STATUTORY INSTRUMENTS

1986 No. 626 (S. 59)

COMPANIES

The Insolvent Companies (Reports on Conduct of Directors) (Scotland) Rules 1986

Made - - - -	*27th March* 1986
Laid before Parliament	*7th April* 1986
Coming into Operation	*28th April* 1986

The Secretary of State, in exercise of the powers conferred on him by section 106 of the Insolvency Act 1985(**a**), and of all other powers enabling him in that behalf, hereby makes the following Rules:—

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Insolvent Companies (Reports on Conduct of Directors) (Scotland) Rules 1986 and shall come into operation on 28th April 1986.

(2) In these Rules—

"the Act" means the Insolvency Act 1985,

"administrative receiver" has the meaning given to it in Part II of the Act, and

"a company" means a company which the Court of Session has jurisdiction to wind up.

Reports required under section 12(5) of the Act

2.—(1) This Rule applies to any report made to the Secretary of State under section 12(5) of the Act by—

(a) the liquidator of a company which is being wound up by an order of the court made on or after 28th April 1986;

(b) the liquidator of a company which passes a resolution for voluntary winding up on or after that date; or

(c) a receiver of a company, appointed under section 467 of the Companies Act 1985(**b**) (power to appoint receivers under the law of Scotland) on or after that date, who is an administrative receiver.

(2) Such a report shall be made in the Form D1 (Scot) or D2 (Scot) set out in the Schedule hereto, as the case may be, and in the manner and to the extent provided in the applicable form.

(**a**) 1985 c. 65.
(**b**) 1985 c. 6.

Interim return by liquidator or administrative receiver

3.—(1) This Rule applies where it appears to a liquidator of a company as mentioned in Rule 2(1)*(a)* or *(b)* or to an administrative receiver as mentioned in Rule 2(1)*(c)* (each of whom is referred to hereinafter as "the office-holder") that the company has at any time become insolvent within the meaning of section 12 of the Act.

(2) Subject as follows, the office-holder shall, not later than 6 months from the relevant date (defined in paragraph (4) below), furnish to the Secretary of State an interim return with respect to every person who—

(a) was, on the date when the company went into liquidation or (as the case may be) the administrative receiver was appointed, a director or shadow director of the company, or

(b) had been a director or shadow director of the company at any time in the three years immediately preceding that date.

(3) The interim return shall be made in the Form D3 (Scot) or D4 (Scot), set out in the Schedule hereto, as the case may be, and in the manner and to the extent provided in the applicable form.

(4) For the purposes of this Rule, "the relevant date" means—

(a) in the case where the company goes into liquidation (except in the case mentioned in paragraph (4)*(b)* below) the date of the liquidator's appointment,

(b) in the case of a members' voluntary winding up the date on which it appears to him that the company went into liquidation at a time when its assets were insufficient for the payment of its debts and other liabilities and the expenses of the winding up, and

(c) in the case of the administrative receiver, the date of his appointment.

(5) An interim return need not be provided under this Rule if the office-holder has, since the relevant date, made reports to the Secretary of State under section 12(5) with respect to all the persons falling within paragraph 2 and (apart from this paragraph) required to be the subject of an annual return.

(6) If a liquidator or administrative receiver without reasonable excuse fails to comply with this Rule, he is liable on summary conviction to a fine not exceeding £400 and, for continued contravention, to a daily default fine not exceeding £40.

Enforcement of section 12(6)

4.—(1) This Rule applies where under section 12(6) of the Act (power to call on liquidators, former liquidators and others to provide information) the Secretary of State requires a person—

(a) to furnish him with information with respect to a person's conduct as director or shadow director of a company, and

(b) to produce and permit inspection of relevant books, papers and other records.

(2) On the application of the Secretary of State the court may make an order directing compliance within such period as may be specified.

(3) The court's order may provide that all expenses of and incidental to the application shall be borne by the person to whom the order is directed.

Michael Howard,
Parliamentary Under Secretary of State,
Department of Trade and Industry.

1 Victoria Street,
London.
27th March 1986.

SCHEDULE Rule 2(2) and 3(3)

Companies in Liquidation

Report on Conduct of Directors under Section 12(5) of the Insolvency Act 1985

D1

(Scot)

Before completing this form please read the DTI Guidance Notes

	Official Use
Company registered number _____	
Name of Company _____	
Registered office address _____	
_____	
Nature of Business _____	
Trading Names _____	
Principal place of business _____	
_____	
Date of winding-up _____	
Name of Liquidator _____	
Office holder number _____	
Liquidator's address _____	
_____	
_____	
Period covered by report From: _____ To: _____	

1. I am the liquidator of the company and it appears to me that the persons listed in the schedule were either directors or shadow directors of the company and **were the only** such directors of the company during the period covered by this report.

2. It further appears to me that the conduct of each of the persons in respect of whom I have marked Y in column 5 in the schedule as directors of the company, either considered in relation to this company alone or taken together with his conduct as a director of any other company, makes him unfit to be concerned in the management of a company. Details of his conduct are provided in Part D1(B)(Scot) of the report.

Schedule

1 Full name and other known names	2 Last known address	3 Mark X if shadow Director	4 Period as Director From To	5 if you have attached supplementary details please mark with a Y

Liquidator's Signature _____

Date _____

Remember to attach forms D1(A)(Scot) and D1(B)(Scot)

Part A

Further Details of the Company

Name of Company

D1(A)

(Scot)

3	Date of incorporation			
4	Period of trading	From	To	
5	Estimated distribution(s) (pence in £) to creditors • preferential: • unsecured:			
6	Summary of statement of affairs	£		
	Gross assets:	_____		
	Gross liabilities to creditors:	_____		
	Estimated total deficiency as regards creditors:	_____		
	Called-up capital:	_____		
7	Approximate number and value of unsecured creditors distinguishing between			
		No.	£	
	Trade and expense:	_____	_____	
	Depositor or consumer pre-paid:	_____	_____	
	Connected companies:	_____	_____	
	Other:	_____	_____	

8 Details of connected companies with which the company has had any dealings

The above is correct to the best of my knowledge, information and belief

Liquidator's signature _____

Date _____

A separate "part B" is to be completed for each Director to be reported upon.

D1(B)

(Scot)

Part B

Name of Company

Fuller Details of the Individual Director Subject to this Report

9 Full name of the Director:

10 Date of birth:

11 Occupation, trade or profession:

12 Position(s) held within Company:

13 Give details on such additional pages as necessary of the conduct of the director which makes it appear to you that the conditions of section 12(1) are satisfied.
You should have particular regard to schedule 2 of the Act.

14 List the remuneration and other benefits during each of the 3 years to the date of winding-up

Period ended	Remuneration received £	Remuneration voted £	Cash Expenses £	Benefits in kind £

15(a) Other companies of which the Director is or was during the 3 years to the date of winding-up also a Director or shadow director

Name of Company	Reg. No.	Are you also the Liquidator or Administrative Receiver of that Company (Y/N)	Mark X here if you are to submit a conduct report in respect of the Company or enter date of report if already submitted

15(b) Give details of any other companies not listed at Q8 or 15(a) above with which the director may have had an association which you feel may be relevant to the consideration of his conduct.

16 Give brief details of any civil or criminal proceedings in relation to the company taken or likely to be taken against the Director

17 Any other matter(s) which you consider the Secretary of State should take into consideration

The details given in Part D1(B) (Scot) (comprising____pages) are correct to the best of my knowledge, information and belief.

Liquidator's Signature _____

Date _____

Report on Conduct of Directors by an Administrative Receiver

under Section 12(5) of the Insolvency Act 1985

D2

(Scot)

Before completing this form please read the DTI Guidance Notes

	Official Use
Company registered number _____	
Name of Company _____	
Registered office address _____	
_____	
Nature of Business _____	
Trading Names _____	
Principal place of business _____	
Date of appointment of Administrative Receiver _____	
Name of Administrative Receiver _____	
Office holder number _____	
Administrative Receiver's address _____	
_____	
Period covered by report From:_____ To: _____	

1. I am the administrative receiver of the company and it appears to me that the persons listed in the schedule were either directors or shadow directors of the company and **were the only** such directors of the company during the period covered by this report.

2. It further appears to me that the conduct of each of the persons in respect of whom I have marked Y in column 5 in the schedule as directors of the company, either considered in relation to this company alone or taken together with his conduct as a director of any other company, makes him unfit to be concerned in the management of a company. Details of his conduct are provided in Part D2(B)(Scot) of the report.

Schedule

1 Full name and other known names	2 Last known address	3 Mark X if shadow Director	4 Period as Director From To	5 if you have attached supplementary details please mark with a Y

Administrative Receiver's Signature _____

Date _____

Remember to attach forms D2(A)(Scot) and D2(B)(Scot)

Part A

Further Details of the Company

D2(A)

(Scot)

Name of Company

3	Date of incorporation:		
4	Period of trading:	From	To
5	Estimated assets available for • Preferential creditors: • Unsecured creditors:		
6	Summary of statement of affairs Gross assets: Gross liabilities to creditors: Estimated total deficiency as regards creditors: Called-up capital	£	
7	Appropriate number and value of unsecured creditors distinguishing between Trade and espense: Depositor or consumer pre-paid: Connected companies: Other:	No.	£

8 Details of connected companies with which the company has had any dealings

The above information is correct to the best of my knowledge,
information and belief.

Administrative Receiver's Signature _____

Date _____

A separate "part B" is to be completed for each Director to be reported upon.

D2(B)

(Scot)

Part B

Name of Company

Fuller Details of the Individual Director Subject to this Report

9 Full name of the Director:

10 Date of birth:

11 Occupation, trade or profession:

12 Position(s) held within Company:

13 Give details on such additional pages as necessary of the conduct of the director which makes it appear to you that the condition of section 12(1) are satisfied.
You should have particular regard to Schedule 2 of the Act.

14 List the remuneration and other benefits during each of the 3 years to the date of your appointment

Period ended	Remuneration received	Remuneration voted	Cash Expense	Benefit in kind
£	£	£	£	£

15(a) Other companies of which the Director is or was during the 3 years to the date of your appointment also a Director or shadow director

Name of Company	Reg. No.	Are you also the Liquidator or Administrative Receiver of that Company (Y/N)	Mark X here if you are to submit a conduct report in respect of the Company or enter date of report if already submitted

15(b) Give details of any other companies not listed at Q8 or 15(a) above with which the director may have had an association which you feel may be relevant to the consideration of his conduct.

16 Give brief details of any civil or criminal proceedings in relation to the company taken or likely to be taken against the Director

17 Any other matter(s) which you consider the Secretary of State should take into consideration

The details given in Part D2(B) (Scot) (comprising____pages) are correct to the best of my knowledge, information and belief.

Administrative Receiver's Signature _____

Date _____

Companies in Liquidation

Interim Return of Directors under Rule 3 of the Insolvent Companies (Reports on Conduct of Directors) (Scotland) Rules 1986

D3

(Scot)

Before completing this form please read the DTI Guidance Notes

	Official Use
Company registered number _____	
Name of Company _____	
Registered office address _____	
_____	
Nature of Business _____	
Trading Names _____	
Principal place of business _____	
Date of winding-up _____	
Name of Liquidator _____	
Office holder number _____	
Liquidator's address _____	
_____	
_____	

D3 (Scot) *contd*

1. (i) I have not submitted a report in this case because

Mark with an X the statement which applies

a ☐ the company has sufficient assets to pay its debts and other liabilities and the expenses of any winding-up

b ☐ as at the date of this return I have not become aware of any matters which would require me to make a report under section 12(5) of the Act

c ☐ sufficient information is not yet to hand (see below)

(ii) I have not submitted a report on all of the directors in this case because

d ☐ as at the date of this return I have not become aware of any matters which would require me to make a report under Sec 12(5) of the Act on the remaining directors

e ☐ sufficient information is not yet to hand

If you have marked box c or box e please indicate the likely date when the report, if any, will be submitted. _____ _____
month year

2. The persons listed in the schedule 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 winding-up.

Schedule

Full name and other known names	Last known address	Mark X if Shadow Director	Period as Director	
			From	To

Liquidator's Signature _____

Date _____

Interim Return of Directors by an Administrative Receiver under Rule 3 of the Insolvent Companies (Reports on Conduct of Directors) (Scotland) Rules 1986

D4

(Scot)

Before completing this form please read the DTI Guidance Notes

		Official Use
Company registered number		
Name of Company		
Registered office address		
Nature of Business		
Trading Names		
Principal place of business		
Date of appointment of Administrative Receiver		
Name of Administrative Receiver		
Office holder number		
Administrative Receiver's address		

D4 (Scot) *contd*

1. (i) I have not submitted a report in this case because

Mark with an X the statement which applies

a ☐ the company has sufficient assets to pay its debts and other liabilities and the expenses of any winding-up

b ☐ as at the date of this return I have not become aware of any matters which would require me to make a report under section 12(5) of the Act

c ☐ sufficient information is not yet to hand (see below)

(ii) I have not submitted a report on all of the directors in this case because

d ☐ as at the date of this return I have not become aware of any matters which would require me to make a report under section 12(5) of the Act on the remaining directors

e ☐ sufficient information is not yet to hand

If you have marked box c or box e please indicate the likely date when the report, if any, will be submitted. _____ _____
month year

2. The persons listed in the schedule 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 winding-up.

Schedule

Full name and other known names	Last known address	Mark X if Shadow Director	Period as Director From	Period as Director To

Administrative Receiver's Signature _____

Date _____

EXPLANATORY NOTE

(This Note does not form part of the Rules.)

These Rules make provision in relation to Scotland for the manner in which a liquidator or administrative receiver of a company appointed after 28th April 1986 shall make to the Secretary of State the report required by section 12(5) of the Insolvency Act 1985 as to the conduct of persons who have been directors or shadow directors of insolvent companies which makes such persons appear to the liquidator or administrative receiver to be unfit to be concerned in the managment of a company.

Rule 2 provides that reports under section 12(5) shall be made in the forms set out in the Schedule and Rule 3 provides for interim returns to be made where reports on all the directors have not already been made.

Rule 4 enables the Secretary of State to apply to the court to enforce compliance by the liquidator or administrative receiver with a requirement by the Secretary of State under section 12(6) to furnish information and books, papers and other records relevant to the conduct of a person as a director.

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