STATUTORY INSTRUMENTS

2016 No. 180

INSOLVENCY, ENGLAND AND WALES

The Insolvent Companies (Reports on Conduct of Directors) (England and Wales) Rules 2016

Made - - - -	*11th February 2016*
Laid before Parliament	*22nd February 2016*
Coming into force - -	*6th April 2016*

The Lord Chancellor has consulted the committee existing for the purposes of section 413 of the Insolvency Act 1986(**1**).

The Lord Chancellor makes the following Rules in exercise of the powers conferred by section 411(1)(a) of the Insolvency Act 1986 and section 21(2) of the Company Directors Disqualification Act 1986(**2**) with the concurrence of the Secretary of State.

Citation, extent, commencement and interpretation

1.—(1) These Rules may be cited as the Insolvent Companies (Reports on Conduct of Directors) (England and Wales) Rules 2016, and extend to England and Wales only.

(2) These Rules come into force on 6th April 2016.

(3) In these Rules—

"by electronic means" means sent initially and received at its destination by means of electronic equipment for the processing (which expression includes digital compression) or storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

"the Act" means the Company Directors Disqualification Act 1986;

"the former Rules" means the Insolvent Companies (Reports on Conduct of Directors) Rules 1996(**3**); and

"the portal" means a digital service provided by the Secretary of State for the functions of both the sending and acknowledgement of receipt, by electronic means, of reports, applications, information and notifications in accordance with these Rules.

(**1**) 1986 c.45.
(**2**) 1986 c.46.
(**3**) S.I. 1996/1909, amended by S.I. 2001/764, 2003/2096.

Revocations

2. Subject to rule 10, the following are revoked—

(a) the former Rules;

(b) the Insolvent Companies (Reports on Conduct of Directors) (Amendment) Rules 2001(**4**); and

(c) the Enterprise Act 2002 (Insolvency) Order 2003(**5**), paragraphs 68 to 70 of the Schedule.

Enforcement of section 7(4) of the Act

3.—(1) This rule applies where, for the purpose of determining whether to exercise any function under section 7 of the Act (disqualification orders under section 6: applications and acceptance of undertakings)(**6**), the Secretary of State or the official receiver requires or has required a person to—

(a) furnish the Secretary of State or (as the case may be) the official receiver with information under section 7(4)(a), or

(b) produce and permit inspection of books, papers and other records in accordance with section 7(4)(b).

(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 are to be borne by the person to whom the order is directed.

Conduct reports required to be sent under section 7A(4) of the Act

4.—(1) This rule is subject to rule 7.

(2) A conduct report required to be sent under section 7A(4) of the Act(**7**) must be sent by the office-holder(**8**) to the Secretary of State by electronic means via the portal.

(3) The Secretary of State must as soon as reasonably practicable acknowledge receipt, by electronic means via the portal, of a conduct report sent in accordance with this rule.

Applications for a longer period under section 7A(4)(b) of the Act

5.—(1) This rule is subject to rule 7.

(2) This rule applies where the particular circumstances of a case may require a period longer than that provided for by section 7A(4)(a) of the Act for the sending of a conduct report to the Secretary of State.

(3) The office-holder may apply to the Secretary of State for a longer period in which to send the report.

(4) The application must be sent by electronic means via the portal before the expiry of the period specified in section 7A(4)(a) of the Act.

(5) The application must explain the particular circumstances for the making of the application.

(6) The Secretary of State must as soon as reasonably practicable acknowledge receipt, by electronic means via the portal, of an application sent in accordance with this rule.

(**4**) S.I. 2001/764.
(**5**) S.I. 2003/2096.
(**6**) 1986 c.46; section 7(4) was amended by the Deregulation Act 2015 (c.20), Schedule 6, paragraph 11(2) to 11(4); the heading to section 7 is amended by the Small Business, Enterprise and Employment Act 2015 (c.26), section 107(4).
(**7**) Section 7A is inserted by the Small Business, Enterprise and Employment Act 2015, section 107(2).
(**8**) "Office-holder" is defined in section 7A(9) of the Act.

(7) The Secretary of State must, as soon as is reasonably practicable, notify the office-holder, by electronic means via the portal,—

(a) of the outcome of the application; and

(b) if the application is successful, of the longer period considered appropriate in the particular circumstances for the sending of the report to the Secretary of State under section 7A(4)(b) of the Act.

New information required to be sent under section 7A(5) of the Act

6.—(1) This rule is subject to rule 7.

(2) New information required to be sent under section 7A(5) of the Act must be sent by the office-holder to the Secretary of State by electronic means via the portal.

(3) The Secretary of State must as soon as reasonably practicable acknowledge receipt, by electronic means via the portal, of new information sent in accordance with this rule.

Unavailability of the portal

7.—(1) The Secretary of State—

(a) may at any time when the portal is unable to carry out one or more of its functions, and

(b) must, where the portal has been unable to carry out one or more of its functions for a period of 7 business days,

provide alternative means for complying with a requirement under rules 4, 5 or 6.

(2) The Secretary of State must give notice to office-holders specifying the means provided for the purposes of paragraph (1) and the period of time for which those means are made available.

(3) The Secretary of State may by notice vary the means provided under paragraph (1) or the period of time for which those means are made available.

(4) A notice under paragraph (3) must give office-holders at least 1 business day's notice before any variation takes effect.

(5) The time within which an office-holder must comply with rules 4, 5 or 6 does not include any day the whole or part of which forms part of a suspension period.

(6) For the purpose of paragraph (5) a suspension period is a period of time during which—

(a) the portal is unable to receive reports, applications or information;

(b) no notice under paragraph (2) or (3) is in force; and

(c) the office-holder has attempted to and been prevented from sending a report, application or information at least once during that period on the basis of sub-paragraph (a).

(7) In this rule, "business day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain.

Enforcement of rules 4 to 6

8.—(1) An office-holder who without reasonable excuse fails to comply with any of the obligations imposed by section 7A(4) or 7A(5) of the Act 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) for continued contravention, is liable to a daily default fine; that is to say, the office-holder is liable on a second or subsequent summary conviction of the offence to a fine