Draft Regulations laid before the Assembly under paragraph 61A(8) of Schedule B1, to the Insolvency (Northern Ireland) Order 1989 for approval

STATUTORY RULES OF NORTHERN IRELAND

2021 No. 000

INSOLVENCY

The Administration (Restrictions on Disposal etc. to Connected Persons) Regulations (Northern Ireland) 2021

Made - - - -	*00th June 2021*
Coming into operation -	*25th June 2021*

The Department for the Economy(**a**) makes the following Regulations in exercise of the powers conferred by paragraph 61A(1), (2) and (7) of Schedule B1 to the Insolvency (Northern Ireland) Order 1989(**b**).

PART 1

Introductory provisions

Citation, commencement and application

1. —(1) These Regulations may be cited as the Administration (Restrictions on Disposal etc. to Connected Persons) Regulations (Northern Ireland) 2021 and come into operation on 25th June 2021.

(2) These Regulations apply only to administrations that commence on or after the day on which these Regulations come into operation.

(3) For the purposes of this regulation an administration commences on—

(a) the appointment of an administrator(**c**) under paragraph 15 or paragraph 23 of Schedule B1, or

(b) the making of an administration order(**d**).

Interpretation

2. In these Regulations—

"the Order" means the Insolvency (Northern Ireland) Order 1989;

(**a**) Formerly the Department of Economic Development, see Article 3(5) of the Departments (Northern Ireland) Order 1999 (S.I. 1999/283 (N.I. 1)) and the Department of Enterprise, Trade and Investment, see section 1(3) of the Departments Act (Northern Ireland) 2016 (2016 c. 5 (N.I.)).

(**b**) S.I. 1989/2405 (N.I. 19). Schedule B1 was inserted by Article 3(2) of and Schedule 1 to the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)). Paragraph 61A of Schedule B1 was inserted by section 9(5) of the Corporate Insolvency and Governance Act 2020 (2020 c. 12).

(**c**) "Administrator" is defined in paragraph 2(1) of Schedule B1.

(**d**) An "administration order" is an order of the High Court under paragraph 11 of Schedule B1.

"the company" means the company whose business or assets are the subject of the substantial disposal;

"qualifying report" has the meaning given to it in regulation 5;

"previous report" has the meaning given to it in regulation 8;

"relevant property" means the property being disposed of, hired out or sold by the substantial disposal;

"Schedule B1" means Schedule B1 to the Order;

"substantial disposal" has the meaning given to it in regulation 3.

PART 2

Restrictions on disposal of property by administrators

CHAPTER 1

GENERAL

Conditions and requirements that apply in respect of a substantial disposal by the administrator

3.—(1) An administrator must not make a substantial disposal unless either one of the following two conditions is met—

(a) the approval of the company's creditors for the making of that disposal has been obtained in accordance with regulation 4, or

(b) a qualifying report in respect of the making of that disposal has been obtained.

(2) Where the condition in paragraph (1)(b) is met and an administrator makes a substantial disposal the notification requirements in regulation 9 must be met.

(3) For the purposes of these Regulations a "substantial disposal"—

(a) means a disposal, hiring out or sale to one or more connected persons(**a**), during the period of 8 weeks beginning with the day on which the company enters administration(**b**), of what is, in the administrator's opinion, all or a substantial part of the company's business or assets, and

(b) includes a disposal which is effected by a series of transactions.

CHAPTER 2

CONDITION AS TO CREDITOR APPROVAL

Creditor approval

4.—(1) The approval of the company's creditors is obtained in accordance with this regulation if the requirements specified in paragraph (2) are met.

(2) The requirements specified in this paragraph are as follows—

(a) the administrator has—

(i) included proposals for making the disposal (referred to for the purposes of this paragraph as "the proposal") in the statement of administrator's proposals referred to in paragraph 50 of Schedule B1, and

(ii) invited the company's creditors to a meeting to decide whether to approve the proposal; and

---

(**a**) "Connected person" is defined in paragraph 61(A)(3) of Schedule B1.
(**b**) "Enters administration" is defined in paragraph 2(2)(b) of Schedule B1.

(b) the company's creditors approve the proposal—

(i) without modification, or

(ii) with modifications to which the administrator consents(**a**).

CHAPTER 3

CONDITION AS TO THE OBTAINING OF A QUALIFYING REPORT

Qualifying report: meaning of qualifying report

5. A qualifying report means a report—

(a) whose contents the administrator has considered, and

(b) which the administrator is satisfied —

(i) meets the requirements specified in regulation 6, and

(ii) includes the content specified in regulation 7.

Qualifying report: requirements to be met in connection with obtaining and considering the report

6.—(1) The requirements specified in this regulation are as follows—

(a) the report is—

(i) obtained by a connected person,

(ii) made by an individual who is an evaluator within the meaning given by Part 3 and in respect of whom the requirements specified in paragraph (2) are met, and

(iii) given to the administrator;

(b) the report—

(i) is in writing,

(ii) states the date on which it was made, and

(iii) is authenticated by the evaluator; and

(c) there have been no material changes since the date on which the report was made to—

(i) the relevant property,

(ii) the terms of the substantial disposal, or

(iii) any circumstances relating to the substantial disposal.

(2) The requirements specified in this paragraph are that the administrator, having regard to the date on which the report was made, is satisfied that the individual making that report had sufficient relevant knowledge and experience to make a qualifying report.

(3) For the purposes of paragraph (1)(a)(ii), the individual making the report is to be taken to have met the requirements for being an evaluator in regulation 10(b) and (c) if the administrator has no reason to believe that the individual did not meet those requirements.

(4) For the purposes of this regulation—

(a) the requirement that the report must be given to the administrator may be met by giving the administrator a copy of the report,

(b) the requirement for the report to be in writing is satisfied if the report is in electronic form and is capable of being read by the recipient in electronic form and reproduced by the recipient in hard-copy form, and

(c) the report is authenticated—

(**a**) Paragraph 54 of Schedule B1 makes provision as to approval of the administrator's proposals by a creditors' meeting.

(i) in the case of a report in hard-copy form, it is signed, or

(ii) in the case of a report in electronic form if the identity of the sender is confirmed in a manner specified by the recipient, or where the recipient has not so specified, if the communication contains or is accompanied by a statement of the identity of the sender and the recipient has no reason to doubt the truth of that statement.

Qualifying report: required content

7. The report must contain the following—

(a) a statement that the person making the report is an evaluator within the meaning given by Part 3;

(b) a statement as to what relevant knowledge and experience the evaluator has to make the report;

(c) the following information concerning the professional indemnity insurance, within the meaning given by regulation 11, taken out by, or on behalf of, the evaluator—

(i) the name of the insurer;

(ii) the policy number;

(iii) the risks covered;

(iv) the amount covered; and

(v) exclusions from the cover;

(d) identification of the relevant property;

(e) either—

(i) the information specified in regulation 8(3) or, as the case may be,

(ii) a statement that the evaluator is satisfied that regulation 8 does not apply;

(f) a statement as to the nature of the consideration that is to be provided for the relevant property and the value of that consideration expressed in sterling;

(g) identification of the connected person and a statement as to their connection to the company;

(h) a statement that either—

(i) the evaluator is satisfied that the consideration to be provided for the relevant property and the grounds for the substantial disposal are reasonable in the circumstances or, as the case may be,

(ii) the evaluator is not satisfied that the consideration to be provided for the relevant property and the grounds for the substantial disposal are reasonable in the circumstances (a "case not made opinion"); and

(i) the evaluator's principal reasons for making the statement in sub-paragraph (h)(i) or (ii) and a summary of the evidence relied upon.

Qualifying report: additional requirements where previous report obtained

8.—(1) This regulation applies if, at any time before the date on which a report is made for the purpose of satisfying the condition in regulation 3(1)(b), the individual making that report—

(a) becomes aware that the connected person has obtained a previous report, or

(b) believes the connected person may have obtained a previous report (but this is subject to paragraph (2)).

(2) Where—

(a) the connected person makes a statement to the individual making the report as to whether they have obtained a previous report, or a specified number of previous reports, and

(b) the individual making the report has no reason to believe that statement is incorrect

the report must be made on the basis that the statement is correct.

(3) If this regulation applies, the report must contain the following—

(a) if the previous report has been given to the individual making the report, that previous report, a copy of that previous report, or details of the contents of that previous report which relate to the matters referred to in paragraph (6)(c), or

(b) if the previous report has not been given to the individual making the report—

(i) a statement that the previous report has not been obtained;

(ii) the reasons why the previous report has not been obtained;

(iii) details of any steps taken by the individual making the report to obtain the previous report; and

(iv) if this regulation applies by virtue of the individual making the report having formed the belief referred to in paragraph (1)(b), the reasons why the individual making the report formed that belief.

(4) The requirement in paragraph (3)(b)(ii) may be met by including, if applicable, in the report a statement that the connected person claims that no previous report exists.

(5) Where this regulation applies in respect of two or more previous reports, the report must contain the matters specified in paragraph (3) in relation to each of the previous reports.

(6) For the purposes of this regulation, a "previous report" means an opinion obtained by the connected person which—

(a) was obtained before the date on which the report is made,

(b) is concerned with a disposal of property that is the same, or substantially the same, as the relevant property identified in the report, and

(c) makes reference to whether the person making the previous report is satisfied that—

(i) the grounds for the disposal are reasonable or, as the case may be, unreasonable, in the circumstances, or

(ii) the consideration to be provided for the property is reasonable or, as the case may be, unreasonable, in the circumstances.

CHAPTER 4

NOTIFICATION OF QUALIFYING REPORT TO REGISTRAR AND TO CREDITORS

Notification requirements where a qualifying report is obtained

9.—(1) Where regulation 3(2) applies (administrator makes a substantial disposal following receipt of a qualifying report) the administrator must comply with the requirements specified in paragraphs (2) to (5).

(2) The administrator must send the following to the persons specified in paragraph (5)—

(a) a copy of the report (excluding any information that, in the administrator's opinion, is confidential or commercially sensitive); and

(b) where paragraph (3) applies, the information specified in paragraph (4).

(3) This paragraph applies where the qualifying report contains—

(a) a case not made opinion within the meaning given by regulation 7(h)(ii), or

(b) details of any previous report where the person making it was satisfied that—

(i) the grounds for the disposal were not reasonable in the circumstances, or

(ii) the consideration to be provided for the disposal was not reasonable in the circumstances.

(4) Where paragraph (3) applies the administrator must send together with each copy of the qualifying report a statement setting out their reasons for proceeding with the substantial disposal.

(5) A copy of the report and, where applicable, the additional information specified in paragraph (4) must be sent to—

(a) the registrar, and

(b) every creditor of the company, of whose claim and address the administrator is aware

at the same time as the administrator complies with the requirement in paragraph 50(4)(a) and (b) of Schedule B1 to send a copy of the statement of their proposals to the registrar and to creditors.

PART 3

The Evaluator

Requirements for acting as evaluator

10. For the purposes of these Regulations an evaluator is an individual who—

(a) is satisfied that their relevant knowledge and experience is sufficient for the purposes of making a qualifying report,

(b) meets the—

(i) requirement as to insurance specified in regulation 11, and

(ii) requirement as to independence specified in regulation 12, and

(c) is not excluded from acting as an evaluator by virtue of regulation 13.

The requirement as to insurance

11.—(1) An individual meets the requirement as to insurance if there is in force professional indemnity insurance in respect of that individual.

(2) For the purposes of this regulation "professional indemnity insurance" means insurance taken out by, or on behalf of, an individual in respect of potential liabilities to the administrator, the connected person, creditors or any other person, as a result of, or arising from, any matter stated by the individual in a report made by them for the purpose of satisfying the condition in regulation 3(1)(b).

Requirement as to independence

12.—(1) An individual meets the requirement as to independence unless they—

(a) are connected(**a**) with the company,

(b) are an associate(**b**) of the connected person or connected with the connected person,

(c) know or have reason to believe that they have a conflict of interest with respect to the substantial disposal, or

(d) have, at any time during the period of 12 months ending with the date on which a report is made by that individual for the purpose of satisfying the condition in regulation 3(1)(b) provided advice to, and in respect of, the company or a connected person in relation to the company—

(i) in connection with, or in anticipation of, the commencement of an insolvency procedure under Parts 1A to 6 of the Order, or

(ii) in relation to corporate rescue or restructuring.

(**a**) "Connected" (apart from where it is used in the expression "connected person") is defined in Article 7 of the Order.
(**b**) "Associate" is defined in Article 4 of the Order.

(2) In this regulation "conflict of interest" means a financial or other interest which is likely to affect prejudicially the independence of the individual in providing a report made for the purpose of satisfying the condition in regulation 3(1)(b).

(3) Nothing in this regulation limits the scope of an individual's obligation to comply with any professional or regulatory requirements to which that individual is subject.

Exclusion from providing the report

13. An individual is excluded from acting as an evaluator if—

(a) the individual is—

(i) the administrator,

(ii) an associate of the administrator, or

(iii) connected with a company with which the administrator is connected,

(b) the individual has at any time been convicted of an offence involving dishonesty or deception in the United Kingdom or any other jurisdiction and the conviction is not a spent conviction,

(c) the individual has at any time made a composition or arrangement with, or granted a trust deed for, the individual's creditors unless the individual has been discharged in respect of it,

(d) the individual has at any time been made bankrupt under the Order, the Insolvency Act 1986(**a**), the Bankruptcy (Scotland) Act 1985(**b**), or the Bankruptcy (Scotland) Act 2016(**c**) or sequestration of the individual's estate has been awarded and in either case—

(i) the individual has not been discharged, or

(ii) the individual has been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under the Order, the Insolvency Act 1986, the Bankruptcy (Scotland) Act 1985, or the Bankruptcy (Scotland) Act 2016, unless that order has ceased to have effect or has been annulled,

(e) a moratorium period under a debt relief order under the Order or the Insolvency Act 1986 applies in relation to the individual,

(f) a debt relief restrictions order under the Order or the Insolvency Act 1986 is in force in respect of the individual,

(g) the individual is subject to—

(i) a disqualification order under Article 3 of the Company Directors Disqualification (Northern Ireland) Order 2002(**d**),

(ii) a disqualification undertaking under Article 4 of that Order,

(iii) a disqualification order under section 1 of the Company Directors Disqualification Act 1986(**e**), or

(iv) a disqualification undertaking under section 1A of that Act,

(h) The individual is subject to an order under Article 86(1) of the Judgments Enforcement (Northern Ireland) Order 1981(**f**) (failure to pay under administration order),

---

(**a**) 1986 c. 45.
(**b**) 1985 c.66, repealed by the Bankruptcy (Scotland) Act 2016 (2016 asp 21).
(**c**) 2016 asp 21.
(**d**) S.I. 2002/3150 (N.I. 4) Article 3 was amended by the Company Directors Disqualification (Amendment) (Northern Ireland) Order 2005 (S.I. 2005/1454 (N.I. 9). Articles 3 and 4 were amended by the Small Business, Enterprise and Employment Act 2015 (c. 26).
(**e**) 1986 c. 46. Section 1 was amended by the Insolvency Act 2000 (c.39), the Enterprise Act 2002 (c.40) and the Small Business, Enterprise and Employment Act 2015 (c. 26). Section 1A was inserted by the Insolvency Act 2000 (c.39) and amended by the Small Business, Enterprise and Employment Act 2015.
(**f**) 1981 No. 226 (N.I. 6).

(i) the individual has at any time been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission for Northern Ireland or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which the individual was responsible or to which the individual was privy, or which the individual by the individual's conduct contributed to or facilitated.

(j) the individual is a patient within the meaning of section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003(**a**) or has had a guardian appointed under the Adults with Incapacity (Scotland) Act 2000(**b**),

(k) the individual lacks capacity, within the meaning of section 306 of the Mental Capacity Act (Northern Ireland) 2016(**c**), to provide the report, or

(l) the individual has at any time been subject to any measures in another jurisdiction equivalent to those set out in sub-paragraphs (d) to (i) above.

(**a**) 2003 asp 13. There are amending instruments but none is relevant.
(**b**) 2000 asp 4.
(**c**) 2016 c. 18 (N.I.).

Sealed with the Official Seal of the Department for the Economy on xx xx 2021



A senior officer of the Department for the Economy

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose requirements in relation to the disposal, hiring out or sale of a company's property by an administrator of that company to a connected person. The requirements only apply in the first 8 weeks of administration, and where the disposal, hiring out or sale involves all or a substantial part of the company's business or assets. This could involve one or more transactions.

"Connected person" is defined in paragraph 61A(3) of Schedule B1 to the Insolvency (Northern Ireland) Order 1989 (1989 No. 2405 (N.I. 19). Included within the definition are specified "relevant persons"; including directors, shadow directors or other officers of the company, non-employee associates, as well as "connected companies". Under that definition a company is connected with another if a relevant person in respect of one of the companies is, or has been a relevant person in respect of the other.

The administrator cannot effect the disposal, hiring out or sale unless creditor approval or an independent report has been obtained. The Regulations set out the requirements relating to creditor approval and the independent report.

These Regulations apply to administration proceedings in Northern Ireland.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. An Explanatory Memorandum has been prepared and is available alongside these Regulations at www.legislation.gov.uk.

© Crown copyright 2021

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print Acts of the Northern Ireland Assembly.

£6.90

http://www.legislation.gov.uk/id/nidsr/2021/9780338016331

ISBN 978-0-33-801633-1

