
DRAFT STATUTORY INSTRUMENTS

2021 No.

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

PART 2

Restrictions on disposal of property by administrators

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⁽¹⁾,
 - (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.

(1) The expression “in writing” is defined in section 436B of the Act.

(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, and
- (b) “authenticate” means to authenticate in accordance with rule 1.5 of the Insolvency (England and Wales) Rules 2016⁽²⁾ or rule 1.6 of the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018⁽³⁾, as applicable.

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

(2) S.I. 2016/1024.

(3) S.I. 2018/1082 (S.4).

- (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.