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

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 ☐
   - Administrative Receiver ☐
   - Administrator ☐

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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