
Changes to legislation: There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, Paragraph 7. (See end of Document for details)

SCHEDULES

SCHEDULE 8

NORTHERN IRELAND: PROVISION CORRESPONDING TO SECTIONS 104 TO 111

Persons instructing unfit director

7 After Article 11 of the 2002 Order insert—

“Persons instructing unfit directors

Order disqualifying person instructing unfit director of insolvent company

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

(a) either—

(i) that a disqualification order under Article 9 has been made against a person who is or has been a director (but not a shadow director) of a company, or

(ii) that the Department has accepted a disqualification undertaking from such a person under Article 10(3), and

(b) that P exercised the requisite amount of influence over the person.

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

(2) For the purposes of this Article, P exercised the requisite amount of influence over the main transgressor if any of the conduct—

(a) for which the main transgressor is subject to the order made under Article 9, or

(b) in relation to which the undertaking was accepted from the main transgressor under Article 10(3),

was the result of the main transgressor acting in accordance with P's directions or instructions.

(3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.

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

Application for order under Article 11A

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

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

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- (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”.

- (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,

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- (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.”

Commencement Information

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

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