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STATUTORY INSTRUMENTS

2002 No. 3150

The Company Directors Disqualification (Northern Ireland) Order 2002

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 any other company or companies) makes him unfit to be concerned in the management of a company.

(2) For the purposes of this Article and Article 10, 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,
- [^{F1}(b) the company enters administration, or]
- (c) an administrative receiver of the company is appointed;

and references to a person's conduct as a director of any company or companies include, where that company or any of those companies has become insolvent, that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.

(3) Under this Article the minimum period of disqualification is 2 years, and the maximum period is 15 years.

F1 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)

Modifications etc. (not altering text)

C1 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))

Disqualification order or undertaking; and reporting provisions

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.

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(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 2 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).

(4) If it appears to the office-holder responsible under this Article, that is to say—

(a) in the case of a company which is being wound up by the High Court, the official receiver,

(b) in the case of a company which is being wound up otherwise, the liquidator,

[^{F2}(c) in the case of a company which is in administration, the administrator, or]

(d) in the case of a company of which there is an administrative receiver, that receiver,

that the conditions mentioned in Article 9(1) are satisfied as respects a person who is or has been a director of that company, the office-holder shall forthwith report the matter to the Department.

(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.

F2 Art. 10(4)(c) 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. 64; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)

Modifications etc. (not altering text)

C2 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)

Disqualification after investigation of company

11.—(1) If it appears to the Department from investigative material 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.

(2) “Investigative material” means—

[^{F3}(a) a report made by inspectors under—

(i) section 437 of the Companies Act 1985, or

(ii) section 167, 168, 169 or 284 of the Financial Services and Markets Act 2000; and]

(b) information or documents obtained under—

[^{F4}(i) section 437, 446E, 447, 448, 451A or 453A of the Companies Act 1985;]

(ii) section 2 of the Criminal Justice Act 1987 (c. 38);

(iii) section 28 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39);

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(iv) section 83 of the Companies Act 1989 (c. 40); or

(v) section 165, 171, 172, 173 or 175 of the Financial Services and Markets Act 2000.

(3) Where it appears to the Department from such report, information or documents 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 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 makes him unfit to be concerned in the management of a company.

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

F3 Art. 11(2)(a) 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. 207(2)** (with art. 10 and see **Sch. 1 para. 212** for insertion of art. 24E(2))

F4 Art. 11(2)(b)(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. 207(3)** (with art. 10)

Modifications etc. (not altering text)

C3 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))

Variation etc. of disqualification undertaking

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

(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.

^{F5}[(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 [^{F6}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.]

F5 2005 NI 9

F6 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)

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Matters for determining unfitness of directors

13.—(1) Where it falls to the High Court to determine whether a person's conduct as a director of any particular company or companies makes him unfit to be concerned in the management of a company, the Court shall, as respects his conduct as a director of that company or, as the case may be, each of those companies, have regard in particular—

- (a) to the matters mentioned in Part I of Schedule 1, and
- (b) where the company has become insolvent, to the matters mentioned in Part II of that Schedule;

and references in that Schedule to the director and the company are to be read accordingly.

(2) In determining whether it may accept a disqualification undertaking from any person the Department shall, as respects the person's conduct as a director of any company concerned, have regard in particular—

- (a) to the matters mentioned in Part I of Schedule 1, and
- (b) where the company has become insolvent, to the matters mentioned in Part II of that Schedule;

and references in that Schedule to the director and the company are to be read accordingly.

(3) Article 9(2) applies for the purposes of this Article and Schedule 1 as it applies for the purposes of Articles 9 and 10; and in this Article and that Schedule “director” includes a shadow director.

(4) ^{F7}

(5) The Department may by order subject to affirmative resolution modify any of the provisions of Schedule 1; and such an order may contain such transitional provisions as may appear to the Department necessary or expedient.

<p>F7 Art. 13(4) 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. 208 (with art. 10)</p> <hr/> <p>Modifications etc. (not altering text)</p> <p>C4 Art. 13 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))</p>

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