

Proposed draft regulations to require scrutiny of pre-pack sales to connected parties

The Secretary of State makes these Regulations in exercise of the powers conferred by paragraph 60A(1), (2) and (7) of Schedule B1 to the Insolvency Act 1986(a).

In accordance with paragraph 60A(9) of Schedule B1 to that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2020 and come into force on ***.

Application

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

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

- (a) the appointment of an administrator(b) under paragraph 14 or paragraph 22 of Schedule B1, or
- (b) the making of an administration order(c).

Interpretation

3. In these Regulations—

“the Act” means the Insolvency Act 1986,

“case made opinion” has the meaning given to it in regulation 8(3)(f)(i),

“case not made opinion” has the meaning given to it in regulation 8(3)(f)(ii),

“connected”, for the purposes of regulation 7(b)(iii) and regulation 10(1) (otherwise than in the expression “connected person”), has the meaning given to it in section 249 of the Act,

“evaluator” means the individual who makes the report,

“relevant property” means the property being disposed of, hired out or sold by the substantial disposal,

(a) 1986 c. 45. Schedule B1 was inserted by section 248 of the Enterprise Act 2002 (c. 40). Paragraph 60A of that Schedule was inserted by section 12 of the Small Business, Enterprise and Employment Act 2015 (c. 26). That paragraph expired at the end of 25th May 2020 and was revived by section 8 of the Corporate Insolvency and Governance Act 2020 (c.12) with effect from the beginning of 26th June 2020.

(b) “Administrator” is defined in paragraph 1(1) of Schedule B1.

(c) An “administration order” is an order of the court under paragraph 10 of Schedule B1.

“report” means the report described in regulation 7,
“Schedule B1” means Schedule B1 to the Act, and
“substantial disposal” has the meaning given to it in regulation 4.

Application (substantial disposal)

4.—(1) These Regulations apply to a substantial disposal by an administrator.

(2) “Substantial disposal” 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, of what is, in the administrator’s opinion, all or a substantial part of the company’s business or assets.

(3) A substantial disposal includes one which is effected by a series of transactions.

Making a substantial disposal

5. An administrator must not make a substantial disposal unless—

- (a) regulation 6 has been satisfied (creditor approval), or
- (b) regulation 7 has been satisfied (the report).

Creditor approval

6. This regulation is satisfied if—

- (a) the administrator seeks a decision from the company’s creditors under paragraph 51(1) or paragraph 52(2) of Schedule B1, and
- (b) the creditors approve the administrator’s proposals without modification, or with modification to which the administrator consents.

The report

7. This regulation is satisfied if—

- (a) the connected person has obtained a report that meets the requirements set out in regulation 8 in respect of the substantial disposal,
- (b) the evaluator is not—
 - (i) the administrator,
 - (ii) an associate^(b) of the administrator, or
 - (iii) connected with a company with which the administrator is connected,
- (c) the connected person has provided the report (or a copy of the report) to the administrator,
- (d) in the administrator’s opinion, there have been no material changes since the date of the report to—
 - (i) the relevant property,
 - (ii) the terms of the substantial disposal, or

(a) “Connected person” is defined in paragraph 60(A)(3) of Schedule B1.

(b) “Associate” is defined in section 435 of the Act.

- (iii) any circumstances relating to the substantial disposal,
- (e) the administrator has considered the contents of the report,
- (f) the administrator has no reason to believe that, on the date of the report, the evaluator did not meet the criteria in regulation 8(1), and
- (g) the administrator has no reason to believe that, on the date of the report, the evaluator did not have the requisite knowledge and experience to provide the report.

8.—(1) The evaluator must—

- (a) meet the requirements as to qualification set out in regulation 9,
- (b) meet the requirements as to independence set out in regulation 10, and
- (c) not be excluded from providing the report by regulation 11.

(2) The report must be—

- (a) in writing (and for these purposes “in writing” includes in electronic form),
- (b) dated, and
- (c) authenticated by the evaluator.

(3) The report must—

- (a) include a statement that the evaluator meets the criteria set out in paragraph (1) above,
- (b) state what knowledge and experience the evaluator has to provide the report,
- (c) identify the relevant property,
- (d) state the consideration to be provided for the relevant property,
- (e) identify the connected person and their connection to the company,
- (f) include 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 (a “case made opinion”), or
 - (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”),
- (g) include the evaluator’s principal reasons for making the statement in sub-paragraph (f)(i) or (f)(ii) above and a summary of the evidence relied upon, and
- (h) include a statement that there is sufficient evidence for the evaluator to provide the statement described in sub-paragraph (f)(i) or (f)(ii) above.

(4) In this regulation “authenticate” means to authenticate in accordance with rule 1.5 of the Insolvency (England and Wales) Rules 2016^(a) or rule 1.6 of the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018^(b), as applicable.

(a) S.I. 2016/1024.
 (b) S.I. 2018/1082.

The requirements as to qualification

9. An individual meets the requirements as to qualification if the individual believes that they have the requisite knowledge and experience to provide the report.

The requirements as to independence

10.—(1) An individual meets the requirements as to independence unless the individual—

- (a) is connected with the company,
- (b) is an associate of the connected person or connected with the connected person,
- (c) knows or has reason to believe that the individual has a conflict of interest with respect to the substantial disposal, or
- (d) has, within the 12 months before the date of the report, provided advice to, and in respect of, the company or a company connected with the company—
 - (i) in connection with or in anticipation of the commencement of an insolvency procedure under Parts I to V of the Act, or
 - (ii) in relation to corporate rescue or restructuring.

(2) In this regulation “conflict of interest” means a financial or other interest which is likely to affect prejudicially the independence of the evaluator in providing the report.

(3) Nothing in this regulation is intended to limit 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

11. An individual is excluded from providing the report if—

- (a) 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,
- (b) 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,
- (c) the individual has at any time been made bankrupt under the Act, the Bankruptcy (Scotland) Act 1985^(a), the Bankruptcy (Scotland) Act 2016^(b) or the Insolvency (Northern Ireland) Order 1989^(c) or sequestration of the individual’s estate has been awarded and in either case—
 - (i) the individual has not been discharged, or

(a) 1985 c. 66.

(b) 2016 asp 21.

(c) S.I. 1989/2405 (N.I. 19).

- (ii) the individual has been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under the Act, the Bankruptcy (Scotland) Act 1985, the Bankruptcy (Scotland) Act 2016 or the Insolvency (Northern Ireland) Order 1989 unless that order has ceased to have effect or has been annulled,
- (d) a moratorium period under a debt relief order under the Act or the Insolvency (Northern Ireland) Order 1989 applies in relation to the individual,
- (e) a debt relief restrictions order under the Act or the Insolvency (Northern Ireland) Order 1989 is in force in respect of the individual,
- (f) the individual is subject to—
 - (i) a disqualification order under section 1 of the Company Directors Disqualification Act 1986(a),
 - (ii) a disqualification undertaking under section 1A of that Act,
 - (iii) a disqualification order under article 3 of the Company Directors Disqualification (Northern Ireland) Order 2002(b),
 - (iv) a disqualification undertaking under article 4 of that Order, or
 - (v) an order made under section 429(2)(b) of the Act (failure to pay under county court administration order),
- (g) the individual has at any time been—
 - (i) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission for England and Wales 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, or
 - (ii) removed under section 34 of the Charities and Trustee Investment (Scotland) Act 2005(c) (powers of the Court of Session) from being concerned in the management or control of any charity or body,
- (h) the individual is a patient within the meaning of section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003(d) or has had a guardian appointed under the Adults with Incapacity (Scotland) Act 2000(e),
- (i) the individual lacks capacity, within the meaning of the Mental Capacity Act 2005(f), to provide the report, or
- (j) the individual has at any time been subject to any measures in another jurisdiction equivalent to those set out in sub-paragraphs (c) to (h) above.

(a) 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.

(b) S.I. 2002/3150 (N.I. 4).

(c) 2005 asp 10. Section 34 was amended by the Public Services Reform (Scotland) Act 2010 (2010 asp 8).

(d) 2003 asp 13. There are amending instruments but none is relevant.

(e) 2000 asp 4.

(f) 2005 c. 9.

Notifications

12.—(1) This regulation applies where an administrator has made a substantial disposal under regulation 5(b).

(2) The administrator must send to every creditor of the company, other than an opted-out creditor^(a), of whose claim and address the administrator is aware—

(a) a copy of the report (or, if more than one report was received, all the reports), excluding any information that, in the administrator's opinion, is confidential or commercially sensitive, and

(b) if the report contained a case not made opinion (or, if more than one report was received, if none of the reports contained a case made opinion), a statement setting out the administrator's reasons for proceeding with the substantial disposal.

(3) The administrator must send to the registrar of companies a copy of the report (or, if more than one report was received, all the reports), excluding any information that, in the administrator's opinion, is confidential or commercially sensitive.

(4) The documents in paragraph (2) and paragraph (3) must be sent with (and at the same time as) the copy of the statement of proposals required to be sent to the registrar of companies and to creditors under paragraph 49(4) of Schedule B1.

(a) "Opted-out creditor" is defined in section 248A of the Act.