

*Status: Point in time view as at 31/10/2016.*

*Changes to legislation: The Company Directors Disqualification (Northern Ireland) Order 2002 is up to date with all changes known to be in force on or before 21 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## STATUTORY INSTRUMENTS

# 2002 No. 3150 (N.I. 4)

## The Company Directors Disqualification (Northern Ireland) Order 2002

- - - - - 17th December 2002

### Modifications etc. (not altering text)

- C1 Order applied (with modifications) (31.7.2015) by [The European Grouping of Territorial Cooperation Regulations 2015 \(S.I. 2015/1493\)](#), [reg. 10](#) (with [reg. 11](#))
- C2 Order modified (1.1.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), [arts. 1\(3\)\(c\), 271\(5\)](#) (with [arts. 8\(8\), 121\(3\), 307](#))
- C3 Order applied (1.8.2007) by [European Grouping of Territorial Cooperation Regulations 2007 \(S.I. 2007/1949\)](#), [reg. 9](#)
- C4 Order power to amend conferred (17.2.2009 for certain purposes otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 158\(2\)\(b\), 159\(2\)\(b\)](#), 167 (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)
- C5 Order applied (with modifications) (21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 121](#), 134 (with [s. 247](#)); [S.I. 2009/296](#), [art. 3](#), [Sch. para. 2](#)
- C6 Order applied (with modifications) (21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 155](#), 167 (with [s. 247](#)); [S.I. 2009/296](#), [art. 3](#), [Sch. para. 3](#)
- C7 Order modified by [1986 c. 53, s. 90E](#) (as inserted (21.2.2009) by [Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#)), [arts. 6, 17](#))
- C8 Order applied (with modifications) (8.2.2011) by [Investment Bank Special Administration Regulations 2011 \(S.I. 2011/245\)](#), [regs. 1, 8\(7\), 9, 15, 16-21, 24-26](#), [Schs. 1-5](#)

### *Introductory*

#### **Title and commencement**

1.—(1) This Order may be cited as the Company Directors Disqualification (Northern Ireland) Order 2002.

(2) This Order shall come into operation on such day or days as the Department may by order appoint<sup>F1</sup>.

F1 fully exercised by SR 2003/345

#### **Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

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(2) In this Order—

“administrative receiver” has the meaning given by Article 5(1) of [F2 the Insolvency (Northern Ireland) Order 1989];

[F3 “ CMA ” means the Competition and Markets Authority; ]

[F4 “ company ” means—

- (a) a company registered under the Companies Act 2006 in Northern Ireland, or
- (b) a company that may be wound up under Part 6 of the Insolvency (Northern Ireland) Order 1989 (unregistered companies);]

[F5 “ the Companies Acts ” has the meaning given by section 2(1) of the Companies Act 2006; ]

[F6 “ the Companies Acts ” has the meaning given in section 2 of the Companies Act 2006; ]

F7 .....

F8 .....

F9 .....

“the Department” means the Department of Enterprise, Trade and Investment;

[F10 “ director ” includes any person occupying the position of director by whatever name called; ]

F11 .....

[F12 “ officer ” has the same meaning as in the Companies Acts (see section 1173(1) of the Companies Act 2006); ]

“the official receiver” means, in relation to the winding up of a company or the bankruptcy of an individual, any officer of the Department who by virtue of Article 355 or 357 of [F13 the Insolvency (Northern Ireland) Order 1989] is authorised to act as the official receiver in relation to that winding up or bankruptcy;

F14 ...

[F15 “ overseas company ” is a company which is incorporated or formed outside Northern Ireland;]

“prescribed” means prescribed by regulations;

[F16 “ the registrar ” means the registrar of companies for Northern Ireland; ]

F17 [ “ regulations ” means—

- (a) in Article 13D, regulations made by the Secretary of State, and
- (b) in other provisions of this Order, regulations made by the Department subject (except in Article 23(3)) to negative resolution;]

“shadow director”, in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act [F18, but so that a person is not deemed a shadow director by reason only that the directors act—

- (a) on advice given by that person in a professional capacity;
- (b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under a statutory provision;
- (c) in accordance with guidance or advice given by that person in that person's capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975);]

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“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

(3) Article 6 of [<sup>F19</sup>the Insolvency (Northern Ireland) Order 1989] (interpretation for Parts II to VII of that Order) applies as regards references to a company's insolvency and to its going into liquidation; and references to acting as an insolvency practitioner are to be read in accordance with Article 3 of that Order.

[<sup>F20</sup>( 4 ) Any reference to provisions, or a particular provision, of the Companies Acts or the Insolvency (Northern Ireland) Order 1989 includes the corresponding provisions or provision of corresponding earlier legislation.]

[<sup>F21</sup>( 5 ) Subject to the provisions of this Article, expressions that are defined for the purposes of the Companies Acts [<sup>F22</sup>(see section 1174 of, and Schedule 8 to, the Companies Act 2006)] have the same meaning in this Order.]

(6) Any reference to acting as receiver—

- (a) includes acting as manager or as both receiver and manager, but
- (b) does not include acting as administrative receiver.

- F2** Art. 2(2): words in the definition of "administrative receiver" substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 204(2)(a)** (with art. 10)
- F3** Words in art. 2(2) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 224(b)** (with art. 3)
- F4** Art. 2(2): definition of "company" substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 204(2)(b)** (with art. 10)
- F5** Art. 2(2): definition of "the Companies Acts" inserted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 204(2)(c)** (with art. 10)
- F6** Art. 2(2): definition of "the Companies Acts" inserted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b), **Sch. 1 para. 226(2)(a)(iii)** (with arts. 6, 11, 12)
- F7** Art. 2(2): definition of "the companies legislation" omitted (1.10.2009) by virtue of [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 204(2)(d)** (with art. 10)
- F8** Art. 2(2): definition of "the Companies Order" omitted (1.10.2009) by virtue of [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 204(2)(d)** (with art. 10)
- F9** Art. 2(2): definition of "the Companies Orders" repealed (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3, **Sch. 1 para. 226(2)(a)(ii)**, **Sch. 2** (with arts. 6, 11, 12)
- F10** Art. 2(2): definition of "director" substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 204(2)(e)** (with art. 10)
- F11** Art. 2(2): definition of "the Insolvency Order" omitted (1.10.2009) by virtue of [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 204(2)(f)** (with art. 10)
- F12** Art. 2(2): definition of "officer" substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 204(2)(g)** (with art. 10)

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- F13** Art. 2(2): words in the definition of "the official receiver" substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 204(2)(h)** (with art. 10)
- F14** Words in art. 2(2) omitted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 224(a)** (with art. 3)
- F15** Words in art. 2(2) inserted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 9(2)**; S.I. 2015/1689, reg. 2(h)
- F16** Art. 2(2): definition of "the registrar" substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 204(2)(i)** (with art. 10)
- F17** 2005 NI 9
- F18** Words in art. 2(2) substituted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 91(2), 164(3)(g)(iii)**
- F19** Words in art. 2(3) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 204(3)** (with art. 10)
- F20** Art. 2(4) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 204(4)** (with art. 10)
- F21** Art. 2(5) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 226(2)(c)** (with arts. 6, 11, 12)
- F22** Words in art. 2(5) inserted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 204(5)** (with art. 10)

#### Modifications etc. (not altering text)

- C9** Art. 2(2)-(6) applied by S.I. 1989/638, **reg. 20(2)** (as inserted (1.10.2009) by European Economic Interest Grouping (Amendment) Regulations 2009 (S.I. 2009/2399), {reg. 21(4)} (with reg. 2))

### Disqualification orders: general

3.—(1) In the circumstances specified in this Order a court may, and under<sup>[F23]</sup> Articles 9 and 13A] shall, make against a person a disqualification order, that is to say an order that, for a period specified in the order—

- (a) he shall not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of the High Court, and
- (b) he shall not act as an insolvency practitioner.

(2) In each Article which gives to a court power or, as the case may be, imposes on it the duty to make a disqualification order there is specified the maximum (and, in <sup>[F24]</sup>Articles 9 and 11A], the minimum) period of disqualification which may or (as the case may be) must be imposed by means of the order and, unless the court otherwise orders, the period of disqualification so imposed shall begin at the end of the period of 21 days beginning with the date of the order.

(3) Where a disqualification order is made against a person who is already subject to such an order or to a disqualification undertaking, the periods specified in those orders or, as the case may be, in the order and the undertaking shall run concurrently.

(4) A disqualification order may be made on grounds which are or include matters other than criminal convictions, notwithstanding that the person in respect of whom it is to be made may be criminally liable in respect of those matters.

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**F23** 2005 NI 9

**F24** Words in art. 3(2) substituted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015](#) (c. 26), s. 164(1), **Sch. 8 para. 9(3)**; S.I. 2015/1689, reg. 2(h)

**Modifications etc. (not altering text)**

**C10** Art. 3 applied by S.I. 1989/638, **reg. 20(2)** (as inserted (1.10.2009) by [European Economic Interest Grouping \(Amendment\) Regulations 2009](#) (S.I. 2009/2399)), {reg. 21(4)} (with reg. 2))

**Disqualification undertakings: general**

4.—(1) In the circumstances specified in Articles [<sup>F25</sup>8A, 10, 11, 11C and 11E] the Department may accept a disqualification undertaking, that is to say an undertaking by any person that, for a period specified in the undertaking, the person—

- (a) will not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of the High Court, and
- (b) will not act as an insolvency practitioner.

(2) The maximum period which may be specified in a disqualification undertaking is 15 years; and the minimum period which may be specified in a disqualification undertaking under Article 10 [<sup>F26</sup>or 11C] is two years.

(3) Where a disqualification undertaking by a person who is already subject to such an undertaking or to a disqualification order is accepted, the periods specified in those undertakings or (as the case may be) the undertaking and the order shall run concurrently.

(4) In determining whether to accept a disqualification undertaking by any person, the Department may take account of matters other than criminal convictions, notwithstanding that the person may be criminally liable in respect of those matters.

**F25** Words in art. 4(1) substituted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015](#) (c. 26), s. 164(1), **Sch. 8 para. 9(4)(a)**; S.I. 2015/1689, reg. 2(h)

**F26** Words in art. 4(2) inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015](#) (c. 26), s. 164(1), **Sch. 8 para. 9(4)(b)**; S.I. 2015/1689, reg. 2(h)

*Disqualification for general misconduct in connection with companies*

**Disqualification on conviction of offence punishable only on indictment or either on conviction on indictment or on summary conviction**

5.—(1) The court may make a disqualification order against a person where he is convicted of an offence punishable only on conviction on indictment or either on conviction on indictment or on summary conviction (whether on indictment or on summary conviction) in connection with the promotion, formation, management, liquidation or striking off of a company, with the receivership of a company's property or with his being an administrative receiver of a company.

[<sup>F27</sup>(1A) In paragraph (1), “company” includes overseas company.]

(2) “The court” for this purpose means—

- (a) the High Court, or
- (b) the court by or before which the person is convicted of the offence, or
- (c) in the case of a summary conviction, any other court of summary jurisdiction<sup>F28</sup> ....

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- (3) The maximum period of disqualification under this Article is—
- (a) where the disqualification order is made by a court of summary jurisdiction, 5 years, and
  - (b) in any other case, 15 years.

**F27** Art. 5(1A) inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 8 para. 9\(5\)](#); S.I. 2015/1689, reg. 2(h)

**F28** Words in art. 5(2)(c) repealed (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\)](#), s. 106(2), Sch. 1 para. 120(1), [Sch. 9 Pt. 1](#) (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

**Modifications etc. (not altering text)**

**C11** Art. 5 applied by [S.I. 1989/638](#), [reg. 20\(2\)](#) (as inserted (1.10.2009) by [European Economic Interest Grouping \(Amendment\) Regulations 2009 \(S.I. 2009/2399\)](#), {reg. 21(4)} (with reg. 2))

**Disqualification for persistent default under companies legislation**

6.—(1) The High Court may make a disqualification order against a person where it appears to it that he has been persistently in default in relation to provisions of the companies legislation requiring any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the registrar.

(2) On an application to the High Court for an order to be made under this Article, the fact that a person has been persistently in default in relation to such provisions as are mentioned in paragraph (1) may (without prejudice to its proof in any other manner) be conclusively proved by showing that in the 5 years ending with the date of the application he has been adjudged guilty (whether or not on the same occasion) of 3 or more defaults in relation to those provisions.

(3) A person is to be treated under paragraph (2) as being adjudged guilty of a default in relation to any such provision if—

- (a) he is convicted (whether on indictment or on summary conviction) of an offence consisting in a contravention of that provision (whether on his own part or on the part of any company), or
- (b) a default order is made against him, that is to say an order under any of the following provisions—
  - (i) <sup>[F29]</sup>section 452 of the Companies Act 2006] (order requiring delivery of company accounts),
  - (ii) <sup>[F30]</sup>section 456 of the Companies Act 2006] (order requiring preparation of revised accounts),
  - <sup>[F31]</sup>(iii) section 1113 of the Companies Act 2006 (enforcement of company's filing obligations),]
  - (iv) Article 51 of <sup>[F32]</sup>the Insolvency (Northern Ireland) Order 1989] (enforcement of receiver's or manager's duty to make returns), or
  - (v) Article 144 of <sup>[F33]</sup>that Order] (corresponding provision for liquidator in winding up), in respect of any such contravention of that provision (whether on his own part or on the part of any company).

<sup>[F34]</sup>(3A) In this Article “the companies legislation” means the Companies Acts and Parts 2 to 7 of the Insolvency (Northern Ireland) Order 1989 (company insolvency and winding up).]

<sup>[F35]</sup>(3B) In this Article “company” includes overseas company.]

(4) The maximum period of disqualification under this Article is 5 years.



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- F29** Words in art. 6(3)(b)(i) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 226(3)(a)** (with arts. 6, 11, 12)
- F30** Words in art. 6(3)(b)(ii) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 226(3)(b)** (with arts. 6, 11, 12)
- F31** Art. 6(3)(b)(iii) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 205(2)(a)** (with art. 10)
- F32** Words in art. 6(3)(b)(iv) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 205(2)(b)** (with art. 10)
- F33** Words in art. 6(3)(b)(v) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 205(2)(c)** (with art. 10)
- F34** Art. 6(3A) inserted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 205(3)** (with art. 10)
- F35** Art. 6(3B) inserted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 9(6)**; S.I. 2015/1689, reg. 2(h)

### Disqualification for fraud, etc., in winding up

7.—(1) The High Court may make a disqualification order against a person if, in the course of the winding up of a company, it appears that he—

- (a) has been guilty of an offence for which he is liable (whether he has been convicted or not) under [<sup>F36</sup>section 993 of the Companies Act 2006] (fraudulent trading), or
- (b) has otherwise been guilty, while an officer or liquidator of the company or receiver of the company's property or administrative receiver of the company, of any fraud in relation to the company or of any breach of his duty as such officer, liquidator, receiver or administrative receiver.
- (2) In this Article “officer” includes a shadow director.
- (3) The maximum period of disqualification under this Article is 15 years.

- F36** Words in art. 7(1)(a) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 99** (with saving in art. 12)

### Modifications etc. (not altering text)

- C12** Art. 7 applied by S.I. 1989/638, **reg. 20(2)** (as inserted (1.10.2009) by European Economic Interest Grouping (Amendment) Regulations 2009 (S.I. 2009/2399)), {reg. 21(4)} (with reg. 2))

### Disqualification on summary conviction of offence

8.—(1) An offence counting for the purposes of this Article is one of which a person is convicted (either on indictment or on summary conviction) in consequence of a contravention of any provision of the companies legislation requiring a return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the registrar (whether the contravention is on the person's own part or on the part of any company).

(2) Where a person is convicted by a court of summary jurisdiction of an offence mentioned in paragraph (1), the court by which he is convicted, or any other court of summary jurisdiction<sup>F37</sup>...

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may make a disqualification order against him if the circumstances specified in paragraph (3) are present.

(3) Those circumstances are that, during the 5 years ending with the date of the conviction, the person has had made against him, or has been convicted of, in total not less than 3 default orders and offences counting for the purposes of this Article and those offences may include that of which he is convicted as mentioned in paragraph (2) and any other offence of which he is convicted on the same occasion.

(4) For the purposes of this Article “default order” means the same as in Article 6(3)(b).

[<sup>F38</sup>(4A) In this Article “the companies legislation” means the Companies Acts and Parts 2 to 7 of the Insolvency (Northern Ireland) Order 1989 (company insolvency and winding up).]

[<sup>F39</sup>(4B) In this Article “company” includes overseas company.]

(5) The maximum period of disqualification under this Article is 5 years.

- F37** Words in art. 8(2) repealed (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\), s. 106\(2\), Sch. 1 para. 120\(2\), Sch. 9 Pt. 1](#) (with [Sch. 8 para. 1](#)); [S.R. 2016/387, art. 2\(k\)\(m\)](#) (with art. 3)
- F38** Art. 8(4A) inserted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\), art. 2\(1\), Sch. 1 para. 206](#) (with art. 10)
- F39** Art. 8(4B) inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 8 para. 9\(7\)](#); [S.I. 2015/1689, reg. 2\(h\)](#)

**Modifications etc. (not altering text)**

- C13** Art. 8 applied by [S.I. 1989/638, reg. 20\(2\)](#) (as inserted (1.10.2009) by [European Economic Interest Grouping \(Amendment\) Regulations 2009 \(S.I. 2009/2399\)](#)), {[reg. 21\(4\)](#)} (with [reg. 2](#))

**[<sup>F40</sup>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),

the Department may accept the undertaking.

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



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

**F40** Art. 8A inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), **Sch. 8 para. 2(1)** (with [Sch. 8 para. 2\(2\)](#)); S.I. 2015/1689, reg. 2(h) (with [Sch. para. 8](#))

### *Disqualification for unfitness*

#### **Duty of High Court to disqualify unfit directors of insolvent companies**

**9.—(1)** The High Court shall make a disqualification order against a person in any case where, on an application under this Article, it is satisfied—

- (a) that he is or has been a director of a company which has at any time become insolvent (whether while he was a director or subsequently), and
- (b) that his conduct as a director of that company (either taken alone or taken together with his conduct as a director of [<sup>F41</sup>one or more other companies or overseas companies] ) makes him unfit to be concerned in the management of a company.

[<sup>F42</sup>(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.]

(2) For the purposes of this Article <sup>F43</sup>..., 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,

[<sup>F44</sup>(b) the company enters administration, or]

- (c) an administrative receiver of the company is appointed;

<sup>F45</sup> ...

[<sup>F46</sup>(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) Under this Article the minimum period of disqualification is 2 years, and the maximum period is 15 years.

**F41** Words in art. 9(1)(b) substituted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), **Sch. 8 para. 3(2)(a)**; S.I. 2015/1689, reg. 2(h) (with [Sch. paras. 5-8](#))

**F42** Art. 9(1A) inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), **Sch. 8 para. 3(2)(b)**; S.I. 2015/1689, reg. 2(h) (with [Sch. paras. 5-8](#))

**F43** Words in art. 9(2) omitted (1.10.2015) by virtue of [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), **Sch. 8 para. 9(8)**; S.I. 2015/1689, reg. 2(h)

**F44** Art. 9(2)(b) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), [Sch. 2 para. 63](#); S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)

**F45** Words in art. 9(2) omitted (1.10.2015) by virtue of [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), **Sch. 8 para. 3(2)(c)**; S.I. 2015/1689, reg. 2(h) (with [Sch. paras. 5-8](#))

**F46** Art. 9(2A)(2B) inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), **Sch. 8 para. 3(2)(d)**; S.I. 2015/1689, reg. 2(h) (with [Sch. paras. 5-8](#))

#### **Modifications etc. (not altering text)**

**C14** Art. 9 applied by S.I. 1989/638, **reg. 20(2)** (as inserted (1.10.2009) by [European Economic Interest Grouping \(Amendment\) Regulations 2009 \(S.I. 2009/2399\)](#)), {reg. 21(4)} (with reg. 2)

**Status:** Point in time view as at 31/10/2016.

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**C15** Art. 9(2) applied (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 8 para. 4\(3\)](#); S.I. 2015/1689, reg. 2(h)

**[<sup>F47</sup>Disqualification orders under Article 9: applications and acceptance of undertakings]**

**10.—(1)** If it appears to the Department that it is expedient in the public interest that a disqualification order under Article 9 should be made against any person, an application for the making of such an order against that person may be made—

- (a) by the Department, or
- (b) if the Department so directs in the case of a person who is or has been a director of a company which is being, or has been, wound up by the High Court, by the official receiver.

(2) Except with the leave of the High Court, an application for the making under Article 9 of a disqualification order against any person shall not be made after the expiration of [<sup>F48</sup>3 years] from the day on which the company of which that person is or has been a director became insolvent.

(3) If it appears to the Department that the conditions mentioned in Article 9(1) are satisfied as respects any person who has offered to give the Department a disqualification undertaking, the Department may accept the undertaking if it appears to the Department that it is expedient in the public interest that the Department should do so (instead of applying, or proceeding with an application, for a disqualification order).

<sup>F49</sup>(4) .....

(5) The Department or the official receiver may require the liquidator, administrator or administrative receiver of a company, or the former liquidator, administrator or administrative receiver of a company—

- (a) to furnish the Department or, as the case may be, the official receiver with such information with respect to any person's conduct as a director of the company, and
- (b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director,

as the Department or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function under this Article.

[<sup>F50</sup>(6) Paragraphs (1A) and (2) of Article 9 apply for the purposes of this Article as they apply for the purposes of that Article.]

**F47** Art. 10 heading substituted (6.4.2016) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 8 para. 5\(4\)](#); S.I. 2016/321, reg. 3(c) (with Sch. paras. 3, 4)

**F48** Words in art. 10(2) substituted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 8 para. 4\(1\)](#) (with Sch. 8 para. 4(2)); S.I. 2015/1689, reg. 2(h)

**F49** Art. 10(4) omitted (6.4.2016) by virtue of [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 8 para. 5\(3\)](#); S.I. 2016/321, reg. 3(c) (with Sch. paras. 3, 4)

**F50** Art. 10(6) inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 8 para. 9\(9\)](#); S.I. 2015/1689, reg. 2(h)

**Modifications etc. (not altering text)**

**C16** Art. 10 applied by S.I. 1989/638, [reg. 20\(2\)](#) (as inserted (1.10.2009) by [European Economic Interest Grouping \(Amendment\) Regulations 2009 \(S.I. 2009/2399\)](#)), {reg. 21(4)} (with reg. 2)

## [<sup>F51</sup>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;
- (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);

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- (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.]

**F51** Art. 10A inserted (6.4.2016) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 8 para. 5\(2\)](#); S.I. 2016/321, reg. 3(c) (with [Sch. paras. 3, 4](#))

**[<sup>F52</sup>Disqualification of director on finding of unfitness]**

**11.—**(1) If it appears to the Department <sup>F53</sup>... that it is expedient in the public interest that a disqualification order should be made against a person who is, or has been, a director or shadow director of a company, the Department may apply to the High Court for such an order.

<sup>F54</sup>(2) .....

(3) Where it appears to the Department <sup>F55</sup>... that, in the case of a person who has offered to give the Department a disqualification undertaking—

- (a) the conduct of the person in relation to a company of which the person is or has been a director or shadow director [<sup>F56</sup>(either taken alone or taken together with his conduct as a director or shadow director of one or more other companies or overseas companies),] makes him unfit to be concerned in the management of a company, 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),

the Department may accept the undertaking.

(4) The High Court may make a disqualification order against a person where, on an application under this Article, it is satisfied that his conduct in relation to the company [<sup>F57</sup>(either taken alone or taken together with his conduct as a director or shadow director of one or more other companies or overseas companies)] makes him unfit to be concerned in the management of a company.

[<sup>F58</sup>(4A) Paragraph (1A) of Article 9 applies for the purposes of this Article as it applies for the purposes of that Article.]

(5) The maximum period of disqualification under this Article is 15 years.

**F52** Art. 11 heading substituted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 8 para. 6\(3\)](#); S.I. 2015/1689, reg. 2(h)

**F53** Words in art. 11(1) omitted (1.10.2015) by virtue of [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 8 para. 6\(2\)\(a\)](#); S.I. 2015/1689, reg. 2(h)

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- F54** Art. 11(2) omitted (1.10.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 6(2)(b)**; S.I. 2015/1689, reg. 2(h)
- F55** Words in art. 11(3) omitted (1.10.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 6(2)(c)**; S.I. 2015/1689, reg. 2(h)
- F56** Words in art. 11(3)(a) inserted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 3(3)(a)**; S.I. 2015/1689, reg. 2(h) (with Sch. paras. 5-8)
- F57** Words in art. 11(4) inserted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 3(3)(b)**; S.I. 2015/1689, reg. 2(h) (with Sch. paras. 5-8)
- F58** Art. 11(4A) inserted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 3(3)(c)**; S.I. 2015/1689, reg. 2(h) (with Sch. paras. 5-8)

**Modifications etc. (not altering text)**

- C17** Art. 11 applied by S.I. 1989/638, **reg. 20(2)** (as inserted (1.10.2009) by European Economic Interest Grouping (Amendment) Regulations 2009 (S.I. 2009/2399)), {reg. 21(4)} (with reg. 2)

*<sup>F59</sup>Persons instructing unfit directors*

- F59** Arts. 11A-11E and cross-heading inserted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 7**; S.I. 2015/1689, reg. 2(h) (with Sch. para. 9)

**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

*Status: Point in time view as at 31/10/2016.*

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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—

- (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”.



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(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
- (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.]

*[<sup>F60</sup>Further provision about disqualification undertakings]*

**F60** Art. 12 cross-heading inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015](#) (c. 26), s. 164(1), [Sch. 8 para. 9\(10\)](#); S.I. 2015/1689, reg. 2(h)

### **Variation etc. of disqualification undertaking**

**12.**—(1) The High Court may, on the application of a person who is subject to a disqualification undertaking—

**Status:** Point in time view as at 31/10/2016.

**Changes to legislation:** The Company Directors Disqualification (Northern Ireland) Order 2002 is up to date with all changes known to be in force on or before 21 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) reduce the period for which the undertaking is to be in force, or
- (b) provide for it to cease to be in force.

(2) On the hearing of an application under paragraph (1), the Department shall appear and call the attention of the Court to any matters which seem to the Department to be relevant, and may give evidence or call witnesses.

<sup>F61</sup>[(3) Paragraph (2) does not apply to an application in the case of an undertaking given under Article 13B, and in such a case on the hearing of the application whichever of the [<sup>F62</sup>CMA] or a specified regulator (within the meaning of Article 13E) accepted the undertaking—

- (a) shall appear and call the attention of the Court to any matters which appear to it to be relevant;
- (b) may give evidence or call witnesses.]

**F61** 2005 NI 9  
**F62** Word in art. 12(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 225](#) (with art. 3)

**Matters for determining unfitness of directors**

<sup>F63</sup>13. ....

**F63** [Art. 13](#) omitted (1.10.2015) by virtue of [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 8 para. 3\(4\)](#); S.I. 2015/1689, reg. 2(h) (with [Sch. paras. 5-8](#))

*<sup>F64</sup>Disqualification for competition infringements*

**F64** 2005 NI 9

**Competition disqualification order**

**13A.**—(1) The High Court shall make a disqualification order against a person if the following two conditions are satisfied in relation to him.

(2) The first condition is that an undertaking which is a company of which he is a director commits a breach of competition law.

(3) The second condition is that the High Court considers that his conduct as a director makes him unfit to be concerned in the management of a company.

(4) An undertaking commits a breach of competition law if it engages in conduct which infringes any of the following—

- (a) the Chapter 1 prohibition (within the meaning of the Competition Act 1998) (prohibition on agreements, etc. preventing, restricting or distorting competition);
- (b) the Chapter 2 prohibition (within the meaning of that Act) (prohibition on abuse of a dominant position);
- (c) Article 81 of the Treaty establishing the European Community (prohibition on agreements, etc. preventing, restricting or distorting competition);
- (d) Article 82 of that Treaty (prohibition on abuse of a dominant position).

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(5) For the purpose of deciding under paragraph (3) whether a person is unfit to be concerned in the management of a company the High Court—

- (a) shall have regard to whether paragraph (6) applies to him;
- (b) may have regard to his conduct as a director of a company in connection with any other breach of competition law;
- (c) shall not have regard to the matters mentioned in Schedule 1.

(6) This paragraph applies to a person if as a director of the company—

- (a) his conduct contributed to the breach of competition law mentioned in paragraph (2);
- (b) his conduct did not contribute to the breach but he had reasonable grounds to suspect that the conduct of the undertaking constituted the breach and he took no steps to prevent it;
- (c) he did not know but ought to have known that the conduct of the undertaking constituted the breach.

(7) For the purposes of paragraph (6)(a) it is immaterial whether the person knew that the conduct of the undertaking constituted the breach.

(8) For the purposes of paragraph (4)(a) or (c) references to the conduct of an undertaking are references to its conduct taken with the conduct of one or more other undertakings.

(9) The maximum period of disqualification under this Article is 15 years.

(10) An application under this Article for a disqualification order may be made by the [F65CMA] or by a specified regulator.

(11) Section 60 of the Competition Act 1998 (c. 41) (consistent treatment of questions arising under United Kingdom and [F66EU] law) applies in relation to any question arising by virtue of paragraph (4)(a) or (b) as it applies in relation to any question arising under Part 1 of that Act.

**F65** Word in art. 13A(10) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 226** (with art. 3)

**F66** Word in art. 13A(11) substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 6 (with art. 3(3))

## Competition undertakings

**13B.**—(1) This Article applies if—

- (a) the [F67CMA] or a specified regulator thinks that in relation to any person an undertaking which is a company of which he is a director has committed or is committing a breach of competition law,
- (b) the [F67CMA] or the specified regulator thinks that the conduct of the person as a director makes him unfit to be concerned in the management of a company, and
- (c) the person offers to give the [F67CMA] or the specified regulator (as the case may be) a disqualification undertaking.

(2) The [F67CMA] or the specified regulator (as the case may be) may accept a disqualification undertaking from the person instead of applying for or proceeding with an application for a disqualification order.

(3) A disqualification undertaking is an undertaking by a person that for the period specified in the undertaking he will not—

- (a) be a director of a company;

**Status:** Point in time view as at 31/10/2016.

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- (b) act as receiver of a company's property;
  - (c) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company;
  - (d) act as an insolvency practitioner.
- (4) But a disqualification undertaking may provide that a prohibition falling within paragraph (3) (a) to (c) does not apply if the person obtains the leave of the High Court.
- (5) The maximum period which may be specified in a disqualification undertaking is 15 years.
- (6) If a disqualification undertaking is accepted from a person who is already subject to a disqualification undertaking under this Order or to a disqualification order the periods specified in those undertakings or the undertaking and the order (as the case may be) run concurrently.
- (7) Paragraphs (4) to (8) of Article 13A apply for the purposes of this Article as they apply for the purposes of that Article but in the application of paragraph (5) of that Article the reference to the High Court shall be construed as a reference to the [F68CMA] or a specified regulator (as the case may be).

- F67** Word in art. 13B(1)(2) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 227](#) (with art. 3)
- F68** Word in art. 13B(7) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 227](#) (with art. 3)

### Competition investigations

**13C.—**(1) If the [F69CMA] or a specified regulator has reasonable grounds for suspecting that a breach of competition law has occurred it may carry out an investigation for the purpose of deciding whether to make an application under Article 13A for a disqualification order.

(2) For the purposes of such an investigation sections 26 to 30 of the Competition Act 1998 (c. 41) apply to the [F69CMA] and the specified regulators as they apply to the [F69CMA] for the purposes of an investigation under section 25 of that Act.

(3) Paragraph (4) applies if as a result of an investigation under this Article the [F69CMA] or a specified regulator proposes to apply under Article 13A for a disqualification order.

- (4) Before making the application the [F69CMA] or regulator (as the case may be) shall—
- (a) give notice to the person likely to be affected by the application, and
  - (b) give that person an opportunity to make representations.

- F69** Word in art. 13C substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 228](#) (with art. 3)

### Co-ordination

**13D.—**(1) The Secretary of State may make regulations for the purpose of co-ordinating the performance of functions under Articles 13A to 13C (relevant functions) which are exercisable concurrently by two or more persons.

(2) Section 54(5) to (7) of the Competition Act 1998 (c. 41) applies to regulations made under this Article as it applies to regulations made under that section and for that purpose in that section—

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(a) references to Part 1 functions shall be read as references to relevant functions;

[ the reference in subsection (6A)(b) to notice under section 31(1) of the Competition  
F70(aa) Act 1998 that the regulator proposes to make a decision within the meaning given by section 31(2) of that Act is to be read as notice under Article 13C(4) that the specified regulator proposes to apply under Article 13A for a disqualification order;]

(b) references to a regulator shall be read as references to a specified regulator; and

(c) a competent person also includes any of the specified regulators.

(3) Regulations made under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

(4) Regulations may contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks appropriate.

**F70** Art. 13D(2)(aa) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 229** (with art. 3)

## Interpretation

**13E.**—(1) This Article applies for the purposes of Articles 13A to 13D.

(2) Each of the following is a specified regulator for the purposes of a breach of competition law in relation to a matter in respect of which it has a function—

(a) the Office of Communications;

(b) the Northern Ireland Authority for [F71Utility] Regulation;

(c) the Civil Aviation Authority.

(3) Conduct includes omission.

(4) Director includes shadow director.]

**F71** Word in art. 13E(2)(b) substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 47** (with arts. 8(8), 121(3), 307); [S.R. 2007/194](#), **art. 2(2)**, **Sch. 1 Pt. II** (with transitional, transitory and saving provisions in **art. 3**, **Sch. 2**)

## *Other cases of disqualification*

## Participation in wrongful trading

**14.**—(1) Where the High Court makes a declaration under Article 177 or 178 of [F72the Insolvency (Northern Ireland) Order 1989] that a person is liable to make a contribution to a company's assets, then, whether or not an application for such an order is made by any person, the Court may, if it thinks fit, also make a disqualification order against the person to whom the declaration relates.

(2) The maximum period of disqualification under this Article is 15 years.

[F73(3) In this Article “company” includes overseas company.]

**F72** Words in art. 14(1) substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 209** (with art. 10)

**Status:** Point in time view as at 31/10/2016.

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**F73** Art. 14(3) inserted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 9(11)**; S.I. 2015/1689, reg. 2(h)

**Modifications etc. (not altering text)**

**C18** Art. 14 applied by S.I. 1989/638, **reg. 20(2)** (as inserted (1.10.2009) by European Economic Interest Grouping (Amendment) Regulations 2009 (S.I. 2009/2399)), {reg. 21(4)} (with reg. 2))

## Undischarged bankrupts

**15.**—<sup>F74</sup>(1) It is an offence for a person to act as director of a company or directly or indirectly to take part in or be concerned in the promotion, formation or management of a company, without the leave of the court, at a time when any of the circumstances mentioned in paragraph (1A) apply to the person.

(1A) The circumstances are—

- (a) the person is an undischarged bankrupt—
  - (i) in Northern Ireland, or
  - (ii) in England and Wales or Scotland,
- (b) a bankruptcy restrictions order or undertaking is in force in respect of the person under—
  - (i) the Insolvency (Northern Ireland) Order 1989, or
  - (ii) the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986,
- (c) a debt relief restrictions order or undertaking is in force in respect of the person under—
  - (i) the Insolvency (Northern Ireland) Order 1989, or
  - (ii) the Insolvency Act 1986,
- (d) a moratorium period under a debt relief order applies in relation to the person under—
  - (i) the Insolvency (Northern Ireland) Order 1989, or
  - (ii) the Insolvency Act 1986.

(1B) In paragraph (1) “the court” means—

- (a) for the purposes of sub-paragraphs (a)(i), (b)(i), (c)(i) and (d)(i) of paragraph (1A), the High Court,
- (b) for the purposes of paragraph (1A)(a)(ii)—
  - (i) the court by which the person was adjudged bankrupt, or
  - (ii) in Scotland, the court by which sequestration of the person's estate was awarded or, if awarded other than by the court, the court which would have jurisdiction in respect of sequestration of the person's estate,
- (c) for the purposes of paragraph (1A)(b)(ii)—
  - (i) the court which made the order,
  - (ii) in Scotland, if the order has been made other than by the court, the court to which the person may appeal against the order, or
  - (iii) the court to which the person may make an application for annulment of the undertaking,
- (d) for the purposes of paragraph (1A)(c)(ii)—
  - (i) the court which made the order, or
  - (ii) the court to which the person may make an application for annulment of the undertaking,



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(e) for the purposes of paragraph (1A)(d)(ii), the court to which the person would make an application under section 251M(1) of the Insolvency Act 1986 (if the person were dissatisfied as mentioned there).]

(2) The leave of the High Court shall not be given unless notice of intention to apply for it has been served on the official receiver and the official receiver shall, if he is of opinion that it is contrary to the public interest that the application should be granted, attend on the hearing of the application and oppose it.

[<sup>F75</sup>(3) In this Article “company” includes a company incorporated outside Northern Ireland that has an established place of business in Northern Ireland.]

**F74** Art. 15(1)-(1B) substituted for art. 15(1) (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), ss. 114, 164\(1\)](#); [S.I. 2015/1689, reg. 2\(i\)](#) (with [Sch. para. 12](#))

**F75** Art. 15(3) added (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\), art. 2\(1\), Sch. 1 para. 210](#) (with art. 10)

**Modifications etc. (not altering text)**

**C19** Art. 15 applied by [S.I. 1989/638, reg. 20\(2\)](#) (as inserted (1.10.2009) by [European Economic Interest Grouping \(Amendment\) Regulations 2009 \(S.I. 2009/2399\)](#)), {[reg. 21\(4\)](#)} (with [reg. 2](#))

**Failure to pay under administration order**

**16.**—(1) The following has effect where an administration order under Part VI of the Judgments Enforcement (Northern Ireland) Order 1981 (NI 6) is revoked.

(2) A person to whom Article 86 of that Order of 1981 (default of debtor) applies by virtue of an order under paragraph (1) of that Article shall not, except with the leave of the High Court, act as director or liquidator of, or directly or indirectly take part in or be concerned in the promotion, formation or management of, a company.

**Modifications etc. (not altering text)**

**C20** Art. 16(2) applied by [S.I. 1989/638, reg. 20\(2\)](#) (as inserted (1.10.2009) by [European Economic Interest Grouping \(Amendment\) Regulations 2009 \(S.I. 2009/2399\)](#)), {[reg. 21\(4\)](#)} (with [reg. 2](#))

**Persons disqualified in Great Britain**

**17.** A person subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46)—

- (a) shall not be a director of a company, act as receiver of a company's property or in any way either directly or indirectly be concerned or take part in the promotion, formation or management of a company unless (in each case) he has leave of the High Court; and
- (b) shall not act as an insolvency practitioner.

[<sup>F76</sup>**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;

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- (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.]

**F76** Art. 17A inserted (1.10.2015) by *Small Business, Enterprise and Employment Act 2015* (c. 26), s. 164(1), **Sch. 8 para. 3(5)**; S.I. 2015/1689, reg. 2(h) (with Sch. paras. 5-8)

### *Consequences of contravention*

#### **Offences**

- 18.** If a person acts in contravention of a disqualification order or disqualification undertaking, or in contravention of Article 15, 16(2) or 17, he shall be guilty of an offence and shall be liable—
- (a) on conviction on indictment, to imprisonment for not more than 2 years or a fine, or both; and
  - (b) on summary conviction, to imprisonment for not more than 6 months or a fine not exceeding the statutory maximum, or both.

#### **Personal liability for company's debts where person acts while disqualified**

- 19.—**(1) A person is personally responsible for all the relevant debts of a company if at any time—
- (a) in contravention of a disqualification order or disqualification undertaking or in contravention of Article 15 or 17 he is involved in the management of the company, or
  - (b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given without the leave of the High Court by a person whom he knows at that time to be—
    - (i) the subject of a disqualification order or disqualification undertaking,
    - (ii) the subject of a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46), or

(iii) an undischarged bankrupt.

(2) Where a person is personally responsible under this Article for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this Article or otherwise, is so liable.

(3) For the purposes of this Article the relevant debts of a company are—

- (a) in relation to a person who is personally responsible under paragraph (1)(a), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company, and
- (b) in relation to a person who is personally responsible under paragraph (1)(b), such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that paragraph.

(4) For the purposes of this Article, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.

(5) For the purposes of this Article a person who, as a person involved in the management of a company, has at any time acted on instructions given without the leave of the High Court by a person whom he knew at that time to be—

- (a) the subject of a disqualification order or disqualification undertaking, or
- (b) the subject of a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46), or
- (c) an undischarged bankrupt,

is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given that person.

**Modifications etc. (not altering text)**

**C21** Art. 19 applied by [S.I. 1989/638, reg. 20\(2\)](#) (as inserted (1.10.2009) by [European Economic Interest Grouping \(Amendment\) Regulations 2009 \(S.I. 2009/2399\)](#)), {reg. 21(4)} (with reg. 2))

*<sup>F77</sup>Compensation orders and undertakings*

**F77** [Arts. 19A-19C](#) and cross-heading inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 8 para. 8](#); [S.I. 2015/1689, reg. 2\(h\)](#) (with [Sch. para. 10](#))

**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

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- (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.
- (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—

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- (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.]

### *Supplementary provisions*

#### **Application for disqualification order**

**20.**—(1) A person intending to apply for the making of a disqualification order by the High Court shall give not less than 10 days' notice of his intention to the person against whom the order is sought; and on the hearing of the application the last-mentioned person may appear and himself give evidence or call witnesses.

(2) An application to the High Court for the making against any person of a disqualification order under any of Articles 5 to 7 may be made by the Department or the official receiver, or by the liquidator or any past or present member or creditor of any company [<sup>F78</sup>or overseas company] in relation to which that person has committed or is alleged to have committed an offence or other default.

(3) On the hearing of an application made by [<sup>F79</sup> a person falling within paragraph (4)] the applicant shall appear and call the attention of the High Court to any matters which seem to be relevant, and may give evidence or call witnesses.

<sup>F80</sup>[(4) The following fall within this paragraph—

- (a) the Department;
- (b) the official receiver;
- (c) the [<sup>F81</sup>CMA];
- (d) the liquidator;
- (e) a specified regulator (within the meaning of Article 13E).]

**F78** Words in art. 20(2) inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015](#) (c. 26), s. 164(1), [Sch. 8 para. 9\(12\)](#); S.I. 2015/1689, reg. 2(h)

**F79** 2005 NI 9

**F80** 2005 NI 9

**F81** Word in art. 20(4) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013](#) (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), [Sch. 1 para. 230](#) (with art. 3)

#### **Modifications etc. (not altering text)**

**C22** Art. 20 applied by [S.I. 1989/638, reg. 20\(2\)](#) (as inserted (1.10.2009) by [European Economic Interest Grouping \(Amendment\) Regulations 2009](#) (S.I. 2009/2399), {reg. 21(4)} (with reg. 2))

#### **Application for leave under an order or undertaking**

##### **21**

[<sup>F82</sup>(1)] On the hearing of an application for leave for the purposes of Article 3(1)(a) or 4(1)(a), the Department shall appear and call the attention of the High Court to any matters which seem to the Department to be relevant, and may give evidence or call witnesses.

**Status:** Point in time view as at 31/10/2016.

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<sup>F83</sup>[(2) Paragraph (1) does not apply to an application for leave for the purposes of Article 3(1) (a) if the application for the disqualification order was made under Article 13A.

(3) In such a case and in the case of an application for leave for the purposes of Article 13B(4) on the hearing of the application whichever of the [<sup>F84</sup>CMA] or a specified regulator (within the meaning of Article 13E) applied for the order or accepted the undertaking (as the case may be)—

- (a) must appear and draw the attention of the Court to any matters which appears to it to be relevant;
- (b) may give evidence or call witnesses.]

**F82** 2005 NI 9

**F83** 2005 NI 9

**F84** Word in art. 21(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 231** (with art. 3)

**Modifications etc. (not altering text)**

**C23** Art. 21 applied by [S.I. 1989/638, reg. 20\(2\)](#) (as inserted (1.10.2009) by [European Economic Interest Grouping \(Amendment\) Regulations 2009 \(S.I. 2009/2399\)](#)), {reg. 21(4)} (with reg. 2))

**Register of disqualification orders and undertakings**

**22.**—(1) Where—

- (a) a disqualification order is made, or
- (b) any action is taken by a court in consequence of which such an order or a disqualification undertaking is varied or ceases to be in force, or
- (c) leave is granted by the High Court for a person subject to such an order to do any thing which otherwise the order prohibits him from doing, or
- (d) leave is granted by the High Court for a person subject to such an undertaking to do anything which otherwise the undertaking prohibits him from doing,

the clerk of the court shall furnish to the Department and to the Secretary of State such particulars as may be prescribed and regulations may prescribe the time within which, and the form and manner in which, such particulars are to be furnished.

(2) The Department shall, from the particulars so furnished continue to maintain the register of disqualification orders, and of cases in which leave has been granted as mentioned in paragraph (1)

(c)<sup>F85</sup> . . . .

<sup>F86</sup>[(3) The Department shall include in the register such particulars as it considers appropriate of—

- (a) disqualification undertakings accepted by it under Article [<sup>F87</sup>8A, 10, 11, 11C or 11E] ;
- (b) disqualification undertakings accepted by the [<sup>F88</sup>CMA] or a specified regulator under Article 13B;
- (c) cases in which leave has been granted as mentioned in paragraph (1)(d).]

(4) When an order or undertaking of which entry is made in the register ceases to be in force, the Department shall delete the entry from the register and all particulars relating to it which have been furnished to the Department under this Article or any previous corresponding provision and, in the case of a disqualification undertaking, any other particulars the Department has included in the register.



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(5) The register shall be open to inspection on payment of such fee as may be prescribed.

(6) The Department may furnish to the Secretary of State such particulars as the Department considers appropriate of disqualification undertakings accepted by it under Article 10 or 11.

(7) Regulations under this Article may extend the preceding provisions of this Article, to such extent and with such modifications as may be specified in the regulations, to disqualification orders made and disqualification undertakings accepted under the Company Directors Disqualification Act 1986 (c. 46).

- F85** Words in art. 22(2) omitted (1.10.2009) by virtue of [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 211** (with art. 10)
- F86** [2005 NI 9](#)
- F87** Words in art. 22(3)(a) substituted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), **Sch. 8 para. 9(13)**; S.I. 2015/1689, reg. 2(h)
- F88** Word in art. 22(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 232** (with art. 3)

### *Miscellaneous and general*

#### **Admissibility in evidence of statements**

**23.**—(1) In any proceedings (whether or not under this Order), any statement made in pursuance of a requirement imposed by or under Articles [<sup>F89</sup>8A to 14, 17A] or 19 [<sup>F90</sup>to 19C] or Schedule 1 or by or under rules made for the purposes of this Order under [<sup>F91</sup>the Insolvency (Northern Ireland) Order 1989], may be used in evidence against any person making or concurring in making the statement.

(2) However, in criminal proceedings in which any such person is charged with an offence to which this paragraph applies—

- (a) no evidence relating to the statement may be adduced, and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Paragraph (2) applies to any offence other than—

- (a) an offence which is—
  - (i) created by rules made for the purposes of this Order under [<sup>F92</sup>the Insolvency (Northern Ireland) Order 1989], and
  - (ii) designated for the purposes of this paragraph by such rules or by regulations;
- (b) an offence which is—
  - (i) created by regulations made under any such rules, and
  - (ii) designated for the purposes of this paragraph by such regulations; or
- (c) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (NI 19) (false statements made otherwise than on oath).

(4) Regulations under paragraph (3)(a)(ii) shall after being made be laid before the Assembly.

- F89** Words in art. 23(1) substituted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), **Sch. 8 para. 9(14)(a)**; S.I. 2015/1689, reg. 2(h)

**Status:** Point in time view as at 31/10/2016.

**Changes to legislation:** The Company Directors Disqualification (Northern Ireland) Order 2002 is up to date with all changes known to be in force on or before 21 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F90** Words in art. 23(1) inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 8 para. 9\(14\)\(b\)](#); S.I. 2015/1689, reg. 2(h)
- F91** Words in art. 23(1) substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\), art. 2\(1\), Sch. 1 para. 209](#) (with art. 10)
- F92** Words in art. 23(3)(a)(i) substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\), art. 2\(1\), Sch. 1 para. 209](#) (with art. 10)

#### Modifications etc. (not altering text)

- C24** Art. 23 applied by [S.I. 1989/638, reg. 20\(2\)](#) (as inserted (1.10.2009) by [European Economic Interest Grouping \(Amendment\) Regulations 2009 \(S.I. 2009/2399\)](#)), {reg. 21(4)} (with reg. 2)

### [<sup>F93</sup>Legal professional privilege

**23A.** In proceedings against a person for an offence under this Order nothing in this Order is to be taken to require any person to disclose any information that he is entitled to refuse to disclose on grounds of legal professional privilege.]

- F93** Art. 23A inserted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\), arts. 2\(2\), 3\(1\)\(b\), Sch. 1 para. 226\(4\)](#) (with arts. 6, 11, 12)

### Interaction with [<sup>F94</sup>the Insolvency (Northern Ireland) Order 1989]

**24.—**(1) Articles 4, [<sup>F95</sup>8A to 14, 17A], 18, 19 [<sup>F96</sup>to 19C] and 23 and Schedule 1, and Articles 3 and 21 as they apply for the purposes of those provisions, are deemed included in Parts II to VII of [<sup>F97</sup>the Insolvency (Northern Ireland) Order 1989] for the purposes of the following Articles of that Order—

- Article 359 (power to make insolvency rules);
- Article 361 (fees orders);
- Article 364 (orders extending provisions about insolvent companies to insolvent partnerships);
- Article 366 (modifications of such provisions in their application to recognised banks).

(2) Article 378 of that Order (Crown application) applies to Articles 4, [<sup>F95</sup>8A to 14, 17A], 18, 19 [<sup>F96</sup>to 19C] and 23 and Schedule 1, and Articles 3 and 21 as they apply for the purposes of those provisions, as it does to the provisions of that Order which are there mentioned.

- F94** Words in art. 24 heading substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\), art. 2\(1\), Sch. 1 para. 209](#) (with art. 10)
- F95** Words in art. 24(1)(2) substituted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 8 para. 9\(15\)\(a\)](#); S.I. 2015/1689, reg. 2(h); S.I. 2015/1689, reg. 2(h)
- F96** Words in art. 24(1)(2) inserted (1.10.2015) by virtue of [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 8 para. 9\(15\)\(b\)](#); S.I. 2015/1689, reg. 2(h); S.I. 2015/1689, reg. 2(h)
- F97** Words in art. 24(1) substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\), art. 2\(1\), Sch. 1 para. 209](#) (with art. 10)

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### [<sup>F98</sup>Bank insolvency

**24A** Section 121 of the Banking Act 2009 provides for this Act to apply in relation to bank insolvency as it applies in relation to liquidation.]

**F98** Art. 24A inserted (21.2.2009) by virtue of [Banking Act 2009 \(c. 1\)](#), **ss. 121(4)**, 134, 263(1) (with s. 247); S.I. 2009/296, **art. 3**, Sch. para. 2

### [<sup>F99</sup>Bank administration

**24B** Section 155 of the Banking Act 2009 provides for this Act to apply in relation to bank administration as it applies in relation to liquidation.]

**F99** Art. 24B inserted (21.2.2009) by virtue of [Banking Act 2009 \(c. 1\)](#), **ss. 155(4)**, 167, 263(1) (with s. 247); S.I. 2009/296, **art. 3**, Sch. para. 3

### [<sup>F100</sup>Building society insolvency and special administration

**24C.** Section 90E of the Building Societies Act 1986 provides for this Act to apply in relation to building society insolvency and building society special administration as it applies in relation to liquidation.]

**F100** Art. 24C inserted (29.3.2009) by virtue of [Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), **arts. 12**, 17

### [<sup>F101</sup>Application of Order to building societies

**24D.**—(1) This Order applies to building societies as it applies to companies.

(2) References in this Order to a company, or to a director or an officer of a company, include, respectively, references to a building society within the meaning of the Building Societies Act 1986 or to a director or officer, within the meaning of that Act, of a building society.

(3) In relation to a building society the definition of “shadow director” in Article 2(2) applies with the substitution of “building society” for “company”.

<sup>F102</sup>(4) . . . . . ]

**F101** Arts. 24D, 24E inserted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 212** (with art. 10)

**F102** Art. 24D(4) omitted (1.10.2015) by virtue of [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), **Sch. 8 para. 9(16)**; S.I. 2015/1689, reg. 2(h)

### Application of Order to open-ended investment companies

<sup>F103</sup>24E. . . . .

**F103** Art. 24E omitted (1.10.2015) by virtue of [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), **Sch. 8 para. 9(17)**; S.I. 2015/1689, reg. 2(h)

**Status:** Point in time view as at 31/10/2016.

**Changes to legislation:** The Company Directors Disqualification (Northern Ireland) Order 2002 is up to date with all changes known to be in force on or before 21 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

**Application of Order to incorporated friendly societies**

**25**<sup>F104</sup>.—(1) This Order applies to incorporated friendly societies as it applies to companies.

(2) References in this Order to a company, or to a director or an officer of a company include, respectively, references to an incorporated friendly society within the meaning of the Friendly Societies Act 1992 (c. 40) or to a member of the committee of management or officer, within the meaning of that Act, of an incorporated friendly society.

(3) In relation to an incorporated friendly society every reference to a shadow director shall be omitted.

[<sup>F105</sup>(3A) In relation to an incorporated friendly society, this Order applies as if Articles 11A to 11E were omitted.]

<sup>F106</sup>(4) .....

<p><b>F104</b> Mod. SR 2004/307</p> <p><b>F105</b> Art. 25(3A) inserted (1.10.2015) by <a href="#">Small Business, Enterprise and Employment Act 2015 (c. 26)</a>, s. 164(1), <a href="#">Sch. 8 para. 9(18)(a)</a>; S.I. 2015/1689, reg. 2(h)</p> <p><b>F106</b> Art. 25(4) omitted (1.10.2015) by virtue of <a href="#">Small Business, Enterprise and Employment Act 2015 (c. 26)</a>, s. 164(1), <a href="#">Sch. 8 para. 9(18)(b)</a>; S.I. 2015/1689, reg. 2(h)</p>
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[<sup>F107</sup>**Application of Order to registered societies**

**25A.**—(1) This Order applies to societies registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24) (“registered societies”) as it applies to companies.

(2) In its application to registered societies, this Order shall have effect as follows—

(a) references in this Order to a company, or to a director or an officer of a company shall include, respectively, references to a registered society or to a member of the committee of management or officer, within the meaning of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24), of a registered society;

(b) in Article 5(1) “striking off of a company” shall include the cancellation of the registration of a registered society under that Act;

(c) in Articles 6(1) and 8(1) “the companies legislation” shall include that Act;

<sup>F108</sup>(d) .....

(e) references to the registrar shall have effect as references to the registrar as defined in section 101(1) of that Act;

(f) references to a shadow director shall be omitted.

[ Articles 11A to 11E are to be disregarded.]

<sup>F109</sup>(g)

<sup>F110</sup>(3) .....

<p><b>F107</b> Art. 25A inserted (1.7.2006) by <a href="#">Industrial and Provident Societies (Northern Ireland) Order 2006 (S.I. 2006/314 (N.I. 3))</a>, arts. 1(3), <b>8</b>; S.R. 2006/242, <b>art. 2</b></p> <p><b>F108</b> Art. 25A(2)(d) omitted (1.10.2015) by virtue of <a href="#">Small Business, Enterprise and Employment Act 2015 (c. 26)</a>, s. 164(1), <a href="#">Sch. 8 para. 9(19)(a)</a>; S.I. 2015/1689, reg. 2(h)</p> <p><b>F109</b> Art. 25A(2)(g) inserted (1.10.2015) by <a href="#">Small Business, Enterprise and Employment Act 2015 (c. 26)</a>, s. 164(1), <a href="#">Sch. 8 para. 9(19)(b)</a>; S.I. 2015/1689, reg. 2(h)</p> <p><b>F110</b> Art. 25A(3) omitted (1.10.2015) by virtue of <a href="#">Small Business, Enterprise and Employment Act 2015 (c. 26)</a>, s. 164(1), <a href="#">Sch. 8 para. 9(19)(c)</a>; S.I. 2015/1689, reg. 2(h)</p>
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## [<sup>F111</sup> Application of Order to credit unions

**25B.**—(1) This Order applies to credit unions as it applies to companies.

(2) Accordingly, in this Order—

- (a) references to a company include a credit union,
- (b) references to a director of a company include a member of the board of directors of a credit union, and
- (c) references to an officer of a company include an officer of a credit union.

(3) In its application in relation to credit unions, this Order has effect as if—

- (a) in Article 5(1) the reference to striking off included the cancellation of the registration of a credit union under the 1985 Order;
- (b) in Articles 6(1) and 8(1) references to the companies legislation included the 1985 Order;
- (c) Articles 11A to 11E were omitted;
- (d) references to the registrar were to the registrar as defined in Article 2A of the 1985 Order;
- (e) references to a shadow director were omitted.

(4) In this Article—

“board of directors”, “credit union” and “officer” (in relation to a credit union) have the meaning given by Article 2(2) of the 1985 Order;

“the 1985 Order” means the Credit Unions (Northern Ireland) Order 1985.]

**F111** Art. 25B inserted (23.4.2016) by [Credit Unions and Co-operative and Community Benefit Societies Act \(Northern Ireland\) 2016 \(c. 16\), ss. 7, 17\(1\)](#)

## Transitional provisions, savings, amendments and repeals

**26.**—(1) The transitional provisions and savings in Schedule 2 shall have effect for the purposes of this Order.

(2) The statutory provisions specified in Schedule 3 shall have effect subject to the amendments specified there, being amendments consequential on the provisions of this Order.

(3) The Department may by order, subject to negative resolution, make—

- (a) any supplementary, incidental or consequential provision, and
- (b) any transitory, transitional or saving provision,

which it considers necessary or expedient for the purposes of this Order.

(4) An order under paragraph (3) may—

- (a) modify, exclude or apply (with or without modifications) any statutory provision;
- (b) make consequential amendments, repeals and revocations of any such provision.

(5) Subject to paragraph (1) and any transitory, transitional or saving provision made under paragraph (3), the statutory provisions specified in Schedule 4 are hereby repealed to the extent specified in column 2 of that Schedule.

**Status:** Point in time view as at 31/10/2016.

**Changes to legislation:** The Company Directors Disqualification (Northern Ireland) Order 2002 is up to date with all changes known to be in force on or before 21 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## SCHEDULES

### [<sup>F112</sup>SCHEDULE 1

Article 17A

#### DETERMINING UNFITNESS ETC: MATTERS TO BE TAKEN INTO ACCOUNT

**F112** Sch. 1 substituted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 8 para. 3(6); S.I. 2015/1689, reg. 2(h) (with Sch. paras. 5-8)

#### **Modifications etc. (not altering text)**

**C25** Sch. 1 applied by S.I. 1989/638, reg. 20(2) (as inserted (1.10.2009) by European Economic Interest Grouping (Amendment) Regulations 2009 (S.I. 2009/2399)), {reg. 21(4)} (with reg. 2)

<sup>F113</sup>*Matters to be taken into account in all cases*

**F113** Mod. SR 2004/307

- 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.
- 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.]



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## SCHEDULE 2

### TRANSITIONAL PROVISIONS AND SAVINGS

1. In this Schedule, “the commencement date” for the purposes of any provision of this Schedule, means the day appointed under Article 1 for the coming into operation of that provision.

2. Where any period of time specified in any provision repealed by Article 26(3) and Schedule 4 is current immediately before the commencement date, this Order has effect as if the corresponding provision had been in operation when the period began to run; and (without prejudice to the foregoing) any period of time so specified and current is deemed for the purposes of this Order—

- (a) to run from the date or event from which it was running immediately before the commencement date, and
- (b) to expire (subject to any provision of this Order for its extension) whenever it would have expired if this Order had not been passed;

and any rights, priorities, liabilities, reliefs, obligations, requirements, powers, duties or exemptions dependent on the beginning, duration or end of such a period as above mentioned shall be under this Order as they were or would have been under that repealed provision.

3. The provision of this Schedule shall have effect without prejudice to sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954 (c. 33).

*Schedule 3—Amendments*

*Schedule 4—Repeals*

**Status:**

Point in time view as at 31/10/2016.

**Changes to legislation:**

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