

Status: Point in time view as at 30/06/2016.

Changes to legislation: There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, SCHEDULE 8. (See end of Document for details)

SCHEDULES

SCHEDULE 8

Section 112

NORTHERN IRELAND: PROVISION CORRESPONDING TO SECTIONS 104 TO 111

The Company Directors Disqualification (Northern Ireland) Order 2002

- 1 In this Schedule “the 2002 Order” means the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)).

Commencement Information

- II** Sch. 8 para. 1 in force at 1.10.2015 by S.I. 2015/1689, reg. 2(h)

Convictions abroad

- 2 (1) After Article 8 of the 2002 Order insert—

Disqualification for certain convictions abroad

- “8A (1) If it appears to the Department that it is expedient in the public interest that a disqualification order under this Article should be made against a person, the Department may apply to the High Court for such an order.
- (2) The High Court may, on an application under paragraph (1), make a disqualification order against a person who has been convicted of a relevant foreign offence.
- (3) A “relevant foreign offence” is an offence committed outside Northern Ireland—
- (a) in connection with—
 - (i) the promotion, formation, management, liquidation or striking off of a company (or any similar procedure),
 - (ii) the receivership of a company's property (or any similar procedure), or
 - (iii) a person being an administrative receiver of a company (or holding a similar position), and
 - (b) which corresponds to an indictable offence under the law of Northern Ireland.
- (4) Where it appears to the Department that, in the case of a person who has offered to give a disqualification undertaking—
- (a) the person has been convicted of a relevant foreign offence, and
 - (b) it is expedient in the public interest that the Department should accept the undertaking (instead of applying, or proceeding with an application, for a disqualification order),

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the Department may accept the undertaking.

(5) In this Article, “company” includes an overseas company.

(6) The maximum period of disqualification under an order under this Article is 15 years.”

(2) Article 8A(2) and (4) of the 2002 Order, as inserted by this paragraph, apply in relation to a conviction of a relevant foreign offence which occurs on or after the day on which this paragraph comes into force regardless of whether the act or omission which constituted the offence occurred before that day.

Commencement Information

I2 Sch. 8 para. 2 in force at 1.10.2015 by S.I. 2015/1689, reg. 2(h) (with Sch. para. 8)

Determining unfitness and disqualification orders: matters to be taken into account

- 3 (1) The 2002 Order is amended as follows.
- (2) In Article 9 (duty of High Court to disqualify unfit directors of insolvent companies)
- (a) in paragraph (1)(b), for “any other company or companies” substitute “one or more other companies or overseas companies”,
- (b) after paragraph (1) insert—
- “(1A) In this Article references to a person's conduct as a director of any company or overseas company include, where that company or overseas company has become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency.”,
- (c) in paragraph (2), omit the words from “and references” to the end, and
- (d) after paragraph (2) insert—
- “(2A) For the purposes of this Article, an overseas company becomes insolvent if the company enters into insolvency proceedings of any description (including interim proceedings) in any jurisdiction.
- (2B) In this Article and Article 10, “director” includes a shadow director.”
- (3) In Article 11 (disqualification where expedient in public interest)—
- (a) in paragraph (3)(a) after “shadow director” insert “ (either taken alone or taken together with his conduct as a director or shadow director of one or more other companies or overseas companies), ”,
- (b) in paragraph (4) after “the company” insert “ (either taken alone or taken together with his conduct as a director or shadow director of one or more other companies or overseas companies) ”, and
- (c) after paragraph (4) insert—
- “(4A) Paragraph (1A) of Article 9 applies for the purposes of this Article as it applies for the purposes of that Article.”
- (4) Omit Article 13 (matters for determining unfitness of directors).

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(5) After Article 17 insert—

Determining unfitness etc.: matters to be taken into account

“17A(1) This Article applies where the High Court must determine—

- (a) whether a person's conduct as a director of one or more companies or overseas companies makes the person unfit to be concerned in the management of a company;
- (b) whether to exercise any discretion it has to make a disqualification order under any of Articles 5 to 7, 8A, 11 or 14;
- (c) where the Court has decided to make a disqualification order under any of those Articles or is required to make an order under Article 9, what the period of disqualification should be.

(2) This Article also applies where the Department must determine—

- (a) whether a person's conduct as a director of one or more companies or overseas companies makes the person unfit to be concerned in the management of a company;
- (b) whether to exercise any discretion the Department has to accept a disqualification undertaking under any of Articles 8A, 10 or 11.

(3) In making any such determination in relation to a person, the High Court or the Department must—

- (a) in every case, have regard in particular to the matters set out in paragraphs 1 to 4 of Schedule 1;
- (b) in a case where the person concerned is or has been a director of a company or overseas company, also have regard in particular to the matters set out in paragraphs 5 to 7 of that Schedule.

(4) In this Article “director” includes a shadow director.

(5) Paragraph (1A) of Article 9 applies for the purposes of this Article as it applies for the purposes of that Article.

(6) The Department may by order modify Schedule 1; and such an order may contain such transitional provision as may appear to the Department to be necessary or expedient.

(7) An order under paragraph (5) is subject to affirmative resolution.”

(6) For Schedule 1 (matters determining unfitness of directors) substitute—

“SCHEDULE 1

Article 17A

DETERMINING UNFITNESS ETC: MATTERS TO BE TAKEN INTO ACCOUNT

Matters to be taken into account in all cases

- 1 The extent to which the person was responsible for the causes of any material contravention by a company or overseas company of any applicable legislative or other requirement.
- 2 Where applicable, the extent to which the person was responsible for the causes of a company or overseas company becoming insolvent.

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- 3 The frequency of conduct of the person which falls within paragraph 1 or 2.
- 4 The nature and extent of any loss or harm caused, or any potential loss or harm which could have been caused, by the person's conduct in relation to a company or overseas company.

*Additional matters to be taken into account
where the person is or has been a director*

- 5 Any misfeasance or breach of any fiduciary duty by the director in relation to a company or overseas company.
- 6 Any material breach of any legislative or other obligation of the director which applies as a result of being a director of a company or overseas company.
- 7 The frequency of conduct of the director which falls within paragraph 5 or 6.

Interpretation

- 8 Paragraphs (1A) to (2A) of Article 9 apply for the purposes of this Schedule as they apply for the purposes of that Article.
- 9 In this Schedule “director” includes a shadow director.”

Commencement Information

I3 Sch. 8 para. 3 in force at 1.10.2015 by S.I. 2015/1689, reg. 2(h) (with Sch. paras. 5-8)

Extension of period for applying for disqualification order for unfit directors

- 4 (1) In Article 10(2) of the 2002 Order (period within which application may be made for disqualification order against unfit director of insolvent company), for “2 years” substitute “ 3 years ”.
- (2) Sub-paragraph (1) applies only to an application relating to a company which has become insolvent after the commencement of that sub-paragraph.
- (3) Article 9(2) of the 2002 Order (meaning of “becoming insolvent”) applies for the purposes of sub-paragraph (2) as it applies for the purposes of Article 9 of that Order.

Commencement Information

I4 Sch. 8 para. 4 in force at 1.10.2015 by S.I. 2015/1689, reg. 2(h)

Reports of office-holders on conduct of directors of insolvent companies

- 5 (1) The 2002 Order is amended as follows.
- (2) After Article 10 insert—

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Office-holder's report on conduct of directors

- “10A(1) The office-holder in respect of a company which is insolvent must prepare a report (a “conduct report”) about the conduct of each person who was a director of the company—
- (a) on the insolvency date, or
 - (b) at any time during the period of 3 years ending with that date.
- (2) For the purposes of this Article a company is insolvent if—
- (a) the company is in liquidation and at the time it went into liquidation its assets were insufficient for the payment of its debts and other liabilities and the expenses of the winding up,
 - (b) the company has entered administration, or
 - (c) an administrative receiver of the company has been appointed;
- and paragraph (1A) of Article 9 applies for the purposes of this Article as it applies for the purposes of that Article.
- (3) A conduct report must, in relation to each person, describe any conduct of the person which may assist the Department in deciding whether to exercise the power under Article 10(1) or (3) in relation to that person.
- (4) The office-holder must send the conduct report to the Department before the end of—
- (a) the period of 3 months beginning with the insolvency date, or
 - (b) such other longer period as the Department considers appropriate in the particular circumstances.
- (5) If new information comes to the attention of an office-holder, the office-holder must send that information to the Department as soon as reasonably practicable.
- (6) “New information” is information which an office-holder considers should have been included in a conduct report prepared in relation to the company, or would have been so included had it been available before the report was sent.
- (7) If there is more than one office-holder in respect of a company at any particular time (because the company is insolvent by virtue of falling within more than one sub-paragraph of paragraph (2) at that time), paragraph (1) applies only to the first of the office-holders to be appointed.
- (8) In the case of a company which is at different times insolvent by virtue of falling within one or more different sub-paragraphs of paragraph (2)—
- (a) the references in paragraph (1) to the insolvency date are to be read as references to the first such date during the period in which the company is insolvent, and
 - (b) paragraph (1) does not apply to an office-holder if at any time during the period in which the company is insolvent a conduct report has already been prepared and sent to the Department.
- (9) The “office-holder” in respect of a company which is insolvent is—
- (a) in the case of a company being wound up by the High Court, the official receiver;

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- (b) in the case of a company being wound up otherwise, the liquidator;
 - (c) in the case of a company in administration, the administrator;
 - (d) in the case of a company of which there is an administrative receiver, the receiver.
- (10) The “insolvency date”—
- (a) in the case of a company being wound up by the High Court, means the date on which the Court makes the winding-up order (see Article 105 of the Insolvency (Northern Ireland) Order 1989);
 - (b) in the case of a company being wound up by way of a members' voluntary winding up, means the date on which the liquidator forms the opinion that the company will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration of solvency under Article 75 of the Insolvency (Northern Ireland) Order 1989;
 - (c) in the case of a company being wound up by way of a creditors' voluntary winding up where no such declaration under Article 75 of that Order has been made, means the date of the passing of the resolution for voluntary winding up;
 - (d) in the case of a company which has entered administration, means the date the company did so;
 - (e) in the case of a company in respect of which an administrative receiver has been appointed, means the date of that appointment.
- (11) For the purposes of paragraph (10)(e), any appointment of an administrative receiver to replace an administrative receiver who has died or vacated office pursuant to Article 55 of the Insolvency (Northern Ireland) Order 1989 is to be ignored.
- (12) In this Article, “director” includes a shadow director.”
- (3) In Article 10 (disqualification order or undertaking and reporting provisions), omit paragraph (4).
- (4) For the heading to Article 10 substitute “ Disqualification orders under Article 9: applications and acceptance of undertakings ”.
- (5) In consequence of the amendment made by sub-paragraph (3), omit paragraph 64 of Schedule 2 to the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)).

Commencement Information

I5 Sch. 8 para. 5 in force at 6.4.2016 by S.I. 2016/321, reg. 3(c) (with Sch. paras. 3, 4)

Directors: removal of restriction on application for disqualification order

- 6 (1) The 2002 Order is amended as follows.
- (2) In Article 11 (disqualification of director after investigation of company)—
- (a) in paragraph (1), omit “from investigative material”,
 - (b) omit paragraph (2), and

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- (c) in paragraph (3), omit “from such report, information or documents”.
- (3) For the heading of that Article substitute “ Disqualification of director on finding of unfitness ”.

Commencement Information

I6 Sch. 8 para. 6 in force at 1.10.2015 by S.I. 2015/1689, reg. 2(h)

Persons instructing unfit director

7 After Article 11 of the 2002 Order insert—

“Persons instructing unfit directors

Order disqualifying person instructing unfit director of insolvent company

11A (1) The High Court may make a disqualification order against a person (“P”) if, on an application under Article 11B, it is satisfied—

- (a) either—
- (i) that a disqualification order under Article 9 has been made against a person who is or has been a director (but not a shadow director) of a company, or
 - (ii) that the Department has accepted a disqualification undertaking from such a person under Article 10(3), and
- (b) that P exercised the requisite amount of influence over the person.

That person is referred to in this Article as “the main transgressor”.

- (2) For the purposes of this Article, P exercised the requisite amount of influence over the main transgressor if any of the conduct—
- (a) for which the main transgressor is subject to the order made under Article 9, or
 - (b) in relation to which the undertaking was accepted from the main transgressor under Article 10(3),
- was the result of the main transgressor acting in accordance with P’s directions or instructions.
- (3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.
- (4) Under this Article the minimum period of disqualification is 2 years and the maximum period is 15 years.

Application for order under Article 11A

11B (1) If it appears to the Department that it is expedient in the public interest that a disqualification order should be made against a person under Article 11A, the Department may—

- (a) make an application to the High Court for such an order, or

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- (b) in a case where an application for an order under Article 9 against the main transgressor has been made by the official receiver, direct the official receiver to make such an application.
- (2) Except with the leave of the High Court, an application for a disqualification order under Article 11A must not be made after the end of the period of 3 years beginning with the day on which the company in question became insolvent (within the meaning given by Article 9(2)).
- (3) Paragraph (5) of Article 10 applies for the purposes of this Article as it applies for the purposes of that Article.

Disqualification undertaking instead of an order under Article 11A

- 11C (1) If it appears to the Department that it is expedient in the public interest to do so, the Department may accept a disqualification undertaking from a person (“P”) if—
- (a) any of the following is the case—
 - (i) a disqualification order under Article 9 has been made against a person who is or has been a director (but not a shadow director) of a company,
 - (ii) the Department has accepted a disqualification undertaking from such a person under Article 10(3), or
 - (iii) it appears to the Department that such an undertaking could be accepted from such a person (if one were offered), and
 - (b) it appears to the Department that P exercised the requisite amount of influence over the person.

That person is referred to in this Article as “the main transgressor”.

- (2) For the purposes of this Article, P exercised the requisite amount of influence over the main transgressor if any of the conduct—
 - (a) for which the main transgressor is subject to the disqualification order made under Article 9,
 - (b) in relation to which the disqualification undertaking was accepted from the main transgressor under Article 10(3), or
 - (c) which led the Department to the conclusion set out in paragraph (1) (a)(iii),
 was the result of the main transgressor acting in accordance with P's directions or instructions.
- (3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.
- (4) Paragraph (5) of Article 10 applies for the purposes of this Article as it applies for the purposes of that Article.

Order disqualifying person instructing unfit director: other cases

- 11D (1) The High Court may make a disqualification order against a person (“P”) if, on an application under this Article, it is satisfied—
- (a) either—

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- (i) that a disqualification order under Article 11 has been made against a person who is or has been a director (but not a shadow director) of a company, or
 - (ii) that the Department has accepted a disqualification undertaking from such a person under Article 11(3), and
- (b) that P exercised the requisite amount of influence over the person.

That person is referred to in this Article as “the main transgressor”.

- (2) The Department may make an application to the High Court for a disqualification order against P under this Article if it appears to the Department that it is expedient in the public interest for such an order to be made.
- (3) For the purposes of this Article, P exercised the requisite amount of influence over the main transgressor if any of the conduct—
- (a) for which the main transgressor is subject to the order made under Article 11, or
 - (b) in relation to which the undertaking was accepted from the main transgressor under Article 11(3),
- was the result of the main transgressor acting in accordance with P's directions or instructions.
- (4) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.
- (5) Under this Article the maximum period of disqualification is 15 years.

Disqualification undertaking instead of an order under Article 11D

11E (1) If it appears to the Department that it is expedient in the public interest to do so, the Department may accept a disqualification undertaking from a person (“P”) if—

- (a) any of the following is the case—
 - (i) a disqualification order under Article 11 has been made against a person who is or has been a director (but not a shadow director) of a company,
 - (ii) the Department has accepted a disqualification undertaking from such a person under Article 11(3), or
 - (iii) it appears to the Department that such an undertaking could be accepted from such a person (if one were offered), and
- (b) it appears to the Department that P exercised the requisite amount of influence over the person.

That person is referred to in this Article as “the main transgressor”.

- (2) For the purposes of this Article, P exercised the requisite amount of influence over the main transgressor if any of the conduct—
- (a) for which the main transgressor is subject to the disqualification order made under Article 11,
 - (b) in relation to which the disqualification undertaking was accepted from the main transgressor under Article 11(3), or

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- (c) which led the Department to the conclusion set out in paragraph (1)(a)(iii),
- was the result of the main transgressor acting in accordance with P's directions or instructions.
- (3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.”

Commencement Information

I7 Sch. 8 para. 7 in force at 1.10.2015 by S.I. 2015/1689, reg. 2(h) (with Sch. para. 9)

Compensation orders and undertakings

8 After Article 19 of the 2002 Order insert—

“Compensation orders and undertakings

Compensation orders and undertakings

- 19A(1) The High Court may make a compensation order against a person on the application of the Department if the Court is satisfied that the conditions mentioned in paragraph (3) are met.
- (2) If it appears to the Department that the conditions mentioned in paragraph (3) are met in respect of a person who has offered to give the Department a compensation undertaking, the Department may accept the undertaking instead of applying, or proceeding with an application, for a compensation order.
- (3) The conditions are that—
- (a) the person is subject to a disqualification order or disqualification undertaking under this Order, and
 - (b) conduct for which the person is subject to the order or undertaking has caused loss to one or more creditors of an insolvent company of which the person has at any time been a director.
- (4) An “insolvent company” is a company that is or has been insolvent and a company becomes insolvent if—
- (a) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up,
 - (b) the company enters administration, or
 - (c) an administrative receiver of the company is appointed.
- (5) The Department may apply for a compensation order at any time before the end of the period of two years beginning with the date on which the disqualification order referred to in paragraph (3)(a) was made, or the disqualification undertaking referred to in that paragraph was accepted.

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- (6) In the case of a person subject to a disqualification order under Article 11A or 11D, or a disqualification undertaking under Article 11C or 11E, the reference in paragraph (3)(b) to conduct is a reference to the conduct of the main transgressor in relation to which the person has exercised the requisite amount of influence.

Amounts payable under compensation orders and undertakings

19B (1) A compensation order is an order requiring the person against whom it is made to pay an amount specified in the order—

- (a) to the Department for the benefit of—
 - (i) a creditor or creditors specified in the order;
 - (ii) a class or classes of creditor so specified;
 - (b) as a contribution to the assets of a company so specified.
- (2) A compensation undertaking is an undertaking to pay an amount specified in the undertaking—
- (a) to the Department for the benefit of—
 - (i) a creditor or creditors specified in the undertaking;
 - (ii) a class or classes of creditor so specified;
 - (b) as a contribution to the assets of a company so specified.
- (3) When specifying an amount the High Court (in the case of an order) and the Department (in the case of an undertaking) must in particular have regard to—
- (a) the amount of the loss caused;
 - (b) the nature of the conduct mentioned in Article 19A(3)(b);
 - (c) whether the person has made any other financial contribution in recompense for the conduct (whether under a statutory provision or otherwise).
- (4) An amount payable by virtue of paragraph (2) under a compensation undertaking is recoverable as if payable under a court order.
- (5) An amount payable under a compensation order or compensation undertaking is provable as a bankruptcy debt.

Variation and revocation of compensation undertakings

19C (1) The High Court may, on the application of a person who is subject to a compensation undertaking—

- (a) reduce the amount payable under the undertaking, or
 - (b) provide for the undertaking not to have effect.
- (2) On the hearing of an application under paragraph (1), the Department must appear and call the attention of the Court to any matters which the Department considers relevant, and may give evidence or call witnesses.”

Commencement Information

18 Sch. 8 para. 8 in force at 1.10.2015 by S.I. 2015/1689, reg. 2(h) (with Sch. para. 10)

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Amendments consequential on, or related to, amendments made by paragraphs 2 to 8

- 9 (1) The 2002 Order is amended as follows.
- (2) In Article 2(2) (interpretation), after the definition of “the official receiver” insert—
- ““overseas company” is a company which is incorporated or formed outside Northern Ireland;”.
- (3) In Article 3 (disqualification orders: general), in paragraph (2), for “Article 9” substitute “ Articles 9 and 11A ”.
- (4) In Article 4 (disqualification undertakings: general)—
- (a) in paragraph (1), for “10 and 11” substitute “ 8A, 10, 11, 11C and 11E ”, and
- (b) in paragraph (2), after “10” insert “ or 11C ”.
- (5) In Article 5 (disqualification on conviction of offence punishable only on indictment or either on indictment or summary conviction), after paragraph (1) insert—
- “(1A) In paragraph (1), “company” includes overseas company.”
- (6) In Article 6 (disqualification for persistent default under companies legislation), after paragraph (3A) insert—
- “(3B) In this Article “company” includes overseas company.”
- (7) In Article 8 (disqualification on summary conviction of offence), after paragraph (4A) insert—
- “(4B) In this Article “company” includes overseas company.”
- (8) In Article 9 (duty of High Court to disqualify unfit directors of insolvent companies), in paragraph (2), omit “and Article 10”.
- (9) In Article 10 (disqualifications under Article 9: applications and undertakings), after paragraph (5) insert—
- “(6) Paragraphs (1A) and (2) of Article 9 apply for the purposes of this Article as they apply for the purposes of that Article.”
- (10) Before Article 12 insert— “ Further provision about disqualification undertakings ”.
- (11) In Article 14 (participation in wrongful trading), after paragraph (2) insert—
- “(3) In this Article “company” includes overseas company.”
- (12) In Article 20 (application for disqualification order), in paragraph (2), after “any company” insert “ or overseas company ”.
- (13) In Article 22 (register of disqualification orders and undertakings), in paragraph (3) (a), for “10 or 11” substitute “ 8A, 10, 11, 11C or 11E ”.
- (14) In Article 23 (admissibility in evidence of statements), in paragraph (1)—
- (a) for “9 to 14” substitute “ 8A to 14, 17A ”, and
- (b) after “or 19” insert “ to 19C ”.
- (15) In Article 24 (interaction with the Insolvency (Northern Ireland) Order 1989), in paragraphs (1) and (2)—
- (a) for “9 to 14” substitute “ 8A to 14, 17A ”, and

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- (b) after “or 19” insert “ to 19C ”.
- (16) In Article 24D (application of Order to building societies), omit paragraph (4).
- (17) Omit Article 24E (application of Order to open-ended investment companies).
- (18) In Article 25 (application of Order to incorporated friendly societies)—
 - (a) after paragraph (3) insert—
 - “(3A) In relation to an incorporated friendly society, this Order applies as if Articles 11A to 11E were omitted.”, and
 - (b) omit paragraph (4).
- (19) In Article 25A (application of Order to registered societies)—
 - (a) omit paragraph (2)(d),
 - (b) after paragraph (2)(f) insert—
 - “(g) Articles 11A to 11E are to be disregarded.”, and
 - (c) omit paragraph (3).

Commencement Information

19 Sch. 8 para. 9 in force at 1.10.2015 by S.I. 2015/1689, reg. 2(h)

- 10 Omit paragraph 65 of Schedule 2 to the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)).

Commencement Information

110 Sch. 8 para. 10 in force at 1.10.2015 by S.I. 2015/1689, reg. 2(h)

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