
STATUTORY INSTRUMENTS

1989 No. 2404

The Companies (Northern Ireland) Order 1989

PART II

COMPANY DIRECTORS DISQUALIFICATION

Interpretation of Part II

3.—(1) In this Part—

“administrative receiver” has the meaning given by Article 5(1) of the Insolvency Order;

“company”—

- (a) includes a company within the meaning of the Companies Act 1985;
- (b) includes any company which may be wound up under Part VI of the Insolvency Order or Part V of the Insolvency Act 1986; and
- (c) except in Article 11, includes a building society within the meaning of the Building Societies Act 1986⁽¹⁾;

“the companies legislation”, in Articles 6(1) and 8(1) means the Companies Orders (except the Insider Dealing Order) and Parts II to VII and Articles 359, 360, 361 and 362 of the Insolvency Order;

“the Companies Orders” has the meaning given by Article 2(3) of the Companies Order;

“the Department” means the Department of Economic Development;

“director”—

- (a) includes any person occupying the position of director by whatever name called, and in Articles 9 to 12 includes a shadow director; and
- (b) in Articles 9, 10, 12 and 18, includes a director (but not a shadow director) of a building society;

“the Insolvency Order” means the Insolvency (Northern Ireland) Order 1989⁽²⁾;

“officer” has the meaning given by Article 2(3) of the Companies Order;

“the official receiver” means, in relation to the winding up of a company or the bankruptcy of an individual, any officer of the Department who by virtue of Article 355 or 357 of the Insolvency Order is authorised to act as the official receiver in relation to that winding up or bankruptcy;

“prescribed” means prescribed by regulations;

“the registrar” means the registrar of companies appointed under Article 653 of the Companies Order and, for the purposes of this Order, includes an assistant registrar;

“regulations” means regulations made by the Department subject to negative resolution;

(1) 1985 c. 6
(2) 1986 c. 45

“shadow director”, in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act (but so that a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity);

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954(3).

(2) Article 6 of the Insolvency Order (interpretation for Parts II to VII of that Order) applies as regards references to a company’s insolvency and to its going into liquidation.

(3) Any reference to provisions, or a particular provision, of the Companies Orders or the Insolvency Order includes the corresponding provisions or provision of the former Companies Acts (as defined by Article 2(3) of the Companies Order, but including also that Order itself).

(4) Any expression for whose interpretation provision is made by Part I of the Companies Order (and not by paragraphs (1) to (3) or Article 2(2) of this Order) is to be construed in accordance with that provision.

(5) In this Order references to the official receiver include an officer of the Department appointed under Article 357(1) of the Insolvency Order as deputy official receiver.

Preliminary

Disqualification orders: general

4.—(1) In the circumstances specified in this Part a court may, and under Article 9 shall, make against a person a disqualification order, that is to say an order that he shall not, without leave of the High Court—

- (a) be a director of a company, or
- (b) be a liquidator or administrator of a company, or
- (c) be a receiver or manager of a company’s property, or
- (d) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company,

for a specified period beginning with the date of the order.

(2) In each Article which gives to a court power or, as the case may be, imposes on it the duty to make a disqualification order there is specified the maximum (and, in Article 9, the minimum) period of disqualification which may or (as the case may be) must be imposed by means of the order.

(3) Where a disqualification order is made against a person who is already subject to such an order, the periods specified in those orders shall run concurrently.

(4) A disqualification order may be made on grounds which are or include matters other than criminal convictions, notwithstanding that the person in respect of whom it is to be made may be criminally liable in respect of those matters.

Disqualification for general misconduct in connection with companies

Disqualification on conviction of offence punishable only on indictment or either on conviction on indictment or on summary conviction

5.—(1) The court may make a disqualification order against a person where he is convicted of an offence punishable only on conviction on indictment or either on conviction on indictment

or on summary conviction (whether on indictment or on summary conviction) in connection with the promotion, formation, management or liquidation of a company, or with the receivership or management of a company's property.

(2) "The court" for this purpose means—

- (a) the High Court, or
- (b) the court by or before which the person is convicted of the offence, or
- (c) in the case of a summary conviction, any other court of summary jurisdiction acting for the same petty sessions district.

(3) The maximum period of disqualification under this Article is—

- (a) where the disqualification order is made by a court of summary jurisdiction, 5 years, and
- (b) in any other case, 15 years.

Disqualification for persistent default under companies legislation

6.—(1) The High Court may make a disqualification order against a person where it appears to it that he has been persistently in default in relation to provisions of the companies legislation requiring any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the registrar.

(2) On an application to the High Court for an order to be made under this Article, the fact that a person has been persistently in default in relation to such provisions as are mentioned in paragraph (1) may (without prejudice to its proof in any other manner) be conclusively proved by showing that in the 5 years ending with the date of the application he has been adjudged guilty (whether or not on the same occasion) of 3 or more defaults in relation to those provisions.

(3) A person is to be treated under paragraph (2) as being adjudged guilty of a default in relation to any such provision if—

- (a) he is convicted (whether on indictment or on summary conviction) of an offence consisting in a contravention of that provision (whether on his own part or on the part of any company), or
- (b) a default order is made against him, that is to say an order under any of the following provisions—
 - (i) Article 252 of the Companies Order (order requiring delivery of company accounts),
 - (ii) Article 662 of the Companies Order (enforcement of company's duty to make returns),
 - (iii) Article 51 of the Insolvency Order (enforcement of receiver's or manager's duty to make returns), or
 - (iv) Article 144 of the Insolvency Order (corresponding provision for liquidator in winding up),in respect of any such contravention of that provision (whether on his own part or on the part of any company).

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

Disqualification for fraud, etc., in winding up

7.—(1) The High Court may make a disqualification order against a person if, in the course of the winding up of a company, it appears that he—

- (a) has been guilty of an offence for which he is liable (whether he has been convicted or not) under Article 451 of the Companies Order (fraudulent trading), or

- (b) has otherwise been guilty, while an officer or liquidator of the company or receiver or manager of its property, of any fraud in relation to the company or of any breach of his duty as such officer, liquidator, receiver or manager.
- (2) In this Article “officer” includes a shadow director.
- (3) The maximum period of disqualification under this Article is 15 years.

Disqualification on summary conviction of offence

8.—(1) An offence counting for the purposes of this Article is one of which a person is convicted (either on indictment or on summary conviction) in consequence of a contravention of any provision of the companies legislation requiring a return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the registrar (whether the contravention is on the person’s own part or on the part of any company).

(2) Where a person is convicted by a court of summary jurisdiction of an offence mentioned in paragraph (1), the court by which he is convicted, or any other court of summary jurisdiction acting for the same petty sessions district, may make a disqualification order against him if the circumstances specified in paragraph (3) are present.

(3) Those circumstances are that, during the 5 years ending with the date of the conviction, the person has had made against him, or has been convicted of, in total not less than 3 default orders and offences counting for the purposes of this Article and those offences may include that of which he is convicted as mentioned in paragraph (2) and any other offence of which he is convicted on the same occasion.

- (4) For the purposes of this Article “default order” means the same as in Article 6(3)(b).
- (5) The maximum period of disqualification under this Article is 5 years.

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,
 - (b) an administration order is made in relation to the company, 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.

Applications to High Court under Article 9; 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 wound up by the High Court, by the official receiver.

(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 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,
- (c) in the case of a company in relation to which an administration order is in force, 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.

(4) 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.

Disqualification after investigation of company

11.—(1) If it appears to the Department from a report made by inspectors under Article 430 of the Companies Order or Article 16A of the Insider Dealing Order, or from information or documents obtained under Article 440 or 441 of the Companies Order, that it is expedient in the public interest that a disqualification order should be made against any person who is or has been a director or shadow director of any company, the Department may apply to the High Court for such an order to be made against that person.

(2) The Department may, on receipt of a report made by inspectors under section 94 or 177 of the Financial Services Act 1986(4) or information or documents obtained under section 105 of that Act, apply to the High Court for a disqualification order to be made against any person who is or has been a director or a shadow director of any company.

(3) 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.

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

Matters for determining unfitness of directors

12.—(1) Where it falls to the High Court to determine whether a person's conduct as a director or shadow 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) Article 9(2) applies for the purposes of this Article and Schedule 1 as it applies for the purposes of Articles 9 and 10.

(3) Subject to paragraph (4), any reference in Schedule 1 to a statutory provision contained in the Companies Order or the Insolvency Order includes, in relation to any time before the coming into operation of that statutory provision, the corresponding statutory provision in force at that time.

(4) 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.

Other cases of disqualification

Participation in wrongful trading

13.—(1) Where the High Court makes a declaration under Article 177 or 178 of the Insolvency Order 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.

Undischarged bankrupts

14.—(1) A person who is an undischarged bankrupt shall not, except with the leave of the High Court, act as director of, or directly or indirectly take part in or be concerned in the promotion, formation or management of, a company.

(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.

Failure to pay under administration order

15.—(1) The following has effect where an administration order under Part VI of the Judgments Enforcement (Northern Ireland) Order 1981(5) 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.

Other disqualified persons

16. A person who is subject to a disqualification order made under the Company Directors Disqualification Act 1986(6) shall not, except with the leave of the High Court, act as director, liquidator, administrator, receiver or manager of, or directly or indirectly take part in or be concerned in the promotion, formation or management of, a company.

Consequences of contravention

Offences

17. If a person acts in contravention of a disqualification order or of Article 14, 15(2) or 16, he shall be guilty of an offence and shall be liable—

- (a) on conviction on indictment, to imprisonment for not more than 2 years or a fine, or both; and
- (b) on summary conviction, to imprisonment for not more than 6 months or a fine not exceeding the statutory maximum, or both.

Personal liability for company's debts where person acts while disqualified

18.—(1) A person is personally responsible for all the relevant debts of a company if at any time—

- (a) in contravention of a disqualification order or of Article 14 or 16 he is involved in the management of the company, or
- (b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given without the leave of the High Court by a person whom he knows at that time to be the subject of a disqualification order or to be an undischarged bankrupt.

(2) Where a person is personally responsible under this Article for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this Article or otherwise, is so liable.

(3) For the purposes of this Article the relevant debts of a company are—

- (a) in relation to a person who is personally responsible under paragraph (1)(a), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company, and
- (b) in relation to a person who is personally responsible under paragraph (1)(b), such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that paragraph.

(4) For the purposes of this Article, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.

(5) For the purposes of this Article a person who, as a person involved in the management of a company, has at any time acted on instructions given without the leave of the High Court by a person whom he knew at that time to be the subject of a disqualification order or to be an undischarged bankrupt is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

Supplementary provisions

Application for disqualification order

19.—(1) A person intending to apply for the making of a disqualification order by the High Court shall give not less than 10 days' notice of his intention to the person against whom the order is sought; and on the hearing of the application the last-mentioned person may appear and himself give evidence or call witnesses.

(2) An application to the High Court for the making against any person of a disqualification order under any of Articles 5 to 7 may be made by the Department or the official receiver, or by the liquidator or any past or present member or creditor of any company in relation to which that person has committed or is alleged to have committed an offence or other default.

(3) On the hearing of an application made by the Department or the official receiver or the liquidator the applicant shall appear and call the attention of the High Court to any matters which seem to be relevant, and may give evidence or call witnesses.

Application for leave under an order

20. On the hearing of an application for leave made by a person against whom a disqualification order has been made on the application of the Department, the official receiver or the liquidator, the Department, official receiver or liquidator shall appear and call the attention of the High Court to any matters which seem to be relevant, and may give evidence or call witnesses.

Register of disqualification orders

21.—(1) Where—

- (a) a disqualification order is made, or
- (b) any action is taken by a court in consequence of which such an order is varied or ceases to be in force, or
- (c) leave is granted by the High Court for a person subject to such an order to do any thing which otherwise the order prohibits him from doing;

the clerk of the court shall furnish to the Department such particulars as may be prescribed and regulations may prescribe the time within which, and the form and manner in which, such particulars are to be furnished.

(2) The Department shall, from the particulars so furnished continue to maintain the register of disqualification orders, and of cases in which leave has been granted as mentioned in paragraph (1) (c), which was set up by it under Article 309 of the Companies Order.

(3) When an order of which entry is made in the register ceases to be in force, the Department shall delete the entry from the register and all particulars relating to it which have been furnished to it under this Article or any previous corresponding provision.

(4) The register shall be open to inspection on payment of such fee as may be prescribed.

Special savings from repealed statutory provisions

22. Schedule 2 has effect—

- (a) in connection with certain transitional cases arising under Articles 93 and 94 of the Companies (Northern Ireland) Order 1982(7), so as to limit the power to make a

disqualification order, or to restrict the duration of an order, by reference to events occurring or things done before those Articles came into operation,

- (b) to preclude any applications for a disqualification order under Article 9 or 11, where the relevant company went into liquidation before the date of the coming into operation of this Part.

Miscellaneous and general

Admissibility in evidence of statements

23. In any proceedings (whether or not under this Order), any statement made in pursuance of a requirement imposed by or under Articles 9 to 13, 18 or 22(b) or Schedule 1 or by or under rules made for the purposes of this Order under the Insolvency Order, may be used in evidence against any person making or concurring in making the statement.

Interaction with the Insolvency Order

24.—(1) Articles 9 to 13, 18, 22(b) and 23 and Schedule 1 are deemed included in Parts II to VII of the Insolvency Order for the purposes of the following Articles of that Order—

Article 359 (power to make insolvency rules);

Article 361 (fees orders);

Article 364 (orders extending provisions about insolvent companies to insolvent partnerships);

Article 366 (modifications of such provisions in their application to recognised banks); and

Article 374 (summary proceedings).

(2) Article 378 of that Order (Crown application) applies to Articles 9 to 13, 18, 22(b) and 23 and Schedule 1 as it does to the provisions of that Order which are there mentioned.

Transitional provisions, savings, amendments and repeals

25.—(1) The transitional provisions and savings in Schedule 3 shall have effect for the purposes of this Part.

(2) The statutory provisions specified in Part I of Schedule 4 shall have effect subject to the amendments specified in that Part, being amendments consequential on the provisions of this Part.

(3) The statutory provisions specified in Part I of Schedule 5 are hereby repealed to the extent specified in column 3 of that Part.