
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 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⁽¹⁾, during the period of 8 weeks beginning with the day on which the company enters administration⁽²⁾, 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—

(1) “Connected person” is defined in paragraph 60(A)(3) of Schedule B1.
(2) “Enters administration” is defined in paragraph 1(2)(b) of Schedule B1.

- (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 49 of Schedule B1, and
 - (ii) subsequently sought a decision from the company’s creditors as to whether they approve the proposal; and
- (b) the company’s creditors approve the proposal—
- (i) without modification, or
 - (ii) with modifications to which the administrator consents⁽³⁾.

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⁽⁴⁾,
 - (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.

⁽³⁾ Paragraph 53 of Schedule B1 makes provision as to creditors’ approval of the administrator’s proposals.

⁽⁴⁾ The expression “in writing” is defined in section 436B of the Act.

- (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⁽⁵⁾ or rule 1.6 of the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018⁽⁶⁾, 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
 - (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—

(5) S.I. 2016/1024.
(6) S.I. 2018/1082 (S.4).

- (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 OF COMPANIES 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 of companies, and
 - (b) every creditor of the company, other than an opted-out creditor⁽⁷⁾, of whose claim and address the administrator is aware
- at the same time as the administrator complies with the requirement in paragraph 49(4)(a) and (b) of Schedule B1 to send a copy of the statement of their proposals to the registrar of companies and to creditors.

(7) “Opted-out creditor” is defined in section 248A of the Act. Section 248A was inserted by section 124 of the Small Business, Enterprise and Employment Act 2015 (c. 26).