

SCHEDULES

SCHEDULE 8

NORTHERN IRELAND: PROVISION CORRESPONDING TO SECTIONS 104 TO 111

Compensation orders and undertakings

8 After Article 19 of the 2002 Order insert—

“Compensation orders and undertakings

19A Compensation orders and undertakings

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

19B Amounts payable under compensation orders and undertakings

- (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.

19C Variation and revocation of compensation undertakings

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