
STATUTORY INSTRUMENTS

1996 No. 1909

**INSOLVENCY
COMPANIES**

**The Insolvent Companies (Reports
on Conduct of Directors) Rules 1996**

Made - - - - 22nd July 1996
Laid before Parliament 24th July 1996
Coming into force - - 30th September 1996

The Lord Chancellor, in exercise of the powers conferred on him by section 411 of the Insolvency Act 1986(1) and section 21(2) of the Company Directors Disqualification Act 1986(2), and of all other powers enabling him in that behalf, with the concurrence of the Secretary of State, and after consulting the committee existing for that purpose under section 413 of the Insolvency Act 1986, hereby makes the following Rules:—

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Insolvent Companies (Reports on Conduct of Directors) Rules 1996.

(2) These Rules shall come into force on 30th September 1996.

(3) In these Rules—

“the Act” means the Company Directors Disqualification Act 1986;

“the former Rules” means the Insolvent Companies (Reports on Conduct of Directors) No. 2 Rules 1986(3); and

“the commencement date” means 30th September 1996.

Revocation

2. Subject to rule 7 below, the former Rules are hereby revoked.

(1) 1986 c. 45.

(2) 1986 c. 46; the amendment to section 21(2) made by the Companies Act 1989 (c. 40) is not relevant for the purposes of these Rules.

(3) S.I. 1986/2134.

Reports required under section 7(3) of the Act

3.—(1) This rule applies to any report made to the Secretary of State under section 7(3) of the Act by:—

- (a) the liquidator of a company which the courts in England and Wales have jurisdiction to wind up which passes a resolution for voluntary winding up on or after the commencement date;
- (b) an administrative receiver of a company appointed otherwise than under section 51 of the Insolvency Act 1986 (power to appoint receiver under the law of Scotland) on or after the commencement date; or
- (c) the administrator of a company which the courts in England and Wales have jurisdiction to wind up in relation to which the 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 hereto, or in a form which is substantially similar, and in the manner and to the extent required by the Form D1.

Return by office-holder

4.—(1) This rule applies where it appears to a liquidator of a company as mentioned in rule 3(1)(a), to an administrative receiver as mentioned in rule 3(1)(b), or to an administrator as mentioned in rule 3(1)(c) (each of whom is referred to hereinafter as “an office-holder”) that the company has at any time become insolvent within the meaning of section 6(2) of the Act.

(2) Subject as follows there may be furnished to the Secretary of State by an office-holder at any time during the period of 6 months from the relevant date (defined in paragraph (4) below) 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 hereto, 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 section 89 of the Insolvency Act 1986), 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) above 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 section 45 of the Insolvency Act 1986.

(5) Subject to paragraph (6) below, it shall be the duty of an office-holder to furnish a return complying with the provisions of paragraphs (3) and (4) of this rule to the Secretary of State:—

- (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 3 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) of this rule, 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) Section 431 of the Insolvency Act 1986 (summary proceedings), as it applies to England and Wales, has effect in relation to an offence under this rule as to offences under Parts I to VII of that Act.

Forms

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

Enforcement of section 7(4)

6.—(1) This rule applies where under section 7(4) of the Act (power to call on liquidators, former liquidators and others to provide information) the Secretary of State or the official receiver requires or has required a person:—

- (a) to furnish him 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 Secretary of State or (as the case may be) the official receiver, the court may make an order directing compliance within such period as may be specified.

(3) The 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

7.—(1) Subject to paragraph (2) below, rules 3 and 4 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 3(1) of the former Rules (passing of resolution for voluntary winding up, appointment of administrative receiver, making of administration order) occurred on or after 29th December 1986 but before the commencement date.

(2) Until 31st December 1996—

- (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

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(b) the Form D1 or D2 as set out in the Schedule to these Rules, 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 3 and 4 of the former Rules as applied by paragraph (1) above; but after that date the forms mentioned in sub-paragraph (b) of this paragraph shall be used for that purpose.

(3) When a period referred to in rule 5(2) of the former Rules is current immediately before the commencement date, these Rules have effect as if rule 6(2) of these Rules had been in force 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 6(2) of these Rules as it was or would have been under the said rule 5(2).

(4) The provisions of this rule are to be without prejudice to the operation of section 16 of the Interpretation Act 1978(4) (saving from repeals) as it is applied by section 23 of that Act.

17th July 1996

Mackay of Clashfern, C.

I concur, on behalf of the Secretary of State

Phillip Oppenheim,
Parliamentary Under Secretary of State for
Company Affairs,
Department of Trade and Industry

22nd July 1996

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SCHEDULE

Rules 3(2), 4(3) and 7(2)

FORMS

SCHEDULE

Rules 3(2), 4(3) and 7(2)

FORMS

D1: FULL REPORT

**REPORT UNDER SECTION 7(3) OF THE COMPANY DIRECTORS
DISQUALIFICATION ACT 1986.**

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. ARE YOU REPORTING AS:

LIQUIDATOR IN A VOLUNTARY LIQUIDATION

ADMINISTRATIVE RECEIVER

ADMINISTRATOR?
(Tick as appropriate.)

4. DATE OF APPOINTMENT:

5. NAME OF THE MEMBER OF YOUR STAFF WITH DAY TO DAY RESPONSIBILITY
FOR THE CASE:

TEL NO:

FAX NO:

POSITION:

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D1 SECTION 2: COMPANY

6. **NAME OF THE COMPANY:** (Please include details of all registered names and trading styles of the company 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. **WHEN DID THE COMPANY COMMENCE TO TRADE?**
(Please state month and year if commencement was within the last five years, or year only if before that.)

12. **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.)

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D1 SECTION 3: COMPANY DIRECTORS

13. PLEASE COMPLETE A BOX, AS SET OUT BELOW, FOR:

- (A) Any person who appears to you to be or have been a director(a) or shadow director of the company whose conduct, either considered in relation to this company alone or taken together with conduct as a director of any other company, makes him unfit to be concerned in the management of a company. Details of the conduct leading you to this view should be set out in the answer to question 15; and
- (B) Any other person who appears to you to have been a director(a) or shadow director of the company at the relevant date(b) or at any time in the three years before that date.

ADDITIONAL COPIES OF THIS SECTION SHOULD BE USED AS APPROPRIATE.

a. FULL NAME: (Including other known names.)

b. CURRENT OR LAST KNOWN ADDRESS:

c. DATE OF BIRTH:
(Important for identification purposes at Companies House.)

d. OCCUPATION, TRADE OR PROFESSION:

e. BRIEFLY, WHAT WERE THE DIRECTOR'S DUTIES IN THE COMPANY?

f. IS THIS A PERSON WHOSE CONDUCT MAKES IT APPEAR TO YOU THAT HE IS UNFIT (as described in paragraph 13(A) above)? YES NO
If yes, please answer both parts of question 15.

g. PERIOD AS DIRECTOR – FROM: TO:

a. FULL NAME: (Including other known names.)

b. CURRENT OR LAST KNOWN ADDRESS:

c. DATE OF BIRTH:
(Important for identification purposes at Companies House.)

d. OCCUPATION, TRADE OR PROFESSION:

e. BRIEFLY, WHAT WERE THE DIRECTOR'S DUTIES IN THE COMPANY?

f. IS THIS A PERSON WHOSE CONDUCT MAKES IT APPEAR TO YOU THAT HE IS UNFIT (as described in paragraph 13(A) above)? YES NO
If yes, please answer both parts of question 15.

g. PERIOD AS DIRECTOR – FROM: TO:

Please note:

- (a) "DIRECTOR" includes any person occupying the position of director, by whatever name called; and
- (b) "THE RELEVANT DATE" has the same meaning as in rule 4(4) of the Insolvent Companies (Reports on Conduct of Directors) Rules 1996.

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D1 SECTION 4: CONNECTED COMPANIES

14. PLEASE GIVE DETAILS OF ANY OTHER COMPANY WITH WHICH THE DIRECTOR(S), IN RESPECT OF WHOM YOU HAVE ANSWERED YES AT QUESTION 13f, MAY HAVE HAD AN INVOLVEMENT WHICH YOU CONSIDER MAY BE RELEVANT TO THE CONSIDERATION OF HIS OR THEIR CONDUCT:

COMPANY NAME	COMPANY REGISTERED NUMBER	INFORMATION WHICH MAY BE RELEVANT

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D1 SECTION 5: UNFIT CONDUCT

15a. PLEASE GIVE DETAILS (ATTACHING ADDITIONAL PAGES IF NECESSARY) OF THE CONDUCT OF THE DIRECTOR(S) WHICH MAKES IT APPEAR TO YOU THAT THE CONDITIONS OF SECTION 6(1) OF THE COMPANY DIRECTORS DISQUALIFICATION ACT 1986 ARE SATISFIED. PARTICULAR REGARD SHOULD BE PAID TO THOSE MATTERS CONTAINED IN SCHEDULE 1 TO THAT ACT. PLEASE ALSO REFER TO THE GUIDANCE NOTES ISSUED BY THE INSOLVENCY SERVICE.

PLEASE USE THE FORMAT BELOW TO PROVIDE DETAILS OF THE CONDUCT OF EACH DIRECTOR WHICH MAKES IT APPEAR TO YOU THAT THE DIRECTOR IS UNFIT AS DESCRIBED IN PARAGRAPH 13(A) ABOVE. ALTERNATIVELY, IF YOU HAVE ALREADY PREPARED A REPORT WHICH DETAILS THIS, ATTACH A COPY AND SUMMARISE YOUR FINDINGS BELOW.

DETAILS OF UNFIT CONDUCT	NAME OF DIRECTOR(S) AND NATURE OF SUPPORTING EVIDENCE

b. ARE THERE ANY OTHER RELEVANT MATTERS? (e.g. Ill health, personal guarantees, individual voluntary arrangement, bankruptcy, etc.)
If yes, please give brief details.

YES NO

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D1 SECTION 6: STATEMENT OF AFFAIRS, ACCOUNTS AND REPORT TO CREDITORS

STATEMENT OF AFFAIRS

16. PLEASE ATTACH A COPY OF THE STATEMENT OF AFFAIRS TO THIS FORM.

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

17. 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

18. PLEASE ATTACH TO THIS FORM A COPY OF THE LAST TWO SETS OF THE AUDITED ACCOUNTS OF THE COMPANY AND ANY DRAFT OR MANAGEMENT ACCOUNTS PREPARED AFTER THEN.

If none are attached, please state why not:
(e.g. None prepared, none in your possession, etc.)

REPORT TO CREDITORS

19. PLEASE ATTACH A COPY OF THE REPORT TO CREDITORS TO THIS FORM.

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

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D1 SECTION 7: OTHER PROCEEDINGS

20. PLEASE PROVIDE DETAILS OF ANY ACTION COMMENCED, OR LIKELY TO BE COMMENCED, BY YOU AGAINST OFFICERS OF THE COMPANY: (e.g. for recovery of assets, wrongful trading or to enforce co-operation.)

21. ARE THERE ANY OTHER CIVIL OR CRIMINAL PROCEEDINGS IN RELATION TO THE COMPANY TAKEN OR LIKELY TO BE TAKEN AGAINST ANY DIRECTOR? (e.g. By the Police, Inland Revenue, Customs and Excise, Department of Trade and Industry, etc.)

YES NO

If yes, please provide details of those proceedings and, where relevant, the name and telephone number of the officer/official dealing with the case.

THE DETAILS GIVEN IN THIS FORM ARE CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

PLEASE SIGN THE FORM:

DATE:

PLEASE ENSURE THAT COPIES OF THE FOLLOWING ARE ATTACHED:

- a) Statement of affairs (or details of assets and liabilities);
- b) Last two sets of audited 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).

NOW SEND THE COMPLETED FORM TOGETHER WITH ENCLOSURES TO:

THE INSOLVENCY SERVICE
INSOLVENCY PRACTITIONERS CONTROL UNIT
2ND FLOOR
LADYWOOD HOUSE
45-46 STEPHENSON STREET
BIRMINGHAM B2 4UZ

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D2: INTERIM RETURN <input type="checkbox"/>
FINAL RETURN <input type="checkbox"/>
(Tick as appropriate.)

RETURN BY OFFICE-HOLDER UNDER RULE 4 OF THE INSOLVENT COMPANIES (REPORTS ON CONDUCT OF DIRECTORS) RULES 1996.

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. ARE YOU REPORTING AS:
LIQUIDATOR IN A VOLUNTARY LIQUIDATION <input type="checkbox"/>
ADMINISTRATIVE RECEIVER <input type="checkbox"/>
ADMINISTRATOR? <input type="checkbox"/>
(Tick as appropriate.)
4. DATE OF APPOINTMENT:
5. NAME OF THE MEMBER OF YOUR STAFF WITH DAY TO DAY RESPONSIBILITY FOR THE CASE:
TEL NO: FAX NO:
POSITION:

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D2 SECTION 2: COMPANY

6. **NAME OF THE COMPANY:** (Please include details of all registered names and trading styles of the company 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. **WHEN DID THE COMPANY COMMENCE TO TRADE?**
(Please state month and year if commencement was within the last five years, or year only if before that.)

12. **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.)

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D2 SECTION 3: COMPANY DIRECTORS

13. PLEASE COMPLETE A BOX, AS SET OUT BELOW, IN RESPECT OF ANY PERSON WHO APPEARS TO YOU TO HAVE BEEN A DIRECTOR(a) OR SHADOW DIRECTOR OF THE COMPANY AT THE RELEVANT DATE(b) OR AT ANY TIME IN THE THREE YEARS BEFORE THAT DATE.

ADDITIONAL COPIES OF THIS SECTION SHOULD BE USED AS APPROPRIATE.

a. FULL NAME: (Including other known names.)
b. CURRENT OR LAST KNOWN ADDRESS:
c. OCCUPATION, TRADE OR PROFESSION:
d. BRIEFLY, WHAT WERE THE DIRECTOR'S DUTIES IN THE COMPANY?
e. PERIOD AS DIRECTOR – FROM: TO:

a. FULL NAME: (Including other known names.)
b. CURRENT OR LAST KNOWN ADDRESS:
c. OCCUPATION, TRADE OR PROFESSION:
d. BRIEFLY, WHAT WERE THE DIRECTOR'S DUTIES IN THE COMPANY?
e. PERIOD AS DIRECTOR – FROM: TO:

Please note:

- (a) "DIRECTOR" includes any person occupying the position of director, by whatever name called; and
- (b) "THE RELEVANT DATE" has the same meaning as in rule 4(4) of the Insolvent Companies (Reports on Conduct of Directors) Rules 1996.

D2 SECTION 4: INTERIM/FINAL RETURN

14. AS APPROPRIATE, PLEASE EITHER:

COMPLETE **a** AND DELETE **b** (IF YOU ARE SUBMITTING AN INTERIM RETURN)

OR

DELETE **a** (IF YOU ARE SUBMITTING A FINAL RETURN)

- 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 section 7(3) of the Company Directors Disqualification Act 1986.

THE DETAILS GIVEN IN THIS FORM ARE CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

PLEASE SIGN THE FORM:

DATE:

NOW SEND THE COMPLETED FORM TO:

THE INSOLVENCY SERVICE
INSOLVENCY PRACTITIONERS CONTROL UNIT
2ND FLOOR
LADYWOOD HOUSE
45-46 STEPHENSON STREET
BIRMINGHAM B2 4UZ

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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) No. 2 Rules 1986 (S.I.1986/2134) (“the 1986 Rules”) subject to transitional and saving provisions.

The Rules make provision in relation to England and Wales 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 Secretary of State, under section 7(3) of the Company Directors Disqualification Act 1986 (“the Act”) 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 Secretary of State 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 section 7(3) of the Act.

Rules 3 and 4 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 30th September 1996.

Rule 3, taken with rule 5, provides that reports under section 7(3) of the Act should be made in Form D1 set out in the Schedule or in a substantially similar form, with any necessary variations.

Rule 4, taken with rule 5, 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 any office-holder who vacates office during that period, except where he has made a report under rule 3 covering every such person.

Rule 6 enables the Secretary of State or the official receiver to apply to the court to enforce compliance by the office-holder with a requirement under section 7(4) of the Act to furnish information and books, papers and other records relevant to the conduct of a person as a director.

Rule 7 contains transitional and saving provisions under which rules 3 and 4 of the 1986 Rules (which made provision for purposes similar to those for which rules 3 and 4 of these Rules provide) remain in force, with modifications relating to the forms to be used, for cases where the relevant insolvency proceedings commenced on or after 29th December 1986 and before 30th September 1996.

By virtue of the operation of sections 22A and 22B respectively of the Act, the Act applies to building societies within the meaning of the Building Societies Act 1986 (c. 53) and 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.

Important changes made by these Rules are that:

- (a) only one form is now prescribed for a section 7(3) report and one for a return to be made under the Rules;
- (b) every office-holder is now required by rule 4(5) to make a return to the Secretary of State in accordance with rule 4 (except where he has made a report as described under rule 4(6)).

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A Compliance Cost Assessment is available copies of which have been placed in the libraries of both Houses of Parliament. Copies are also available from The Insolvency Service of the Department of Trade and Industry, P.O. Box 203, Room 5.1, 21 Bloomsbury Street, London WC1B 3QW.