

2003 No. 3363

INSOLVENCY

COMPANIES, ENGLAND AND WALES

INDIVIDUALS, ENGLAND AND WALES

INSOLVENCY PRACTITIONERS

**The Insolvency Practitioners and Insolvency Services Account
(Fees) Order 2003**

<i>Made</i> - - - -	<i>30th December 2003</i>
<i>Laid before Parliament</i>	<i>5th January 2004</i>
<i>Coming into force</i> - -	<i>Article 2(3) 30th January 2004</i>
<i>All other provisions</i>	<i>1st April 2004</i>

The Secretary of State, in exercise of the powers conferred upon her by section 415A of the Insolvency Act 1986(a) hereby makes the following Order:

Citation, Commencement, Interpretation and Extent

1.—(1) This Order may be cited as the Insolvency Practitioners and Insolvency Services Account (Fees) Order 2003 and shall come into force on 1st April 2004 (“the principal commencement date”) except for Article 2(3) which shall come into force on 30th January 2004.

(2) In this Order any reference to a numbered section is to the section so numbered in the Insolvency Act 1986.

(3) All the provisions of this Order except Article 5 and the Schedule to this Order extend to England and Wales and Scotland and Article 5 and the Schedule to this Order extend only to England and Wales.

Fees payable in connection with the recognition of professional bodies pursuant to section 391

2.—(1) Every application by a body for recognition pursuant to section 391 shall be accompanied by a fee of £4,500.

(2) On the principal commencement date and on or before 1st April in each subsequent year there shall be paid to the Secretary of State by each body recognised pursuant to section 391 in respect of the maintenance of that body’s recognition pursuant to section 391, a fee calculated by

(a) Section 415A is inserted in to the Insolvency Act 1986 (c.45) by section 270 of the Enterprise Act 2002 (c.40).

multiplying £100 by the number of persons who as at the preceding 1st January in that year were authorised to act as insolvency practitioners by virtue of membership of that body.

(3) Each body recognised pursuant to section 391 shall on or before 31st January in each year submit to the Secretary of State a list of its members who as at 1st January in that year were authorised to act as insolvency practitioners by virtue of membership of that body.

Fees payable in connection with authorisations by the Secretary of State under section 393

3.—(1) Every person who on the principal commencement date is the holder of an authorisation to act as an insolvency practitioner granted by the Secretary of State pursuant to section 393 shall within 7 days of that date pay to the Secretary of State a fee in respect of the maintenance of that authorisation calculated in accordance with paragraph (2).

(2) The fee payable by virtue of paragraph (1) shall be calculated by multiplying £2,000 by the number of days in the period starting with the principal commencement date and ending with the date immediately before the next anniversary of the granting of the authorisation or the date of expiry of the authorisation (whichever occurs first) and dividing the result by 365.

(3) Every application made to the Secretary of State pursuant to section 392 for authorisation to act as an insolvency practitioner shall be accompanied by a fee of £2,000.

(4) Subject to paragraph (5), every person who holds an authorisation granted by the Secretary of State pursuant to section 393 to act as an insolvency practitioner shall, on each anniversary of the granting of that authorisation when it is in force, pay to the Secretary of State in connection with the maintenance of that authorisation a fee of £2,000.

(5) Where on the relevant anniversary the authorisation mentioned in paragraph (4) has less than a year to run, the fee shall be calculated by multiplying £2,000 by the number of days that the authorisation has to run (starting with the day of the anniversary) and dividing the result by 365.

Transitional cases – early applications for authorisation

4.—(1) This article applies to an application made to the Secretary of State pursuant to section 392 for the granting of an authorisation to act as an insolvency practitioner—

- (a) where the applicant was as at the date of its making the holder of an authorisation granted pursuant to section 393;
- (b) where the application was made—
 - (i) after the date of the making of this Order but before the principal commencement date; and
 - (ii) more than three months before the expiry of the authorisation mentioned in subparagraph (a); and
- (c) in respect of which as at the principal commencement date no decision as to whether to grant or refuse it has been taken.

(2) In respect of an application to which this article applies, there shall be paid to the Secretary of State by the applicant within 7 days of the principal commencement date a fee of £1,500.

Fees payable in connection with the operation of the Insolvency Services Account

5. There shall be payable in connection with the operation of the Insolvency Services Account fees as provided for in the Schedule to this Order.

Value Added Tax

6. Where Value Added Tax is chargeable in respect of the provision of a service for which a fee is prescribed by any provision of this Order, there shall be payable in addition to that fee the amount of the Value Added Tax.

30th December 2003

Nigel Griffiths,
Parliamentary Under Secretary of State for
Small Business and Enterprise,
Department of Trade and Industry

**FEES PAYABLE IN CONNECTION WITH THE OPERATION OF
THE INSOLVENCY SERVICES ACCOUNT**

Interpretation for the purposes of the Schedule

1.—(1) In this Schedule a reference to a numbered regulation is to the regulation so numbered in the Insolvency Regulations 1994^(a)

(2) In this Schedule “payment date” means any of the following dates in any year—

- (a) 1st January;
- (b) 1st April;
- (c) 1st July; and
- (d) 1st October.

(3) Subject to paragraphs (4) and (5), for the purposes of this Schedule an account is “maintained with the Secretary of State in respect of monies which may from time to time be paid into the Insolvency Services Account” where—

- (a) in a winding up by the court or a bankruptcy the Secretary of State creates a record in relation to the winding up or, as the case may be, the bankruptcy for the purpose of recording payments into and out of the Insolvency Services Account relating to the winding up or, as the case may be, the bankruptcy; and
- (b) in a voluntary winding up on the request of the liquidator the Secretary of State creates a record in relation to the winding up for the purposes of recording payments into and out of the Insolvency Services Account relating to the winding up.

(4) An account ceases to be maintained with the Secretary of State where—

- (a) a request in writing made by the liquidator or, as the case may be, the trustee for closure of that account has been received by the Secretary of State and no monies to which that account relates are held in the Insolvency Services Account (other than any unclaimed dividends or any amount that it is impracticable to distribute to creditors); or
- (b) in the case of a winding up by the court or a bankruptcy, the liquidator or, as the case may be, the trustee has filed a final receipts and payments account with the Secretary of State pursuant to regulation 14 or regulation 28.

but an account is revived in the circumstances mentioned in paragraph (5).

(5) The circumstances referred to in paragraph (4) are—

- (a) the receipt by the Secretary of State of notice in writing given by the trustee or liquidator for the revival of the account; or
- (b) the payment into the Insolvency Services Account of any sums to the credit of the company or, as the case may be, the estate of the bankrupt,

and on the occurrence of either of the circumstances mentioned above, an account is “maintained with the Secretary of State in respect of monies which may from time to time be paid into the Insolvency Services Account”.

^(a) S.I. 1994/2507 amended by S.I. 1987/1959, S.I.1988/1739, S.I. 1990/380, S.I. 2000/485, S.I. 2001/762, S.I. 2001/3649 and S.I. 2003/1633.

(6) References to a bankruptcy include a bankruptcy under the Bankruptcy Act 1914^(a) and references to a winding up include a winding up under the provisions of the Companies Act 1985^(b).

Fees payable in connection with the operation of the Insolvency Services Account

2. Fees shall be payable in relation to the operation of the Insolvency Services Account (including payments into and out of that account) in the circumstances set out in the table below—

TABLE

<i>No. of fee</i>	<i>Description of fee and circumstances in which it is payable</i>	<i>Amount</i>
1.	<p>Banking fee; winding up by the court and bankruptcy</p> <p>Where in any bankruptcy or winding up by the court an account is maintained with the Secretary of State in respect of monies which may from time to time be paid into the Insolvency Services Account, there shall be payable out of the estate of the bankrupt or, as the case may be, the assets of the company on each payment date where the liquidator or the trustee is not the official receiver, a fee of—</p>	£15
2.	<p>Banking fee; voluntary winding up</p> <p>Where in a voluntary winding up an account is maintained with the Secretary of State in respect of monies which may from time to time be paid into the Insolvency Services Account there shall be payable out of the assets of the company on each payment date a fee of—</p>	£20
3.	<p>Cheque etc. issue fee</p> <p>Where a cheque, money order or payable order in respect of monies in the Insolvency Services Account is issued or reissued on the application of—</p> <p>(a) a liquidator pursuant to regulations 7 or 8;</p> <p>(b) a trustee pursuant to regulations 22 or 23; or</p> <p>(c) any person claiming any monies in that account pursuant to regulation 32,</p> <p>there shall be payable out of the assets of the company, the estate of the bankrupt or, as the case may be, by the claimant—</p> <p>(i) where the application is made before principal commencement date, a fee in respect of that cheque, money order or payable order of—</p> <p>(ii) where the application is made on or after the principal commencement date, a fee in respect of that cheque, money order or payable order of—</p>	£0.65 £0.80

(a) 1914 c. 59.
(b) 1985 c. 6.

4.

BACs etc. fee

On the making or remaking through the Bankers Automated Clearing System or any other electronic funds system of a transfer in respect of funds held in the Insolvency Services Account on an application made after the principal commencement date by—

- (a) a liquidator pursuant to regulations 7 or 8;
- (b) a trustee pursuant to regulations 22 or 23; or
- (c) any person claiming pursuant to regulation 32 any monies held in the Insolvency Services Account,

there shall be payable out of the assets of the company, the estate of the bankrupt or, as the case may be, by the claimant a fee in respect of that transfer of—

£0.15

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in relation to the payment of fees in relation to the authorisation of insolvency practitioners and the operation of the Insolvency Services Account. Section 415A under which this Order is made was inserted into the Insolvency Act 1986 by section 270 of the Enterprise Act 2002. Copies of the regulatory impact assessment for this Act are available from the Policy Unit, The Insolvency Service 21 Bloomsbury Street, London, WC1B 3QW.

Article 2 of the Order makes provision for the payment of fees by bodies seeking recognition pursuant to section 391 and by bodies recognised pursuant to section 391 of the Insolvency Act 1986 in respect of the maintenance of their recognition under that section.

Article 3(3) of the order makes provision for the payment of a fee in respect of an application pursuant to section 392 of the Insolvency Act 1986 for an authorisation to act as insolvency practitioner. The fee to accompany an application for authorisation to act as an insolvency practitioner is prior to the coming into force of this Order £100. This fee has remained at its current level for over 12 years. The level of the fee no longer covers the costs associated with the processing of applications and it was accordingly decided that it should be raised to £2,000 to cover the costs associated with deciding applications for authorisation. This fee is roughly comparable with the fees charged to members by bodies recognised pursuant to section 391. Article 3 also makes provision for the payment of fees in respect of the maintenance of authorisations granted pursuant to section 393. Articles 3(1) and 3(2) make provision for the payment of fees by persons who are holders of an authorisation on the principal commencement date in respect of the maintenance of those authorisations. A fee is introduced by Article 3(4) which is charged on each anniversary of the granting of an authorisation to act as an insolvency practitioner whilst that the authorisation remains in force. This fee is designed to recover the costs associated with the monitoring of insolvency practitioners authorised by the Secretary of State including the making of monitoring visits and the handling of complaints. Monitoring visits are made on a regular basis by the Insolvency Practitioners Unit of the Insolvency Service. The Unit carries out checks to ensure that those authorised to act as insolvency practitioners by the Secretary of State continue to be fit and proper to hold an authorisation. Article 3(5) makes provision for reduction of the fee in respect of the maintenance of the authorisation in cases where the authorisation has less than a year to run. Article 4 makes provision to charge fees in respect of applications for authorisations made before 1st April 2004 which are made to avoid payment of the new fees.

Article 5 and the Schedule to this Order make provision for the payment of fees in relation to the holding with the Secretary of State of an account relating to monies held in the Insolvency Services Account in liquidations and bankruptcies. Provision is also made for the payment of fees in relation to the issue of cheques and other instruments and the making of electronic transfers of funds held in the Insolvency Services Account. Article 6 of the Order makes provision for the payment of VAT where this is payable on fees.

STATUTORY INSTRUMENTS

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