

## STATUTORY INSTRUMENTS

# 2002 No. 3150

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

### *Other cases of disqualification*

#### **Participation in wrongful trading**

**14.**—(1) Where the High Court makes a declaration under Article 177 or 178 of <sup>[F1]</sup>the 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.

[F2(3) In this Article “company” includes overseas company.]

**F1** 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)

**F2** 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)**

**C1** 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>[F3]</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,

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- (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,
  - (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>F4</sup>(3) In this Article “company” includes a company incorporated outside Northern Ireland that has an established place of business in Northern Ireland.]

**F3** 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)

**F4** 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)**

**C2** 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)**

**C3** 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>F5</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;
- (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.]

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**F5** 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)

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