
STATUTORY RULES OF NORTHERN IRELAND

2003 No. 357

INSOLVENCY

The Insolvent Companies (Reports on Conduct of Directors) Rules (Northern Ireland) 2003

Made - - - - 27th July 2003

To be laid before Parliament

Coming into operation 5th September 2003

The Lord Chancellor, in exercise of the powers conferred on him by Article 359 of the Insolvency (Northern Ireland) Order 1989⁽¹⁾ and Article 24(1) of the Company Directors Disqualification (Northern Ireland) Order 2002⁽²⁾, and of all other powers enabling him in that behalf, with the concurrence of the Department of Enterprise, Trade and Investment⁽³⁾, and after consulting the committee existing for that purpose under Article 360 of the Insolvency (Northern Ireland) Order 1989, hereby makes the following Rules:

Citation and commencement

1.—(1) These Rules may be cited as the Insolvent Companies (Reports on Conduct of Directors) Rules (Northern Ireland) 2003.

(2) These Rules shall come into operation on 5th September 2003.

Interpretation

2. In these Rules –

“the commencement date” means 5th September 2003;

“the Department” means the Department of Enterprise, Trade and Investment;

“the former Rules” means the Insolvent Companies (Reports on Conduct of Directors) Rules (Northern Ireland) 1997⁽⁴⁾; and

“the Order” means the Company Directors Disqualification (Northern Ireland) Order 2002.

(1) S.I. 1989/2405 (N.I. 19)

(2) S.I. 2002/3150 (N.I. 4)

(3) Formerly the Department of Economic Development; *see* S.I. 1999/283 (N.I. 1)

(4) S.R. 1997 No. 516

Revocation

3. Subject to rule 8, the former Rules are hereby revoked.

Reports required under Article 10(4) of the Order

4.—(1) This rule applies to any report made to the Department under Article 10(4) of the Order by –

- (a) the liquidator of a company which passes a resolution for voluntary winding up on or after the commencement date;
- (b) an administrative receiver of a company appointed on or after the commencement date; or
- (c) the administrator of a company in relation to which the High Court makes an administration order on or after the commencement date.

(2) Such a report shall be made in the Form D1 set out in the Schedule, or in a form which is substantially similar, and in the manner and to the extent required by the Form D1.

Return by the office-holder

5.—(1) This rule applies where it appears to a liquidator of a company as mentioned in rule 4(1)(a), to an administrative receiver as mentioned in rule 4(1)(b), or to an administrator as mentioned in rule 4(1)(c) (each of whom is in this rule referred to as “an office-holder”) that the company has at any time become insolvent within the meaning of Article 9(2) of the Order.

(2) Subject to paragraphs (3) to (6) there may be furnished to the Department by an office-holder at any time during the period of 6 months from the relevant date (defined in paragraph (4)) a return with respect to every person who –

- (a) was, on the relevant date, a director or shadow director of the company, or
- (b) had been a director or shadow director of the company at any time in the 3 years immediately preceding that date.

(3) The return shall be made in the Form D2 set out in the Schedule, or in a form which is substantially similar, and in the manner and to the extent required by the Form D2.

(4) For the purposes of this rule, “the relevant date” means –

- (a) in the case of a company in creditors' voluntary winding up (there having been no declaration of solvency by the directors under Article 75 of the Insolvency (Northern Ireland) Order 1989), the date of the passing of the resolution for voluntary winding up,
- (b) in the case of a company in members' voluntary winding up, the date on which the liquidator forms the opinion that, at the time when the company went into liquidation, its assets were insufficient for the payment of its debts and other liabilities and the expenses of winding up,
- (c) in the case of the administrative receiver, the date of his appointment,
- (d) in the case of the administrator, the date of the administration order made in relation to the company,

and for the purposes of sub-paragraph (c) the only appointment of an administrative receiver to be taken into account in determining the relevant date shall be that appointment which is not that of a successor in office to an administrative receiver who has vacated office either by death or pursuant to Article 55 of the Insolvency (Northern Ireland) Order 1989.

(5) Subject to paragraph (6), it shall be the duty of an office-holder to furnish a return complying with the provisions of paragraphs (3) and (4) to the Department –

- (a) where he is in office in relation to the company on the day one week before the expiry of the period of 6 months from the relevant date, not later than the expiry of such period;
 - (b) where he vacates office (otherwise than by death) before the day one week before the expiry of the period of 6 months from the relevant date, within 14 days after his vacation of office except where he has furnished such a return on or prior to the day one week before the expiry of such period.
- (6) A return need not be provided under this rule by an office-holder if he has, whilst holding that office in relation to the company, since the relevant date, made a report under rule 4 with respect to all persons falling within paragraph (2) of this rule and (apart from this paragraph) required to be the subject of a return.
- (7) If an office-holder without reasonable excuse fails to comply with the duty imposed by paragraph (5), he is guilty of an offence and –
- (a) on summary conviction of the offence, is liable to a fine not exceeding level 3 on the standard scale, and
 - (b) after continued contravention, is liable to a daily default fine; that is to say, he is liable on a second or subsequent summary conviction of the offence to a fine of one-tenth of level 3 on the standard scale for each day on which the contravention is continued (instead of the penalty specified in sub-paragraph (a)).
- (8) Article 374 of the Insolvency (Northern Ireland) Order 1989 (summary proceedings) has effect in relation to an offence under this rule as to offences under Parts II to VII of that Order.

Forms

6. The forms referred to in rule 4(2) and rule 5(3) shall be used with such variations, if any, as the circumstances may require.

Enforcement of Article 10(5)

7.—(1) This rule applies where under Article 10(5) (power to call on liquidators, former liquidators and others to provide information) the Department or the official receiver requires or has required a person –

- (a) to furnish the Department or the official receiver, as the case may be, with information with respect to a person's conduct as director or shadow director of a company, and
- (b) to produce and permit inspection of relevant books, papers and other records.

(2) On the application of the Department or (as the case may be) the official receiver, the High Court may make an order directing compliance within such period as may be specified.

(3) The Rules of the Supreme Court (Northern Ireland) 1980(5) and the practice of the High Court apply to applications under this rule, with any necessary modifications.

(4) The High Court's order may provide that all costs of and incidental to the application shall be borne by the person to whom the order is directed.

Transitional and saving provisions

8.—(1) Subject to paragraph (2), rules 4 and 5 of the former Rules shall continue to apply as if the former Rules had not been revoked when any of the events mentioned in sub-paragraphs (a), (b) or (c) of rule 4(1) of the former Rules (passing of resolution for voluntary winding up, appointment

(5) S.R. 1980 No. 346; the relevant amending instruments are S.R. 1981 No. 224; S.R. 1983 No. 5; S.R. 1983 No. 114; S.R. 1984 No. 110; S.R. 1986 No. 203; S.R. 1991 No. 232; S.R. 1993 No. 143; and S.R. 2001 No. 254

of administrative receiver, making of administration order) occurred on or after 1st January 1998 but before the commencement date.

(2) Until 5th December 2003 –

(a) the forms contained in the Schedule to the former Rules which were required to be used for the purpose of complying with those Rules, or

(b) the Form D1 or D2 as set out in the Schedule, as appropriate, or a form which is substantially similar thereto, with such variations, if any, as the circumstances may require,

may be used for the purpose of complying with rules 4 and 5 of the former Rules as applied by paragraph (1); but after that date the forms mentioned in sub-paragraph (b) shall be used for that purpose.

(3) When a period referred to in rule 7(2) of the former Rules is current immediately before the commencement date, these Rules have effect as if rule 7(2) of these Rules had been in operation when the period began and the period is deemed to expire whenever it would have expired if these Rules had not been made and any right, obligation or power dependent on the beginning, duration or end of such period shall be under rule 7(2) of these Rules as it was or would have been under the said rule 7(2) of the former Rules.

Dated 27th July 2003

Falconer of Thoroton, C.

The Department of Enterprise, Trade and Investment hereby concurs with the foregoing Rules.
Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 30th July 2003.

L.S.

Michael J. Bohill
Senior Officer of the
Department of Enterprise, Trade and Investment

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SCHEDULE

Rules 4(2) and 5(3)

SCHEDULE

Rules 4(2) and 5(3)

D1: Full Report

REPORT UNDER ARTICLE 10(4) OF THE COMPANY DIRECTORS DISQUALIFICATION (NORTHERN IRELAND) ORDER 2002

Please refer to the guidance notes issued by the Insolvency Service

Name of company:

Please provide the following information:

Section 1: Office-Holder

1. Name of the Office-Holder(s):	_____

2. Name of the Firm and Address of the Office-Holder(s):	_____

3. I am reporting as (Tick as appropriate):	
Liquidator in a voluntary liquidation	<input type="checkbox"/>
Administrative Receiver	<input type="checkbox"/>
Administrator	<input type="checkbox"/>
4. Date of Appointment:	_____
5. Relevant Date: (see Rule 5(4) of the Insolvent Companies (Reports on Conduct of Directors) Rules (NI) 2003)	_____

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D1 Section 2: Company

6. Name of the Company: (Please include details of all registered and trading names which the company has used in the last two years)	_____

7. Company Registered Number:	_____
8. Current Registered Office Address:	_____

9. Any other registered office in the six months prior to your appointment as administrative receiver, the date of the administration order or the date of the resolution for voluntary winding up:	_____

10. Principal Trading Address(es):	_____

11. Nature of the Company's Business:	_____

12. Date of Incorporation:	_____
13. Period of Trading: (give month and year)	FROM: _____ TO: _____
14. Details of any other administrative receivership, voluntary liquidation or administration in relation to the Company (stating type, name of office-holder(s), date of appointment and (if appropriate) date of resolution(s) for voluntary winding up):	_____

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D1 Section 3: Company Directors

15. The persons listed below were to the best of my knowledge and belief all the persons who were directors or shadow directors of the company during the three years prior to the insolvency.

Full name (including other known names) and current or last known address	Date of Birth	Tick if Shadow Director	Occupation, Trade or Profession	Director's Duties in the Company	Period as Director		*See note below
					From	To	

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* Please indicate, by a tick in column 8, whether you think that the persons listed are unfit to be concerned in the management of a company. Please ensure that you complete question 16 for each director/shadow director indicated as being unfit.

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D1 Section 4: Unfit Conduct

Please complete a separate table for each director upon whom you are reporting

16. Using the Table below, please list those matters of unfitness which, in your opinion, make the Director/Shadow Director unfit to be concerned in the management of a company. Alternatively, if you have already prepared a short report which details this, attach a copy and summarise your findings below.

NOTE: Before completing the table you should read Article 9(1) and Schedule 1 of the Company Directors Disqualification (Northern Ireland) Order 2002 and the Insolvency Service's Guidance Notes (GN 8).

Name of Director _____

Details of Unfit Conduct	Nature of Supporting Evidence

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D1 Section 5: Connected Companies

16(a) Other Companies of which any Director is or was also a Director/ Shadow Director during the 3 years before the date of the Insolvency.

Name of Company	Registered No.	Jurisdiction in which registered*	Name of Director

16(b) Other connected Companies with which the company has had any dealings (if none known, write "None Known").

Name of Company	Registered No.	Jurisdiction in which registered*

16(c) Other Companies not listed at Q16(a) or (b) above with which the Director may have had an association which you think may be relevant to the consideration of his/her conduct.

Name of Company	Registered No.	Jurisdiction in which registered*	Name of Director	Nature of the association

*ie Northern Ireland or England & Wales or Scotland

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D1 Section 6: Statement of Affairs, Accounts and Report to Creditors

Statement of Affairs

17. Please enclose a copy of the Statement of Affairs.

If a copy is not enclosed, please state why not and attach details of the known assets and liabilities of the company.

18. If there is a material difference between the Statement of Affairs and the expected final position, please provide details of the amount and the reason for any discrepancy.

Accounts

19. Please enclose a copy of the last 3 sets of the Company's full Financial Accounts and any subsequent draft or management accounts.

If none are enclosed, please state why not:
(eg None prepared, none in your possession, etc.)

Reports to Creditors

20. Please enclose a copy of the Report to Creditors.

If you are not able to provide a copy of the report to creditors, please attach a report setting out the company's history.

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D1 Section 7: Other Proceedings and Other Matters

21. Give brief details of any civil or criminal proceedings in relation to the Company taken or likely to be taken against any director.

22. Are there any other relevant matters? (e.g. Ill-health, personal guarantees, individual voluntary arrangement, bankruptcy, etc.)

Yes No

If yes, please give brief details.

The details given in this form are correct to the best of my knowledge, information and belief.

Signature: _____

Date: _____

Please ensure that copies of the following are attached:

- (a) Statement of affairs (or details of assets and liabilities);
- (b) Last 3 sets of full financial accounts and draft or management accounts subsequently prepared, if any;
- (c) Report to creditors (or report detailing the company's history); and
- (d) Questionnaire(s), if any, completed by director(s).

On completion please return to:

**The Insolvency Service
Directors Disqualification Unit
Fermanagh House
Ormeau Avenue
BELFAST
BT2 8NJ**

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D2 Interim Return	<input type="checkbox"/>
Final Return	<input type="checkbox"/>
Tick as appropriate	

RETURN BY OFFICE-HOLDER UNDER RULE 5 OF THE INSOLVENT COMPANIES
(REPORTS ON CONDUCT OF DIRECTORS) RULES (NORTHERN IRELAND) 2003

Please refer to the guidance notes issued by the Insolvency Service

Name of company:

Please provide the following information:

D2 Section 1: Office-Holder

1. Name of the Office-Holder(s):	_____

2. Name of the Firm and Address of the Office-Holder(s):	_____

3. I am reporting as (Tick as appropriate):	
Liquidator in a voluntary liquidation	<input type="checkbox"/>
Administrative Receiver	<input type="checkbox"/>
Administrator	<input type="checkbox"/>
4. Date of Appointment:	_____
5. Relevant Date: (see Rule 5(4) of the Insolvent Companies (Reports on Conduct of Directors) Rules (NI) 2003)	_____

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D2 Section 2: Company

6. Name of the Company: (Please include details of all registered and trading names which the company has used in the last two years)	_____
7. Company Registered Number:	_____
8. Current Registered Office Address:	_____ _____ _____
9. Principal Trading Address(es):	_____ _____ _____
10. Nature of the Company's Business:	_____ _____ _____
11. Date of Incorporation:	_____ _____ _____
12. Period of Trading: (give month and year)	FROM: _____ TO: _____
13. Details of any other administrative receivership, voluntary liquidation or administration in relation to the Company (stating type, name of office-holder(s) and date of appointment):	_____ _____ _____ _____
14. Names of any other connected Companies with which the Company had any dealings (include registered number and jurisdiction in which registered, if known) (if you are not aware of any other connected companies, write " None Known "):	_____ _____ _____ _____

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D2 Section 3: Company Directors

15. The persons listed below were to the best of my knowledge and belief all the persons who were directors or shadow directors of the company during the three years prior to the insolvency.

Full name (including other known names) and current or last known address	Date of Birth	Tick if Shadow Director	Occupation, Trade or Profession	Director's Duties in the Company	Period as Director	
					From	To

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D2 Section 4: Interim/Final Return

16. If you are submitting an **interim return**, complete (a) and delete (b)

OR

If you are submitting a **final return**, delete (a).

(a) No report or final return has yet been submitted because:
(Please state reasons e.g. "the company's affairs are still being examined" or "sufficient information is not yet to hand".)

A report or final return is expected to be submitted by:

_____ month _____ year

(b) At the date of this return, I have not become aware of any matters which would require me to make a report under Article 10(4) of the Company Directors Disqualification (Northern Ireland) Order 2002.

Note: please ensure that you have deleted either (a) or (b)

The details given in this Form are correct to the best of my knowledge, information and belief.

Signature: _____

Date: _____

On completion please return to:

**The Insolvency Service
Directors Disqualification Unit
Fermanagh House
Ormeau Avenue
BELFAST
BT2 8NJ**

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EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules revoke and replace the Insolvent Companies (Reports on Conduct of Directors) Rules (Northern Ireland) 1997 (S.R. 1997 No. 516) (“the 1997 Rules”) subject to transitional and saving provisions.

The Rules make provision for the manner in which a voluntary liquidator, administrative receiver or administrator of a company, (“the office-holder”), is to make a report to the Department of Enterprise, Trade and Investment (“the Department”), under Article 10(4) of the Company Directors Disqualification (Northern Ireland) Order 2002 (“the Order”) in relation to any person who has been a director or shadow director of an insolvent company and whose conduct appears to the office-holder to be such that he is unfit to be concerned in the management of a company. The Rules also provide for returns to be made to the Department by office-holders, in respect of directors or shadow directors of an insolvent company, where a report has not already been made in respect of such persons under Article 10(4) of the Order.

Rules 4 and 5 apply in respect of reports and returns to be made where the relevant insolvency proceedings have commenced (that is, when one of the following events has occurred: the company has passed a resolution for it to be voluntarily wound up; an administrative receiver has been appointed; or an administration order has been made), on or after 5th September 2003.

Rule 4, taken with rule 6, provides that reports under Article 10(4) of the Order should be made in Form D1 set out in the Schedule or in a substantially similar form, with any necessary variations.

Rule 5, taken with rule 6, provides for a return to be made in Form D2 set out in the Schedule or in a substantially similar form, with any necessary variations, in relation to every person who has been a director or shadow director of an insolvent company on, or within the three years prior to, the commencement of the relevant insolvency proceedings. The return is required to be made by the office-holder in office one week before the end of six months after the commencement of those insolvency proceedings, and by an office-holder who vacates office during that period, except where he has made a report under rule 4 covering every such person.

Rule 7 enables the Department or the official receiver to apply to the High Court to enforce compliance by the office-holder with a requirement under Article 10(5) of the Order to furnish information and books, papers and other records relevant to the conduct of a person as a director.

Rule 8 contains transitional and saving provisions under which rules 4 and 5 of the 1997 Rules (which made provision for purposes similar to those for which rules 4 and 5 of these Rules provide) remain in operation, with modifications relating to the forms to be used, for cases where the relevant insolvency proceedings commenced on or after 1st January 1998 and before 5th September 2003.

By virtue of the operation of Article 25 of the Order, the Order applies to incorporated friendly societies within the meaning of the Friendly Societies Act 1992 (c. 40) as it applies to companies and these rules apply similarly.

By virtue of the definition of “company” given in Article 2 of the Order, the Order applies to building societies within the meaning of the Building Societies Act 1986 (c. 53) and these rules apply similarly.