

**EXPLANATORY MEMORANDUM TO**  
**THE INSOLVENCY PROCEEDINGS (FEES) (AMENDMENT) ORDER 2007**

**2007 NO. 521`**

1. This explanatory memorandum has been prepared by the Department of Trade and Industry 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 Proceedings (Fees) Order 2004 (S.I. 2004/593) as amended (“the Principal Order”) prescribes, amongst other things, the fee to be paid to an insolvency practitioner appointed by the court under section 273(2) to prepare a report under section 274 of the Act (article 5); the amounts payable as deposits in respect of bankruptcy or winding up petitions (article 6); the deposit payable in connection with the registration of an individual voluntary arrangement and the performance by the official receiver of the functions of nominee in relation to such an arrangement (article 7); for a reduction in the fee B1 (bankruptcy) where an individual voluntary arrangement is approved by creditors (article 8); for the purpose of calculating the fee payable in respect of the Secretary of State’s administration of the estate of a bankrupt, a definition of “the bankruptcy ceiling” which requires the inclusion in the calculation of that ceiling, amongst other things, of the interest payable under section 328(4) of the Insolvency Act 1986 in respect of preferential debts (paragraph 1(1) of Schedule 2); the fees payable in respect of the official receiver’s general duties on the making of a bankruptcy or winding up order (Schedule 2); and the fee currently payable to the Secretary of State to register an individual voluntary arrangement (Schedule 2).

2.3 Except for savings in respect of certain fees and certain cases, the Principal Order also partly revoked the Bankruptcy Fees Order 1984 (S.I. 1984/880 as amended), the Companies (Department of Trade and Industry) Fees Order 1985 (S.I. 1985/1784 as amended), and the Insolvency Fees Order 1986 (S.I. 1986/2030 as amended). The saved fees continued to be applicable to cases that were commenced under the earlier Bankruptcy Act 1914 (c.59) or the Companies Act 1985 (c.6) before 29th December 1986. In the case of the Insolvency Fees Order 1986, the saved fees continued to be applicable to cases that were commenced under the later Insolvency Act 1986 (c.45) after 29th December 1986 but in respect of which, a winding up or bankruptcy order was made before 1st April 2004 (“the old cases”).

2.4 The Insolvency Proceedings (Fees) (Amendment) Order 2007 (“the Order”) makes further amendments to the Principal Order. It increases the

amount of all the deposits payable pursuant to article 6 of the Principal Order, including the deposit payable in respect of a bankruptcy petition, the latter increase generating a corresponding increase to the amount to be paid to the insolvency practitioner appointed by the court in bankruptcy proceedings to prepare a report under section 274. The Order reduces the deposit payable under article 7 of the Principal Order in connection with the registration of an individual voluntary arrangement and the performance by the official receiver of the functions of a nominee in relation to such an arrangement. The Order also amends the definition of the bankruptcy ceiling in paragraph 1(1) of Schedule 2 to the Principal Order by requiring the inclusion, in the calculation of that ceiling, of the interest payable under section 329(2)(b) of the Insolvency Act 1986 in respect of bankruptcy debts owed in respect of credit provided by a person who was a spouse or civil partner of the bankrupt at the commencement of the bankruptcy. The Order increases the fees payable in respect of the official receiver's general duties on the making of a bankruptcy order (Fee B1) or winding up order (Fee W1), by expressly including amongst the duties in respect of which the fee is charged, his duty to investigate and report upon the affairs of bankrupts and of bodies in liquidation. As a consequence of the increase in Fee B1, the Order amends Article 8 of the Principal Order, which makes provision for the reduction of that fee upon the approval of an individual voluntary arrangement. Since the fee is increased, the reduced fee is itself increased. The Order reduces the fee currently payable under Schedule 2 of the Principal Order to the Secretary of State for registration of an individual voluntary arrangement.

2.5 The Order also completes the revocations begun by the Principal Order by revoking the Bankruptcy Fees Order 1984, the Companies (Department of Trade and Industry) Fees Order 1985 and the Insolvency Fees Order 1986 and those provisions making amendments to the savings and contained in articles 3, 4 and 5 the Insolvency Proceedings (Fees) (Amendment) Order 2006.

### **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**

4.1 The Order is made pursuant to sections 414 and 415 of the Insolvency Act 1986, section 133 of the Bankruptcy Act 1914 and section 663(4) of the Companies Act 1985. The powers are exercisable in each case by the Lord Chancellor with the sanction of the Treasury.

### **5. Extent**

This instrument applies to England and Wales.

## **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, was intended to be simpler, fairer and more transparent regime required 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 At that time, it was decided that creditors would meet certain of the case administration costs of the official receiver. However, from 1 April 2007, the application of the principles referred to requires that the cost of investigating the affairs of bankrupts and bodies in liquidation by the official receiver should be a cost matched by income. The Order therefore provides for an increase, which is broadly in line with inflation, in the administration fee charged to the estates of bankrupts and companies in liquidation.

7.3 As to the fees relating to “old cases”, which are being abolished on the commencement date, these fees were continued for so long as it was thought necessary to discharge the cost of completing such cases. However, a surplus had begun to accumulate, and they were accordingly reduced on 1 April 2006. Although the income from the fees was also available to cross subsidise current cases, they are being revoked completely in accordance with the requirement to match income to costs.

7.4 Similar considerations have been applied to the fee for registration of individual voluntary arrangements where there has been a reduction in the cost of administering this part of the insolvency register. The fee is reduced by the Order from £15 to £10 so as to ensure compliance with the Treasury Fees and Charges Guide requiring income to match costs.

7.5 In the calculation of the percentage case administration fee payable to the Secretary of State relating to bankruptcies, paragraph 1(1) of Schedule 2 of the Principal Order requires certain items to be taken into account in order to reach a figure to which the percentage is to be applied. The aggregate of the items to be taken into account make up the bankruptcy ceiling beyond the level of which the percentage is not to be applied. Amongst the matters to be taken into account is the statutory interest payable under section 328(4) of the Insolvency Act 1986 on preferential debts but not the interest payable on certain bankruptcy debts which arise from credit afforded to the bankrupt by a spouse or civil partner of his, payable under section 329(2)(b) of the same Act. This was simply an oversight that is corrected by the Order. The impact of the change is likely to be very limited because it will only apply to those cases

where debts are paid in full and only where the payments in full include a payment in respect of credit provided by a bankrupt's spouse or civil partner.

7.6 All the other increases referred to in paragraph 2.4 above are increases in fees applied in accordance with the principles referred to above, that costs should be matched by income, and which are accordingly increases in line with inflation.

## **8. Impact**

No Regulatory Impact Assessment has been prepared for this Order.

## **9. Contact**

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