument extends to all of the United Kingdom.
- 5.2 This instrument applies to all of the United Kingdom.

5.3 There is no disproportionate impact on Scotland as the fee increase is proportionate to the number of insolvency practitioners that is regulated by each RPB.

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 fee structure introduced on 1 April 2004 requires RPBs to bear the cost of oversight regulation through the payment of a one off fee for being recognised as an RPB and the payment of an annual fee calculated by reference to the number of members who as at 1st January in each year it has authorised to act as insolvency practitioners. The annual fee was set at £300 per member in 2009. This is no longer sufficient to meet costs, including overheads, of regulating RPBs. Additionally, new measures in the Small Business, Enterprise and Employment Act 2015 introduced changes to oversight regulation. These include the introduction of new regulatory objectives against which the RPBs are monitored by the Secretary of State, and also powers to enable the Secretary of State to take proportionate regulatory action in appropriate circumstances.

7.2 The current fee for recognition as a RPB was set in 2004 and has not been increased since. The Small Business, Enterprise and Employment Act 2015 introduced a new application process. The increase in fee is to meet the additional costs of processing new applications received by the Secretary of State for recognition as an RPB.

7.3 The aim of the fee increases is to increase revenue to a level that better reflects the costs of providing oversight regulation of the insolvency profession.

7.4 The Principal Order has been amended by eight earlier Statutory Instruments.

8. Consultation outcome

8.1 As is customary for fee changes of this nature, no consultation has been undertaken.

9. Guidance

9.1 Guidance will be issued to stakeholders, by notification to RPBs, and to all other interested parties via the Insolvency Service's website.

10. Impact

10.1 The impact on small businesses is detailed in section 11 below. There is no impact on charities and voluntary bodies.

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

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 There will be an impact on small businesses as one of the RPBs is classed as a small business. It would be inappropriate to exempt that RPB from the fee increase because it is the second largest RPB in terms of insolvency practitioner members and therefore accounts for a significant share of the cost of oversight regulation. There is a likelihood that RPBs will pass on at least some of the increase to their members, some of who are small businesses. The potential impact of this has been considered and is detailed in the Impact Assessment.

12. Monitoring & review

12.1 The increase in fees aims to achieve full cost recovery. The fees will continue to be subject to regular review and the legislation may be further amended.

13. Contact

13.1 Denis Lockwood at the Insolvency Service. Telephone: 01702 442316 or email: Denis.Lockwood@insolvency.gsi.gov.uk can answer any queries regarding the Order.