

COMPANY DIRECTORS DISQUALIFICATION (AMENDMENT) (NORTHERN IRELAND) ORDER 2005

S.I. 2005 No. 1454 (N.I. 9)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Company Directors Disqualification (Amendment) (Northern Ireland) 2005 was made on 7 June 2005.
2. This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment (“the Department”) to assist the reader in understanding the Order. It does not form part of the Order.
3. The Order replicates sections 9A to 9E as inserted into the Company Directors Disqualification Act 1986 by section 204 of the Enterprise Act 2002 (c. 40).

BACKGROUND AND POLICY OBJECTIVES

Under the Company Directors Disqualification (Northern Ireland) Order 2002 (“the CDDO”) the courts can disqualify a person for a period of time on a number of grounds. If someone’s conduct while a director of a company which has become insolvent has been such that he is unfit to be concerned in the management of a company, he can be disqualified for between two and fifteen years either through the making of an Order by the Northern Ireland High Court or through the giving of an undertaking to the Department. The consequences are that he is forbidden, unless with the permission of the Court, to be a director of a company, to act as receiver of a company’s property or in any way, whether directly or indirectly, to be concerned in or take part in the promotion, formation or management of a company. He also cannot act as an insolvency practitioner.

To act in contravention of a disqualification order or undertaking constitutes a criminal offence attracting a prison sentence of up to two years and/or a fine. The person contravening the order and anyone acting on his behalf also become personally liable for his company’s debts.

The purpose of this Order is to include provision in the CDDO to extend the grounds on which the Northern Ireland High Court is able to make a disqualification order against a director to include the situation where his company has been in breach of competition law and his conduct as a director makes him unfit to be concerned in the management of a company. As an alternative to court proceedings the Office of Fair Trading (“OFT”) or a specified regulator would be able to accept an undertaking from the director which would have the same effect as a High Court Order.

CONSULTATION

A consultation document outlining both the policy and the provisions contained in the Order was circulated during August 2004 to a wide spectrum of interests, including MPs, Assembly Members, representatives of interested professional and business associations and the various equality interest groups. No change to the Order was required following the consultation.

MAIN ELEMENTS OF THE ORDER

The Order contains 4 Articles. The third of these amends the CDDO by inserting 5 new Articles, the effect of which is to enable the disqualification of company directors who have been involved in infringement of competition law.

COMMENTARY ON PROVISIONS

Article 1 : Title and commencement

This Article sets out the title to the Order and the arrangements for commencement.

Article 2 : Interpretation

This Article applies the Interpretation Act (Northern Ireland) 1954 to the Order.

Article 3 : Disqualification of company directors for breaches of competition law

The Article inserts five new Articles into the CDDO. The effect will be to protect the public by enabling directors of companies which have been in breach of competition law to be disqualified.

- New Article 13A provides that the High Court shall make a disqualification order against a person for a period of up to 15 years if two conditions are satisfied. The first condition is that the person is the director of a company that has committed a breach of competition law. This is defined as an infringement of either the prohibitions in the Competition Act 1998 (c.41), or the EC Treaty relating to agreements preventing, restricting, or distorting competition or abuse of a dominant position. The second condition is that the Court considers the person's conduct was such as to make him unfit to be concerned in the management of a company. Applications for a disqualification order may be made by either the OFT or a specified regulator.
- New Article 13B provides that a person whom the OFT or a specified regulator considers unfit may consent to a period of disqualification without the need for court involvement by giving a disqualification undertaking to the OFT or regulator. The maximum period of disqualification is 15 years.
- New Article 13C provides the OFT and the specified regulators with powers of investigation to enable them to decide whether to make a disqualification application. These powers are the same as those available for an investigation into suspected infringement of the Competition Act 1998. It also provides that, before it can make a disqualification application, the OFT or specified regulator must give notice to the person likely to be affected by the application, and give him the opportunity to make representations.
- New Article 13D gives the Secretary of State power to make regulations for the purpose of coordinating the performance of functions under Articles 13A to 13C.
- New Article 13E lists the specified regulators for the purposes of a breach of competition law in respect of which each has a function.

Article 4 : Supplementary

This Article makes various consequential amendments to the CDDO.

COMMENCEMENT

The introductory provisions (Articles 1 and 2) are to come into operation on the expiration of 7 days from the day on which the Order is made. The substantive provisions (Articles 3 and 4) will be brought into operation on a day to be appointed by a commencement order.