

EXPLANATORY MEMORANDUM TO
THE INSOLVENCY PROCEEDINGS (FEES) (AMENDMENT) ORDER 2022
2022 No. 929

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Insolvency Proceedings (Fees) (Amendment) Order 2022 (the “Order”) amends the Insolvency Proceedings (Fees) Order 2016 S.I.2016/692 (the “Principal Order”).

2.2 This Order:

- Increases the deposits payable when presenting a petition to the Court for a bankruptcy order or for the winding up of a company (other than winding up under section 124A in the public interest, which remains unchanged).
- Corrects the previous defective drafting to bring it into line with current drafting conventions. The Joint Committee on Statutory Instruments (JCSI), in its Ninth Report of Session 2016–17, reported Article 4 of the for defective drafting in its use of the word “will” instead of “must” to impose an obligation. Article 4 of the 2016 Order sets out the circumstances in which the deposit will be returned to the person who paid it.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Order amends defective drafting in Article 4 of the Principal Order reported by the Joint Committee on Statutory Instruments (JCSI), in its Ninth Report of Session 2016–17.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales

4.2 The territorial application of this instrument is England and Wales

5. European Convention on Human Rights

5.1 As the instrument is not subject to parliamentary procedure, no statement is required.

6. Legislative Context

6.1 Sections 414 and 415 of the Insolvency Act 1986 permit the Lord Chancellor, with the sanction of the Treasury, to fix fees for company insolvencies and for bankruptcy proceedings for tasks carried out by the official receiver or the Secretary of State. The

Principal Order prescribes the fees that cover the costs of the performance by official receivers of their functions under the Act.

- 6.2 This Order amends the Principal Order.
- 6.3 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 winding up and bankruptcy services. The Order will help ensure that the fee structure remains closely aligned to the requirements of HM Treasury.

7. Policy background

What is being done and why?

- 7.1 The Principal Order, made on 30 June 2016, sets out the fees charged in bankruptcy and court winding up insolvencies to cover the overall cost of administering the case. In line with Managing Public Money principles, the fees are set at a level that is designed to cover the cost of the service provided. Recovery of the costs adheres to the long-held principle that creditors should bear the cost and not the taxpayer.
- 7.2 The main fee is the administration fee, which is to cover the official receiver's basic costs of dealing with the insolvency and is charged in every case. The administration fee is charged upfront 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 deposit is paid by those initiating the insolvency process; that is a creditor or the company itself. If there are enough assets to cover all the fees and costs, then the deposit is returned to the party who initiated the insolvency.
- 7.3 Fees have not increased since April 2016 and insolvency cases numbers are at a historically low level. 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 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.
- 7.4 The issue is not the amount of the administration fee, it is the ability to recovery it. The fee levels set in the Principal Order represent the cost of delivering the service, but recovery of the administration fee is not secured, except to the extent of the deposit. The Order increases the upfront deposit paid by the party initiating creditor petition bankruptcy and winding up proceedings, thus increasing the guaranteed income at the start of the case, to pay for its administration. All other fees in creditor petition bankruptcy and winding up cases, and the deposit in debtor bankruptcy stay the same.
- 7.5 The deposits prescribed by the Order are:
- Creditor petition bankruptcy: deposit £1,500 (increase of £510)
 - Company winding up: deposit £2,6000 (increase of £1,000)
- 7.6 The new petition deposits will recover a minimum of 50% of the administration cost of these cases up front, providing greater certainty to the funding of the official receiver's

statutory duties. In cases where sufficient assets are realised, the deposit is repaid in full to the petitioner in priority to other fees or any distribution to creditors.

Insolvency is an expensive process, should be the last resort and it is right that those seeking to initiate it should bear more of the costs of the process. These changes increase the upfront costs to commence insolvency proceedings, but there are alternative ways in which creditors can seek recovery, such as seeking a negotiated settlement, attachment of earnings, charging orders, or controlled goods agreement

7.7 The deposit level for a debtor's bankruptcy application, where the individual applies to the adjudicator for their own bankruptcy, remains unchanged. In such cases the deposit is paid by the individual seeking debt relief.

7.8 The Order also takes the opportunity to correct previous defective drafting in the Principal Order to bring it into line with current drafting conventions. The Joint Committee on Statutory Instruments (JCSI), in its Ninth Report of Session 2016–17, reported Article 4 of the Principal Order for defective drafting in its use of the word “will” instead of “must” to impose an obligation. Article 4 of the 2016 Order sets out the circumstances in which the deposit will be returned to the person who paid.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 As is customary with fee changes of this nature, no consultation has been undertaken.

11. Guidance

11.1 Guidance will be issued to key stakeholders via the courts, by notification directly to insolvency practitioners and to all other interested parties via the Insolvency Service's website.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that any such organisation that presents a petition to make someone bankrupt or to liquidate a company will incur additional upfront costs. There is an estimated annual direct cost to business of £1.9m, however, the impacts on business are out of scope of the Business Impact Target.

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

12.3 A full Impact Assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. Proportionate analysis of impacts have been included in 12.1 and 12.2.

12.4 Under section 28(3) of the Small Business, Enterprise and Employment Act 2015, fees are excluded from the definition of regulatory provisions. There is therefore no need to

provide a provision for review under section 28(2)(a) of the Small Business, Enterprise and Employment Act 2015.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 Small and micro business will incur the same types of costs as other businesses. Proportionate analysis shows that the increase in deposits would result in an equivalent annual net direct cost to small and micro businesses of £1.13m at most. Where there are sufficient assets in a case, the deposit is returned to the petitioning entity.

14. Monitoring & review

- 14.1 The Insolvency Service will, in accordance with Managing Public Money principles, monitor the performance of service costs so that the undertaking can be adjusted as necessary.

15. Contact

- 15.1 John Curbison at the Insolvency Service, Telephone: 0300 304 6962 or email: john.curbison@insolvency.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Angela Crossley, Director for Strategy, Policy and Analysis, at the Insolvency Service can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Callanan, Minister for Business, Energy and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.