

2016 No. 890

INSOLVENCY, ENGLAND AND WALES

**The Compensation Orders (Disqualified Directors) Proceedings
(England and Wales) Rules 2016**

<i>Made</i>	- - - -	<i>7th September 2016</i>
<i>Laid before Parliament</i>		<i>8th September 2016</i>
<i>Coming into force</i>	- -	<i>1st October 2016</i>

The Lord Chancellor has consulted the committee existing for the purposes of section 413 of the Insolvency Act 1986(a).

The Lord Chancellor, with the concurrence of the Secretary of State and the Chancellor of the High Court (the latter nominated by the Lord Chief Justice under section 411(7) of the Insolvency Act 1986), makes the following Rules in exercise of the power conferred by section 411(1) of the Insolvency Act 1986, read in conjunction with section 21(2) of the Company Directors Disqualification Act 1986(b).

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Compensation Orders (Disqualified Directors) Proceedings (England and Wales) Rules 2016.

(2) These Rules come into force on 1st October 2016.

(3) In these Rules—

“the Act” means the Company Directors Disqualification Act 1986 and a reference to a numbered section is to that section of that Act;

“CPR” followed by a Part or rule by number means that Part or rule with that number in the Civil Procedure Rules 1998(c);

“practice direction” means a direction as to the practice and procedure of any court within the scope of the Civil Procedure Rules 1998;

“registrar” has the same meaning as in rule 13.2(3A) of the Insolvency Rules 1986(d); and

“relevant party” means—

(a) the defendant (in the case of an application under section 15A(1)(e)); or

(a) 1986 c.45.

(b) 1986 c.46; section 21(2) was amended by the Small Business, Enterprise and Employment Act 2015 (c.26), Schedule 7, paragraph 16.

(c) S.I. 1998/3132. Relevant amending instruments (those amending Part 8) are S.I. 2000/221, 2000/1317, 2001/256, 2001/4015, 2008/2178, 2011/88, 2013/1974 and 2014/407.

(d) S.I. 1986/1925. Relevant amending instruments are S.I. 2010/686 and 2014/817.

(e) Section 15A was inserted by the Small Business, Enterprise and Employment Act 2015, section 110.

- (b) the Secretary of State (in the case of an application under section 15C(1)(a)).

Application

2.—(1) Subject to paragraph (2), these Rules apply to an application under the Act made on or after 1st October 2016—

- (a) by the Secretary of State for a compensation order against a person under section 15A(1); and
- (b) by a person who is subject to a compensation undertaking under section 15A(2) for variation or revocation of that undertaking under section 15C(1).

(2) These Rules apply to applications where the courts in England and Wales—

- (a) have made a disqualification order against the person;
- (b) have jurisdiction to make a disqualification order against the person (in a case where proceedings for a disqualification order have or are being commenced); or
- (c) would have had jurisdiction to make a disqualification order against the person (in a case where the person is subject to disqualification undertaking).

Form and conduct of applications

3.—(1) The Civil Procedure Rules 1998, and any relevant practice direction, apply in respect of applications under these Rules, except where these Rules make different provision.

(2) An application must be made by claim form and the claimant must use the CPR Part 8 (alternative procedure for claims) procedure.

(3) In the case of an application under section 15C(1), the Secretary of State is the defendant for the purposes of the Civil Procedure Rules 1998.

(4) CPR rule 8.1(3) (power of the court to order the claim to continue as if the claimant had not used the Part 8 procedure), CPR rule 8.2 (contents of the claim form) and CPR rule 8.7 (Part 20 claims) do not apply to applications under these Rules.

(5) Rule 7.47 (appeals and reviews of court orders in corporate insolvency) and rule 7.49A (procedure on appeal) of the Insolvency Rules 1986 apply to applications under these Rules.

The claimant's case

4.—(1) The claimant must, at the time when the claim form is issued, file in court evidence in support of the application.

(2) The claimant must serve on the relevant party with the claim form copies of the evidence under paragraph (1).

(3) The evidence must be by one or more affidavits or witness statements, which must include—

- (a) in the case of an application under section 15A(1), a statement—
 - (i) of the disqualification order or undertaking in respect of which the application is being brought, or of the proceedings for a disqualification order either commenced or being commenced alongside the application;
 - (ii) of the loss it is alleged has been caused by the conduct in respect of which—
 - (aa) the defendant is subject to the disqualification order or undertaking, or
 - (bb) proceedings for a disqualification order have been or are being commenced;
 - (iii) identifying the creditor or creditors to whom it is alleged loss has been caused;

(a) Section 15C was inserted by the Small Business, Enterprise and Employment Act 2015, section 110.

- (iv) identifying particulars of the order the claimant is seeking under section 15B(1)(a); and
 - (v) of any other matters considered to be of relevance to the application; and
- (b) in the case of an application under section 15C(1), the compensation undertaking (or a copy).

(4) In the case of an application under section 15A(1), where the insolvent company as referred to in section 15A(3)(b) is in administration or liquidation, or there is an administrative receiver of that company, the claimant must also give notice of the claim to the administrator, liquidator or administrative receiver within 14 days of the claim form being issued.

(5) The notice under paragraph (4) must identify particulars of the order the claimant is seeking under section 15B(1).

Endorsements etc. on claim form

5.—(1) The following information must be endorsed on the claim form—

- (a) that the application is made in accordance with these Rules;
- (b) in the case of an application under section 15A(1), that the court has the power to make such an order in respect of loss it is alleged has been caused by the defendant's conduct;
- (c) in the case of an application under 15C(1), that the court has the power to reduce the amount of a compensation undertaking offered and accepted under section 15A(2) or to provide that such an undertaking is not to have effect; and
- (d) that any evidence which the relevant party wishes the court to take into consideration must be filed in court in accordance with the time limit under rule 7(1).

(2) The time limit referred to in paragraph (1)(d) must be set out in the claim form.

Acknowledgment of service

6.—(1) The claim form served on the relevant party must be accompanied by an acknowledgment of service and CPR rule 8.3(2) (dealing with the contents of an acknowledgment of service) does not apply.

(2) In the case of an application under section 15A(1), the acknowledgment of service must state that the defendant should indicate—

- (a) whether the defendant is contesting the disqualification on which the application is based by—
 - (i) contesting the making of a disqualification order (either before it has been made or by way of an appeal), or
 - (ii) applying for a disqualification undertaking to cease to be in force;
- (b) whether the defendant disputes that the conduct on which the application is based caused the loss alleged in the application; or
- (c) whether the defendant, while not resisting the application, intends to adduce mitigating factors with a view to justifying a reduced level of compensation.

(3) In the case of an application under section 15C(1)—

- (a) the acknowledgment of service must state whether or not the Secretary of State intends to file any evidence relating to the application; and
- (b) CPR rule 8.4 (consequence of not filing an acknowledgment of service) does not apply.

(a) Section 15B was inserted by the Small Business, Enterprise and Employment Act 2015, section 110.

Evidence

7.—(1) The relevant party must, within 28 days from the date of service of the claim form, file in court any evidence relating to the application which the relevant party wishes the court to take into consideration.

(2) The relevant party must, at the same time, serve on the claimant a copy of any such evidence.

(3) The claimant must, within 14 days of receiving the copy of the relevant party's evidence, file in court any further evidence in reply which the claimant wishes the court to take into consideration.

(4) The claimant must, at the same time, serve a copy of any such further evidence on the relevant party.

(5) Any evidence filed and served under this rule must be by either affidavit or witness statement.

(6) CPR rules 8.5 (filing and serving written evidence) and 8.6(1) (requirements where written evidence is to be relied on) do not apply.

The hearing of the application

8.—(1) When the claim form is issued, the court must fix a date for the first hearing of the claim for a date not less than 8 weeks from the date of issue of the claim form.

(2) The hearing must in the first instance be before the registrar in open court.

(3) Without prejudice to the Secretary of State's rights and obligations under sections 15C(2) and 16(3) on the hearing of an application, subject to the direction of the court, any of the parties may give evidence, call and cross-examine witnesses at the hearing.

(4) The registrar must either determine the case on the date fixed or adjourn it.

(5) If the registrar adjourns the case for further consideration the registrar must—

(a) direct whether the case is to be heard by a registrar or, if the registrar thinks it appropriate, for determination by the judge;

(b) state the reasons for the adjournment; and

(c) give directions as to the following matters—

(i) the manner in which and the time within which notice of the adjournment and the reasons for it are to be given to the relevant party,

(ii) any order for the provision of further information or for disclosure by the parties,

(iii) the filing in court and the service of further evidence (if any) by the parties,

(iv) such other matters as the registrar thinks necessary or expedient with a view to an expeditious disposal of the application, and

(v) the time and place of the adjourned hearing.

(6) Where a case is adjourned other than to the judge, it may be heard by the registrar who originally dealt with the case or by another registrar.

Compensation orders: making and setting aside of an order

9.—(1) The court may make a compensation order under section 15A(1) against the defendant whether or not the defendant—

(a) appears,

(b) has completed and returned the acknowledgment of service of the claim form, or

(c) has filed evidence in accordance with rule 7.

(2) Any compensation order made in the absence of the defendant may be set aside or varied by the court on such terms as it thinks just.

Signed by authority of the Lord Chancellor

24th September 2016

Oliver Heald
Minister of State
Ministry of Justice

I concur, by the authority of the Lord Chief Justice

5th September 2016

Sir Terence Etherton
Chancellor of the High Court

I concur, on behalf of the Secretary of State

7th September 2016

Margot James
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make provision in England and Wales for the procedure for bringing applications for compensation orders and applications for the variation and revocation of compensation undertakings. The ability for the Secretary of State to apply for compensation orders to be made against, and to accept compensation undertakings from, disqualified directors under section 15A of the Company Directors Disqualification Act 1986 (c.46) was introduced by section 110 of the Small Business, Enterprise and Employment Act 2015 (c.26) as from 1st October 2015.

Rule 3 applies the alternative procedure for civil claims under Part 8 of the Civil Procedure Rules 1998 (S.I. 1998/3132) to applications for compensation orders and for variations and revocations of compensation undertakings under these Rules, subject to the modifications set out. It also applies provisions from the Insolvency Rules 1986 (S.I. 1986/1925) on appeals and reviews of court orders.

Rules 4 and 5 set out the modified form in which applications are to be made, and the evidence and information that must accompany them.

Rule 6 modifies the Part 8 procedure in relation to acknowledgments of service, making specific provision for what must be included in response to applications covered by these Rules.

Rule 7 provides a tailored regime for the filing and serving of evidence in these proceedings, and rule 8 for the hearing of applications. In the first instance, these applications must be heard by a registrar, and may be adjourned, including in order that they be determined by a judge.

Rule 9 states that a compensation order may be made against a defendant who has not taken part in the proceedings, but also gives the court discretion to vary or set aside an order made in the absence of the defendant.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. An explanatory memorandum is published alongside this instrument at www.legislation.gov.uk.

© Crown copyright 2016

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.00

UK2016090722 09/2016 19585

<http://www.legislation.gov.uk/id/uksi/2016/890>

ISBN 978-0-11-114954-6



9 780111 149546