STATUTORY INSTRUMENTS

2016 No. 356

INSOLVENCY, NORTHERN IRELAND

The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) (Reports on Conduct of Directors) (Northern Ireland) Regulations 2016

Made - - - -	*11th March 2016*
Laid before Parliament	*15th March 2016*
Coming into force - -	*6th April 2016*

The Secretary of State, in exercise of the powers conferred by section 159(1) and (2) of the Small Business, Enterprise and Employment Act 2015(**a**), makes the following Regulations.

Citation and commencement

1.—(1) These Regulations may be cited as the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) (Reports on Conduct of Directors) (Northern Ireland) Regulations 2016 and come into force on 6th April 2016.

(2) In these Regulations "the 2003 Rules" means the Insolvent Companies (Reports on Conduct of Directors) Rules (Northern Ireland) 2003(**b**).

Amendments to the 2003 Rules

2.—(1) The 2003 Rules are amended as follows.

(2) For Rule 4 substitute—

> **"Conduct reports required under Article 10A(4) of the Order(c)**
>
> **4.** An office-holder(**d**) must prepare a conduct report required under Article 10A(1) of the Order in the Form DCR set out in the Schedule.".

(3) For Rule 5 substitute—

> **"Enforcement of Article 10A(4) and (5) of the Order**
>
> **5.**—(1) An office-holder who without reasonable excuse fails to comply with any of the obligations imposed by Articles 10A(4) or 10A(5) of the Order is guilty of an offence and—

(**a**) 2015 c.26.
(**b**) S.R. (NI) 2003 No 357.
(**c**) The Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)); the Order was amended by the Small Business, Enterprise and Employment Act 2015 (c.26), Schedule 8.
(**d**) "Office-holder" is defined in Article 10A(9) of the Company Directors Disqualification Order 2002; article 10A was inserted by the Small Business, Enterprise and Employment Act 2015 (c.26), Schedule 8 paragraph 5.

(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, 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)).

(2) 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.".

(4) Rule 6 is omitted.

(5) For the forms set out in the Schedule there shall be substituted the form designated DCR as set out in the Schedule to these Regulations.

Review

3. After Rule 8 of the 2003 Rules, insert—

"**9.**—(1) A Minister of the Crown must from time to time—

(a) carry out a review of these Rules,

(b) set out the conclusions of the review in a report, and

(c) publish the report.

(2) The report must in particular—

(a) set out the objectives intended to be achieved by these Rules,

(b) assess the extent to which those objectives are achieved, and

(c) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(3) The first report under this rule must be published before the end of the period of 5 years beginning on 6th April 2016.

(4) Subsequent reports under this rule must be published at intervals not exceeding 5 years.

(5) In this regulation, "regulatory provision" has the meaning given by section 32(4) of the Small Business, Enterprise and Employment Act 2015."

Transitional and savings provisions

4.—(1) The amendments made by these Regulations do not apply to a person required to deliver a report within a period specified in an order made in accordance with rule 7(2) of the 2003 Rules, if the period specified in the order has not expired on 6th April 2016.

(2) When, in relation to a company (as defined in article 2(2) of the Company Directors (Northern Ireland) Order 2002(**a**)) the relevant date in rule 5(4) of the 2003 Rules occurred before 6th April 2016, the 2003 Rules continue to apply without the amendments made by these Regulations.

Anna Soubry
Minister of State for Small Business, Industry and Enterprise
Department for Business, Innovation and Skills

11th March 2016

(**a**) 2002 No. 3150 (N.I .4).

SCHEDULE

Regulation 2(5)

FORM DCR

Rule 4

REPORT BY OFFICE-HOLDER UNDER ARTICLE 10A(1) OF THE COMPANY DIRECTORS DISQUALIFICATION (NORTHERN IRELAND) ORDER 2002

1. Name of Company:
(please include all registered and trading names which the company has used in the last two years)

OFFICE HOLDER

2. Name of office-holder(s):

3. Name and address of office-holder(s) firm:

4. Capacity in which report is being made (tick appropriate):

Official Receiver (in the case of a company wound up by the High Court) ☐

Liquidator (in the case of a company being wound up otherwise than by the High Court) ☐

Administrator ☐

Administrative receiver ☐

5. Date Appointed:

6. Insolvency date:
(see Article 10A(10) of the Company Directors Disqualification (Northern Ireland) Order 2002)

COMPANY

7. Company registered number:

8. Current registered office address:

9. Address of any other registered office in the six months prior to the Insolvency date:

10. Principal trading address(es):

11. Nature of the company's business:

12. Date of incorporation:

13. Period of Trading: FROM_____ TO _____
(give month and year)

14. Details of any other voluntary liquidation, administration or administrative receivership the company has been in (stating type, name of office-holder(s), date of appointment and (if appropriate) date of resolution(s) for voluntary winding up):

15. Names and registered numbers of any other connected companies the company has had dealings with (include registered number). If you are not aware of any other connected companies, write **"None Known"**.

COMPANY DIRECTORS

16. 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 date.

Full Name (including other known names) and current or last-known address	Date of Birth	Tick if Shadow Director	Occupation, Trade or Profession	Directors Duties in the Company	Period as Director		Please enter the word "unfit" in this column opposite the details for each person if you think that the person is unfit to be concerned in the management of a company
					From	To	

17. Tick either box (a) or (b):

(a) I am not aware of any conduct on the part of any of the directors listed at question 16 which, in my opinion, would make them unfit to be concerned in the management of a company: ☐

(b) I am aware of conduct on the part of one or more of the directors listed at question 16 which, in my opinion, would make them unfit to be concerned in the management of a company: ☐

IF YOU HAVE TICKED BOX (a) AT QUESTION 17 YOU SHOULD IGNORE THE REMAINING QUESTIONS AND GO STRAIGHT TO THE DECLARATION AT THE END OF THIS REPORT

IF YOU HAVE TICKED BOX (b) AT QUESTION 17 ANSWER THE REMAINING QUESTIONS 18 to 25 AND THEN SIGN THE DECLARATION AT THE END OF THIS REPORT

18. **Please complete a separate table for each director you are reporting as unfit.**

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.

NOTE: Before completing the table you should read Article 9(1) and (1A) of and Schedule 1 to the Company Directors Disqualification (Northern Ireland) Order 2002.

Name of the Director: _____

Details of Unfit Conduct	Nature of Supporting Evidence

19. Other companies of which each of the directors/shadow directors listed in the table at question 16 is or was also a director/shadow director during the three years before the insolvency date.

Name of Company	Registered No

20. Other companies not listed at question 15 or 19 which the director may have had an association with which you think may be relevant to consideration of his/ her conduct.

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

* i.e. Northern Ireland or England & Wales or Scotland

21. Estimated value of known assets of the company: £

22. Estimated total liabilities of the company: £

23. Name and address of the company's accountants:

24. Give brief details of any civil or criminal proceedings in relation to the company taken or likely to be taken against any director:

25. Are there any other relevant matters? (eg ill-health, personal guarantees, individual voluntary arrangements, bankruptcy etc):

YES ☐

NO ☐

DECLARATION:

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

Signature: _____

Date: _____

On completion this report should be e-mailed to the Insolvency Service at:

ddu.insolvency@detini.gov.uk

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Insolvent Companies (Reports on Conduct of Directors) Rules (Northern Ireland) 2003 ("the 2003 Rules") in consequence of the commencement of paragraph 5 of Schedule 8 to the Small Business, Enterprise and Employment Act 2015.

Regulation 2 substitutes rule 4 and the Schedule to provide that the report which Article 10A(1) of the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150) (N.I. 4)) ("the Order") requires the office-holder to prepare on a person's conduct as director of an insolvent company is to be made using new Form DCR.

Regulation 2 also substitutes rule 5 to provide that an office-holder is guilty of an offence if they fail (without reasonable excuse) to comply with Article 10A(4) or 10A(5) of the Order. On conviction for such an offence, the office-holder would be liable to a fine not exceeding level 3 on the standard scale and for continued contravention would be liable to a daily default fine.

Article 10A(4) of the Order requires the office-holder to send the conduct report to the Department before the end of 3 months beginning with the insolvency date, or such longer period as the Department considers appropriate in the particular circumstances. Article 10(5) requires the office-holder to send any new information which comes to their attention to the Department as soon as reasonably practicable.

Regulation 2 also revokes Rule 6.

Regulation 3 requires a Minister of the Crown to review the operation and effect of the 2003 Rules and publish a report within five years after these Regulations come into force. Following the review it will fall to the Minister to consider whether the 2003 Rules should be revoked or should continue in force with or without further amendment. A further instrument would be needed to revoke the 2003 Rules or amend them.

Regulation 4 provides transitional and savings provisions.

A regulatory impact assessment has not been produced for this instrument as the policy was covered in a regulatory impact assessment produced by the Northern Ireland Insolvency Service with respect to provisions in the Small Business, Enterprise and Employment Act 2015 amending the Company Directors Disqualification (Northern Ireland) Order 2002. Copies of this regulatory impact assessment are available from the Legislation Unit, Insolvency Service, Fermanagh House. 20A Ormeau Avenue, Belfast BT2 8NJ.

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