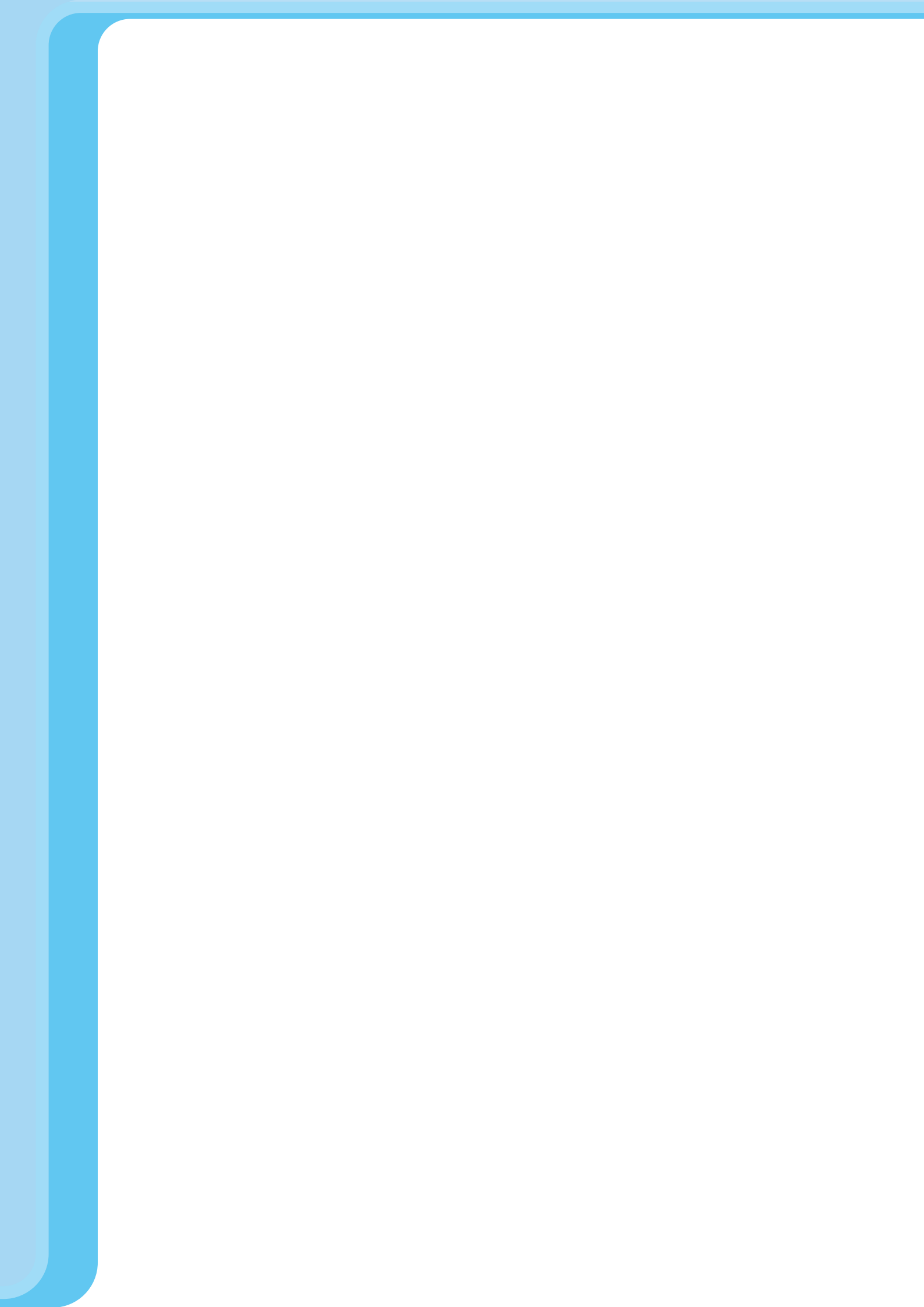


OFFENCES - COMPANIES ACT 2014

INFORMATION LEAFLET NO.29 / December 2020



OFFENCES UNDER THE COMPANIES ACT 2014

The Companies Act 2014 is split into two main areas, Parts 1-15 which deals with private companies limited by shares and Parts 16-26 which deals with the other company types, public limited companies, external companies etc.

This leaflet lists only some of the offences under the Companies Act. It also details enforcement action that may be undertaken by the Companies Registration Office.

There are a number of offences for which the CRO will take immediate action.

Annual returns which are filed late with the CRO incur a **late filing fee** of €100 with effect from the expiry of the company's filing deadline, with a daily late fee of €3 accruing thereafter, up to a maximum of €1,200 per return.

In addition to the late filing fee, the Registrar of Companies is empowered under law to take a number of enforcement measures in respect of those companies that file late. However, a number of companies are repeatedly paying late filing fees, so the severity of the enforcement measures to be employed by the CRO in respect of a company relates directly to that company's annual return filing compliance history in respect of the two most recent years.

"Firm but fair" is the guiding force behind the Integrated Enforcement Environment (IEE) and the four underlying principles are:

- *Proportionality*: We meet non-compliance with an appropriate enforcement response, the severity of which is related to the compliance history of the company.
- *Consistency*: The IEE ensures that companies are not left out of an enforcement process in which they should be included. We also take a similar approach in similar circumstances for different companies.
- *Transparency*: We can ensure that company directors understand what is expected of them. This will include making clear why we intend to, or have taken enforcement action.
- *Targeting*: We make sure that effort is directed primarily towards those companies that repeatedly breach their filing requirements.

The range of enforcement actions to which your company will be exposing itself, in the event that it does not deliver this year's annual return on time (together with any other annual return that may be outstanding), is as follows:

High Court Order

Under section 797 of the Companies Act 2014, the Registrar is empowered, after the expiry of a period of 14 days following the issue of a notice to a company and/or its directors, if the outstanding annual return(s) has/have not been filed at the end of that period, to apply to the High Court for:

- an order directing the company and any officer thereof to make good the default within such period as the court may specify
- an order directing that the costs of and incidental to the application be borne by officers of the company responsible for the default.

Furthermore, this measure may be used by the Registrar to secure the filing of an outstanding return, notwithstanding the prior conviction of the company or its directors for non-filing of annual returns, in the event that any return remains outstanding post-conviction of the company or its directors.

On-the-Spot Fine

Under section 874(2)(c) of the Companies Act 2014, a defaulting person or company must, within the period of 21 days following the issue of a notice of on-the-spot fine by the Registrar to that person or company:

- Remedy the default by filing the outstanding annual return(s), and
- Make to the Registrar a payment of the amount set out in the notice.

The defaulting person/company will be prosecuted if the terms of the on-the-spot fine notice are not complied with within the 21-day period.

Prosecution of Companies and Directors

Companies and directors of companies who fail to file an annual return with the CRO may be prosecuted under section 865(2) of the Companies Act 2014. A director who has received three such convictions may be disqualified from acting as director, or having any involvement in the management, of any company.

Involuntary Strike-Off

A company, which fails to file an annual return in respect of any one year, may be struck off the register and dissolved. In the event that your company has an annual return outstanding, one statutory warning only is required to be issued by the CRO to the registered office of the company.

The protection of limited liability will be lost with effect from the date of strike off and any assets of the company will vest in the Minister for Public Expenditure & Reform (under the State Property Acts) by operation of law on dissolution of the company.

Furthermore, the Director of Corporate Enforcement (ODCE) may apply to the High Court for an order pursuant to section 842 of the Companies Act 2014 disqualifying the company's directors from acting as director, or having any involvement in the management, of any company, together with an order for the legal costs incurred by the ODCE in bringing such an application and the costs incurred by that Office in investigating the matter.

*Because of the emphasis on the latest return, the inclusion of a company in the list for enforcement action need not concern any company that files on time in the current year. **However, if your company does not file its current return on time, the nature of the enforcement measure which will be employed will be determined by reference to your company's compliance with its return filing obligations in previous years.***

Offences

The Act provides for a four-fold categorisation of offences into Categories 1 to 4. Throughout the Act, offences are, as created, categorised as attracting a particular category of penalty.

In Section 871, Chapter 7 of Part 14, those penalties are set out:

- Category 1 offence – conviction on indictment can result in a term of imprisonment of up to 10 years or a fine of up to €500,000 or both;
- Category 1 offence - summary conviction can result in a class A fine or imprisonment for a term not exceeding 12 months or both;
- Category 2 offence – conviction on indictment can result in a term of imprisonment of up to five years or a fine of up to €50,000 or both;
- Category 2 offence - summary conviction can result in a class A fine or imprisonment for a term not exceeding 12 months or both;
- Category 3 offence – a summary offence only, attracting a term of imprisonment of up to six months or a “Class A fine” (or both); and

- Category 4 offence – also a summary offence only, punishable by the imposition of a Class A fine. A “Class A fine” is a fine within the meaning of the Fines Act 2010 (i.e. a fine not exceeding €5,000).

References to Offences in the Companies Act 2014.

There are numerous references throughout the Companies Act to the offences. Offences that can be prosecuted by the Registrar relate to the failure to file documents as required under the Act. Some of the offences as they relate to companies are listed here.

s.50 Necessity to maintain registered office in the state. Category 4 Offence
A company is required to have a registered office in the State to which all communications and notices may be addressed. Change to the address can be filed using the **form B2**. Failure to update the company’s registered office could also result in the company not receiving warning of impending strike-off/other legal notices. As a result a company could be struck off and dissolved without it knowing.

s.128 Company must have a director

Every LTD company must have at least one director. If default is made for 28 consecutive days then the company and any officer of it who is in default shall be guilty of a category 3 offence. Every other company type - DAC, CLG, PLC and unlimited companies must have at least two directors.

All company directors must be over the age of eighteen. Section 129 relates to the prohibition on an undischarged bankrupt acting as officer. Category 2 Offence. A body corporate cannot be a director.

s.137 Company to have director resident in an EEA State. Category 4 Offence
A company can alternatively file a bond, in force to the value of €25,000 or have a certificate from the Revenue Commissioners filed together with **form B67** stating that the company has a real and continuous link with one or more economic activities that are being carried on in the State.

s.142 Contravention of 25 limit of directors. Category 4 Offence
Certain companies are excluded from the limit of 25 companies. **Form B68** can be filed if the company is one categorised in the Table to section 142 or a company is excluded if it is a public limited company. A holding company is deemed to be one company along with the company or companies (subsidiaries) to which it is a holding company.

s.149 Register of directors and secretaries

The CRO register should be updated with any changes in the register of directors and secretaries within 14 days of the change. Notification should be made on **Form B10**. Default in complying with this section is category 3 offence.

s.150 Supplemental provisions regarding director being disqualified under a different jurisdiction. Category 3 Offence.

Where a director of a company becomes disqualified in another jurisdiction, then **form B74a** should be submitted, detailing the jurisdiction in which they have become disqualified, the date on which they became disqualified and the period for which the disqualification lasts. If a person is being appointed director and is already disqualified in a foreign jurisdiction then **form B74** must be submitted with the relevant form appointing the director (**form B10 or form A1**).

s.216 Need to maintain registers and other documents

Chapter 10 Part 4 Companies Act 2014 sets out the requirement to maintain registers and the need to make accessible to different interested parties.

Companies need to have available:

- Copies of directors's service contracts and memoranda
- Copies of instruments creating charges
- Directors and secretaries registers
- Disclosable interests register
- Members register
- Minutes of meetings.

The documents need to be kept at the registered office of the company or at its principal place of business in the State or at another place in the State. Category 3 offence.

s.281 Obligation to keep adequate accounting records

Every company is obliged to keep adequate accounting records - adequate meaning that they:

- correctly record and explain the transactions of the company
- enable, at any time, the assets, liabilities, financial position and profit and loss of the company to be determined with reasonable accuracy,
- enable the directors to ensure that the financial statements comply with the Companies Act and allow the statements to be audited.

Chapter 2 of Part 6 Companies Act 2014 goes into detail into how these records should be maintained. Breaches of these sections (281-285) would be a category 2 offence.

s.343 Obligation to make an Annual Return

Failure to file an annual return is a category 3 offence. Please note that companies which are entitled to the audit exemption under Chapter 15 of Part 6 of the Companies Act 2014 would also lose that entitlement.

s.416 Satisfaction of Charge

If the satisfaction is submitted by the company and it is found that the persons signed the declaration knowing it to be false, then the officers in question are guilty of a **category 2 offence**. Also under section 416(6), if the court considers that the making of the statement contributed to the company being unable to pay its debts, prevented or impeded the orderly winding up of the company or facilitated the defrauding of the creditors, remove the limited liability as the court may specify for the debts and other liabilities of the company.

Part 14 Companies Act 2014

Restrictions and Disqualifications of company officers were previously set out sections 150 and 160 of the Companies Act 1990. Under the Companies Act 2014, company officers can still be restricted or disqualified but there are new means of both being applied.

Section 819 Restriction

The restriction amounts have been changed in the 2014 Act. The company must now have an allotted share capital of nominal value not less than

- **€500,000** in the case of a Public Limited Company (other than an investment company) or a Public Unlimited Company
- **€100,000** in the case of any other company.
- €100,000 in relation to a guarantee company by virtue of the company's memorandum of association specifying that the amount of the contribution on the part of a member of it is not less than €100,000. The member must be an individual rather than a body corporate.
- €100,000 in relation to an investment company by virtue of the issued share capital of the company must not be less than €100,000. The allotment must be in

cash.

- Each allotted share shall be paid up to an aggregate amount not less than the amount referred to above including the whole of any premium on that share and each allotted share and the whole of any premium on each allotted share shall be paid for in cash.

Section 839 Disqualification

A person is automatically disqualified for 5 years if that person is convicted on indictment of any offence under the Companies Act 2014 or any offence involving fraud or dishonesty.

Chapter 5 of Part 14 Companies Act 2014

This chapter relates to disqualification and restriction undertakings and is a new part of the legislation. This allows the Office of the Director of Corporate Enforcement (ODCE) to send a notice (acceptance document) to the company officer in question requesting that they take the restriction/disqualification as an undertaking without the need for the court to be involved.

Where the acceptance notice is signed and returned to the ODCE within the notice period, no further application will be made to the High Court.

STATUTORY RETURNS, TIME FOR DELIVERY AND PENALTIES FOR NON-COMPLIANCE

Note: This list is not exhaustive. The Companies Act imposes many other obligations on companies

| Statutory returns | To be delivered | Penalty for non-compliance |
|--|--|--------------------------------|
| Form B1– Annual return [s343] | Within 56 days of date to which return has been made up which date may be no later than the ARD [s343] | Category 3 Offence [s343 (10)] |
| Financial statements [s347] | To be delivered with annual return within nine months of financial year-end date | Category 3 Offence [s347 (5)] |
| Form B2 – Change in registered office [s50] | Within 14 days of change [s50(3)] | Category 4 Offence [s50(6)] |
| Form B3 – Notice where registers are kept [s216(6)] N.B. not required if kept at registered office | forthwith | Category 3 Offence [s217(3)] |
| Form B4 – Notice of increase in nominal capital [s93(3)] | Within 30 days of increase [s93(2)] | Category 3 Offence [s93(4)] |
| Form B5 – Return of allotments [s70(7)] | Within 30 days of the allotment [s70(7)] | Category 4 Offence [s70(8)] |
| Form B7 – Notice of consolidation/division/cancellation/redemption, etc. of shares [s83(6)/s92] | Within 30 days of the event [s83/s92] | Category 3 Offence [s83/s92] |
| Form B10 – Notice of change in directors/secretary change [s149(8)] | Within 14 days of the event [s149(8)] | Category 3 Offence [s.150(4)] |
| Form B74 - Notice of disqualification in foreign jurisdiction - [s.150(2)/s.22(2)] | Submitted together with either form B10 or form A1 | Category 3 Offence [s.150(4)] |

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| Form B74a - Notice of disqualification in foreign jurisdiction subsequent to appointment - [s.150(9)] | Within 3 months of the Commencement of the Act [s150(9)]/ Within 14 days of the event [s149(8)] | Category 3 Offence [s.150(4)] |
| Form E1/12 – Declaration of solvency [s580(4)][s.207] | Within 14 days of the winding up [s580(5)]/Within 21 after resolution (SAP) [s207(2)] | Ineffective declaration. Court Order is then required to rectify situation |
| Form C1 – Mortgage or Charge created by an Irish company (One Stage Procedure) [s409 (3)] | Within 21 days after the date of creation [s409(3)] | Charge becomes void, the money secured shall immediately become payable [s409] |
| Form C1a - Mortgage or Charge created by an Irish company (Two Stage Procedure) [s409(4)(a)] | | Charge becomes void, the money secured shall immediately become payable [s409] |
| Form C1b - Mortgage or Charge created by an Irish company (Two Stage Procedure) [s409(4)(b)] | Within 21 days of the submission of the form C1a [s409(4)(b)] | Charge becomes void, the money secured shall immediately become payable [s409] |
| Form C6 – Full satisfaction of a charge [s416(4)] | When charge has been satisfied [s416] | Property remains unchanged on register of charges |
| Form C7 – Partial satisfaction of a charge [s416(4)] | When partial satisfaction has been discharged on specific property [s416] | Charge remains unchanged on register of charges |
| Form C10 - Judgment Mortgage [s413(2)] | Within 21 days of receipt of document by creditor from PRA (Property Registration Authority). 3 days for receipt of document to creditor [s413(3) and (5)] | |
| Form E8 – Notice of appointment of receiver [s436(1)] | Within seven days of appointment [s436(1)] | Category 4 Offence [s436(3)] |
| Form E10/17 – Statement of affairs [s430(1)(b)] | Within two months of receipt of statement [s430(1)(b)] | Category 4 Offence [s430(10)] |
| Form E24 – Notice of Petition of Court [s531(1)] | Within three days of presentation of petition [s531(1)] | Category 4 Offence [s531(8)] |
| Form H1 – Restoration to the register of company struck off [s737(1)(b)] | Within 12 months of the company being struck off [s737(1)(c)] | Company remains dissolved |
| Form H2 – Notice of disclosure order [s812(1)(b)] | Within seven days of the making of the disclosure order [s812(2) (b)] | |
| Form H3 – Notice of removal of auditor [s385(2)(b)] | Within 14 days of the resolution removing the auditor [s385(2)(b)] | Category 3 Offence [s385(3)] |
| Form H4 – Notification that proper books of account not kept [s392(1)(b)] | Within seven days of the serving of the notice on the company [s392(1)(b)] | Category 3 Offence [s392(8)] |
| Form H5 – Return of company purchasing its own shares [s116(1)] | Within 30 days of delivery of shares to company [s116(1)] | Category 3 Offence [s116(3)] |
| Forms G2/G1/G1Q – Resolutions [special/ordinary] [s198] | Within 15 days of the passing of the resolution [s198] | Category 4 Offence [s198(5)] |
| Form F2 – Alteration in charter (memo & arts etc.) [s.1302(3)/s1304(3)] | Within 30 days [s1302(3)] | Category 3 Offence [s1302(9)/s1304(9)] |

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| Form F3 – Return of changes in directors/secretary/persons authorised to represent the company authorised persons/ persons responsible for ensuring compliance with Act [s1302(3)/s1304(3)] | Within 30 days [s1302(3)] | Category 3 Offence [s1302(9)/s1304(9)] |
| Form F4 – Changes in address of place of business or branch [s1302(3)/s1304(3)] | Within 30 days [s1304(3)] | Category 3 Offence [s1302(9)/s1304(9)] |
| Form F7 – Financial Statement documents [s1303/s1305] | Within 30 days [s.1303(3)/s.1305] | Category 3 Offence [s1303(5)/s1305(8)] |
| Form F12 – Application to register branch (EEA country) [s1302(2)] | Within 30 days of establishment of Branch [s1302(2)] | Category 3 Offence [s1302(9)] |
| Form F13 – Application to register branch (non EEA Country) [s.1304(2)] | Within 30 days of establishment of branch [s1304(2)] | Category 3 Offence [s1304(6)] |
| Form F14 – Notice re. liquidation/insolvency/closure of branch [s.1302(3)(e)/s.1304(3)] | Within 30 days of occurrence [s.1302(3)/1304(3)] | Category 3 Offence [s1302(9)/s1304(6)] |

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