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## STATUTORY INSTRUMENTS

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### 2002 No. 3150 (N.I. 4)

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

- - - - - 17th December 2002

##### Modifications etc. (not altering text)

- C1** Order modified (1.1.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(3)(c), **271(5)** (with arts. 8(8), 121(3), 307)
- C2** Order applied (1.8.2007) by [European Grouping of Territorial Cooperation Regulations 2007 \(S.I. 2007/1949\)](#), **reg. 9**
- C3** Order power to amend conferred (17.2.2009 for certain purposes otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 158(2)(b), 159(2)(b)**, 167 (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 3
- C4** Order applied (with modifications) (21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 121**, 134 (with s. 247); S.I. 2009/296, **art. 3**, Sch. para. 2
- C5** Order applied (with modifications) (21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 155**, 167 (with s. 247); S.I. 2009/296, **art. 3**, Sch. para. 3
- C6** Order modified by 1986 c. 53, s. 90E (as inserted (21.2.2009) by [Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), **arts. 6**, 17)
- C7** Order applied (with modifications) (8.2.2011) by [Investment Bank Special Administration Regulations 2011 \(S.I. 2011/245\)](#), regs. 1, 8(7), 9, **15**, 16-21, 24-26, Schs. 1-5

##### *Introductory*

##### **Title and commencement**

**1.—**(1) This Order may be cited as the Company Directors Disqualification (Northern Ireland) Order 2002.

(2) This Order shall come into operation on such day or days as the Department may by order appoint<sup>F1</sup>.

**F1** fully exercised by SR 2003/345

##### **Interpretation**

**2.—**(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

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

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“company”

- (a) includes a company within the meaning of the Companies Act 1985 (c. 6);
- (b) includes any company which may be wound up under Part VI of the Insolvency Order or Part V of the Insolvency Act 1986 (c. 45); and
- (c) except in Article 11, includes a building society within the meaning of the Building Societies Act 1986 (c. 53);

“the companies legislation”, in Articles 6(1) and 8(1) means the Companies Orders (except Part V of the Criminal Justice Act 1993 (c. 36) (insider dealing)) and Parts II to VII and Articles 359, 360, 361 and 362 of the Insolvency Order;

“the Companies Order” means the Companies (Northern Ireland) Order 1986 (NI 6);

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

“the Department” means the Department of Enterprise, Trade and Investment;

“director”

- (a) includes any person occupying the position of director by whatever name called; and
- (b) in Articles 9, 10, 13 and 19, includes a director (but not a shadow director) of a building society;

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

“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;

[<sup>F2</sup>“the OFT” means the Office of Fair Trading;]

“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;

[<sup>F3</sup>“regulations” means—

- (a) in Article 13D, regulations made by the Secretary of State, and
- (b) in other provisions of this Order, regulations made by the Department subject (except in Article 23(3)) to negative resolution;]

“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 (c. 33).

(3) 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; and references to acting as an insolvency practitioner are to be read in accordance with Article 3 of that Order.

(4) 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).

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

- (6) Any reference to acting as receiver—
- (a) includes acting as manager or as both receiver and manager, but
  - (b) does not include acting as administrative receiver.

**F2** 2005 NI 9

**F3** 2005 NI 9

### Disqualification orders: general

3.—(1) In the circumstances specified in this Order a court may, and under<sup>[F4]</sup> Articles 9 and 13A] shall, make against a person a disqualification order, that is to say an order that, for a period specified in the order—

- (a) he shall not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of the High Court, and
- (b) he shall not act as an insolvency practitioner.

(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 and, unless the court otherwise orders, the period of disqualification so imposed shall begin at the end of the period of 21 days beginning with the date of the order.

(3) Where a disqualification order is made against a person who is already subject to such an order or to a disqualification undertaking, the periods specified in those orders or, as the case may be, in the order and the undertaking 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.

**F4** 2005 NI 9

#### Modifications etc. (not altering text)

**C8** Art. 3 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))

### Disqualification undertakings: general

4.—(1) In the circumstances specified in Articles 10 and 11 the Department may accept a disqualification undertaking, that is to say an undertaking by any person that, for a period specified in the undertaking, the person—

- (a) will not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of the High Court, and
- (b) will not act as an insolvency practitioner.

(2) The maximum period which may be specified in a disqualification undertaking is 15 years; and the minimum period which may be specified in a disqualification undertaking under Article 10 is two years.

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(3) Where a disqualification undertaking by a person who is already subject to such an undertaking or to a disqualification order is accepted, the periods specified in those undertakings or (as the case may be) the undertaking and the order shall run concurrently.

(4) In determining whether to accept a disqualification undertaking by any person, the Department may take account of matters other than criminal convictions, notwithstanding that the person 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, liquidation or striking off of a company, with the receivership of a company's property or with his being an administrative receiver of a company.

(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.

#### **Modifications etc. (not altering text)**

**C9** Art. 5 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))

#### **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 250(3) of the Companies Order (order requiring delivery of company accounts),
- (ii) Article 253B of the Companies Order (order requiring preparation of revised accounts),
- (iii) Article 662 of the Companies Order (enforcement of company's duty to make returns),
- (iv) Article 51 of the Insolvency Order (enforcement of receiver's or manager's duty to make returns), or
- (v) 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 of the company's property or administrative receiver of the company, of any fraud in relation to the company or of any breach of his duty as such officer, liquidator, receiver or administrative receiver.

- (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.

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## *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,

[<sup>F5</sup>(b) the company enters administration, 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.

**F5** Art. 9(2)(b) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 63; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)

#### **Modifications etc. (not altering text)**

**C10** Art. 9 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))

### **Disqualification order or undertaking; and 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, or has been, 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 Department that the conditions mentioned in Article 9(1) are satisfied as respects any person who has offered to give the Department a disqualification undertaking, the Department may accept the undertaking if it appears to the Department that it is expedient in the public interest that the Department should do so (instead of applying, or proceeding with an application, for a disqualification order).

(4) 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,  
[<sup>F6</sup>(c) in the case of a company which is in administration, 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.

(5) 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.

**F6** Art. 10(4)(c) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 64; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)

**Modifications etc. (not altering text)**

**C11** Art. 10 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))

**Disqualification after investigation of company**

**11.**—(1) If it appears to the Department from investigative material that it is expedient in the public interest that a disqualification order should be made against a person who is, or has been, a director or shadow director of a company, the Department may apply to the High Court for such an order.

(2) “Investigative material” means—

- (a) a report made by inspectors under—
  - (i) Article 430 of the Companies Order;
  - (ii) section 167, 168, 169 or 284 of the Financial Services and Markets Act 2000 (c. 8); or
  - (iii) where the company is an open-ended investment company (within the meaning of that Act) regulations made as a result of section 262(2)(k) of that Act or section 1(2)(k) of the Open-Ended Investment Companies Act (Northern Ireland) 2002; and
- (b) information or documents obtained under—
  - (i) Article 440<sup>F7</sup> or 441 of the Companies Order;
  - (ii) section 2 of the Criminal Justice Act 1987 (c. 38);
  - (iii) section 28 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39);
  - (iv) section 83 of the Companies Act 1989 (c. 40); or
  - (v) section 165, 171, 172, 173 or 175 of the Financial Services and Markets Act 2000.

(3) Where it appears to the Department from such report, information or documents that, in the case of a person who has offered to give the Department a disqualification undertaking—

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- (a) the conduct of the person in relation to a company of which the person is or has been a director or shadow director makes him unfit to be concerned in the management of a company, and
  - (b) it is expedient in the public interest that the Department should accept the undertaking (instead of applying, or proceeding with an application, for a disqualification order),
- the Department may accept the undertaking.

(4) 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.

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

**F7** prosp. subst. by [2005 NI 17](#)

### **Variation etc. of disqualification undertaking**

**12.**—(1) The High Court may, on the application of a person who is subject to a disqualification undertaking—

- (a) reduce the period for which the undertaking is to be in force, or
- (b) provide for it to cease to be in force.

(2) On the hearing of an application under paragraph (1), the Department shall appear and call the attention of the Court to any matters which seem to the Department to be relevant, and may give evidence or call witnesses.

[<sup>F8</sup>(3) Paragraph (2) does not apply to an application in the case of an undertaking given under Article 13B, and in such a case on the hearing of the application whichever of the OFT or a specified regulator (within the meaning of Article 13E) accepted the undertaking—

- (a) shall appear and call the attention of the Court to any matters which appear to it to be relevant;
- (b) may give evidence or call witnesses.]

**F8** [2005 NI 9](#)

### **Matters for determining unfitness of directors**

**13.**—(1) Where it falls to the High Court to determine whether a person's conduct as a 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) In determining whether it may accept a disqualification undertaking from any person the Department shall, as respects the person's conduct as a director of any company concerned, 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.

(3) Article 9(2) applies for the purposes of this Article and Schedule 1 as it applies for the purposes of Articles 9 and 10; and in this Article and that Schedule “director” includes a shadow director.

(4) Subject to paragraph (5), 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.

(5) 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.

### *[<sup>F9</sup>Disqualification for competition infringements*

**F9**    2005 NI 9

#### **Competition disqualification order**

**13A.**—(1) The High Court shall make a disqualification order against a person if the following two conditions are satisfied in relation to him.

(2) The first condition is that an undertaking which is a company of which he is a director commits a breach of competition law.

(3) The second condition is that the High Court considers that his conduct as a director makes him unfit to be concerned in the management of a company.

(4) An undertaking commits a breach of competition law if it engages in conduct which infringes any of the following—

- (a) the Chapter 1 prohibition (within the meaning of the Competition Act 1998) (prohibition on agreements, etc. preventing, restricting or distorting competition);
- (b) the Chapter 2 prohibition (within the meaning of that Act) (prohibition on abuse of a dominant position);
- (c) Article 81 of the Treaty establishing the European Community (prohibition on agreements, etc. preventing, restricting or distorting competition);
- (d) Article 82 of that Treaty (prohibition on abuse of a dominant position).

(5) For the purpose of deciding under paragraph (3) whether a person is unfit to be concerned in the management of a company the High Court—

- (a) shall have regard to whether paragraph (6) applies to him;
- (b) may have regard to his conduct as a director of a company in connection with any other breach of competition law;
- (c) shall not have regard to the matters mentioned in Schedule 1.

(6) This paragraph applies to a person if as a director of the company—

- (a) his conduct contributed to the breach of competition law mentioned in paragraph (2);
- (b) his conduct did not contribute to the breach but he had reasonable grounds to suspect that the conduct of the undertaking constituted the breach and he took no steps to prevent it;
- (c) he did not know but ought to have known that the conduct of the undertaking constituted the breach.

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(7) For the purposes of paragraph (6)(a) it is immaterial whether the person knew that the conduct of the undertaking constituted the breach.

(8) For the purposes of paragraph (4)(a) or (c) references to the conduct of an undertaking are references to its conduct taken with the conduct of one or more other undertakings.

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

(10) An application under this Article for a disqualification order may be made by the OFT or by a specified regulator.

(11) Section 60 of the Competition Act 1998 (c. 41) (consistent treatment of questions arising under United Kingdom and Community law) applies in relation to any question arising by virtue of paragraph (4)(a) or (b) as it applies in relation to any question arising under Part 1 of that Act.

### **Competition undertakings**

**13B.**—(1) This Article applies if—

- (a) the OFT or a specified regulator thinks that in relation to any person an undertaking which is a company of which he is a director has committed or is committing a breach of competition law,
- (b) the OFT or the specified regulator thinks that the conduct of the person as a director makes him unfit to be concerned in the management of a company, and
- (c) the person offers to give the OFT or the specified regulator (as the case may be) a disqualification undertaking.

(2) The OFT or the specified regulator (as the case may be) may accept a disqualification undertaking from the person instead of applying for or proceeding with an application for a disqualification order.

(3) A disqualification undertaking is an undertaking by a person that for the period specified in the undertaking he will not—

- (a) be a director of a company;
- (b) act as receiver of a company's property;
- (c) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company;
- (d) act as an insolvency practitioner.

(4) But a disqualification undertaking may provide that a prohibition falling within paragraph (3) (a) to (c) does not apply if the person obtains the leave of the High Court.

(5) The maximum period which may be specified in a disqualification undertaking is 15 years.

(6) If a disqualification undertaking is accepted from a person who is already subject to a disqualification undertaking under this Order or to a disqualification order the periods specified in those undertakings or the undertaking and the order (as the case may be) run concurrently.

(7) Paragraphs (4) to (8) of Article 13A apply for the purposes of this Article as they apply for the purposes of that Article but in the application of paragraph (5) of that Article the reference to the High Court shall be construed as a reference to the OFT or a specified regulator (as the case may be).

### **Competition investigations**

**13C.**—(1) If the OFT or a specified regulator has reasonable grounds for suspecting that a breach of competition law has occurred it may carry out an investigation for the purpose of deciding whether to make an application under Article 13A for a disqualification order.

(2) For the purposes of such an investigation sections 26 to 30 of the Competition Act 1998 (c. 41) apply to the OFT and the specified regulators as they apply to the OFT for the purposes of an investigation under section 25 of that Act.

(3) Paragraph (4) applies if as a result of an investigation under this Article the OFT or a specified regulator proposes to apply under Article 13A for a disqualification order.

(4) Before making the application the OFT or regulator (as the case may be) shall—

- (a) give notice to the person likely to be affected by the application, and
- (b) give that person an opportunity to make representations.

### **Co-ordination**

**13D.**—(1) The Secretary of State may make regulations for the purpose of co-ordinating the performance of functions under Articles 13A to 13C (relevant functions) which are exercisable concurrently by two or more persons.

(2) Section 54(5) to (7) of the Competition Act 1998 (c. 41) applies to regulations made under this Article as it applies to regulations made under that section and for that purpose in that section—

- (a) references to Part 1 functions shall be read as references to relevant functions;
- (b) references to a regulator shall be read as references to a specified regulator; and
- (c) a competent person also includes any of the specified regulators.

(3) Regulations made under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

(4) Regulations may contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks appropriate.]

### **Interpretation**

**13E.**—(1) This Article applies for the purposes of Articles 13A to 13D.

(2) Each of the following is a specified regulator for the purposes of a breach of competition law in relation to a matter in respect of which it has a function—

- (a) the Office of Communications;
  - (b) the Northern Ireland Authority for Energy Regulation;
  - (c) the Civil Aviation Authority.
- (3) Conduct includes omission.
- (4) Director includes shadow director.

### *Other cases of disqualification*

### **Participation in wrongful trading**

**14.**—(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.

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## Undischarged bankrupts

**15.**—<sup>F10</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 High Court, at a time when—

- (a) he is an undischarged bankrupt, or
- (b) a bankruptcy restrictions order is in force in respect of him.]

(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.

**F10** Art. 15(1) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 13(3), Sch. 6 para. 5; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)

## 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)

**C12** 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.

### *Consequences of contravention*

## Offences

**18.** If a person acts in contravention of a disqualification order or disqualification undertaking, or in contravention of Article 15, 16(2) or 17, 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**

**19.—**(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 disqualification undertaking or in contravention of Article 15 or 17 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—
  - (i) the subject of a disqualification order or disqualification undertaking,
  - (ii) the subject of a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46), or
  - (iii) 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—

- (a) the subject of a disqualification order or disqualification undertaking, or
- (b) the subject of a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46), or
- (c) an undischarged bankrupt,

is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given that person.

### **Modifications etc. (not altering text)**

**C13** Art. 19 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))

## *Supplementary provisions*

### **Application for disqualification order**

**20.—**(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

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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<sup>[F11]</sup> a person falling within paragraph (4)] 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.

<sup>[F12]</sup>(4) The following fall within this paragraph—

- (a) the Department;
- (b) the official receiver;
- (c) the OFT;
- (d) the liquidator;
- (e) a specified regulator (within the meaning of Article 13E).]

**F11** 2005 NI 9

**F12** 2005 NI 9

#### **Modifications etc. (not altering text)**

**C14** Art. 20 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))

### **Application for leave under an order or undertaking**

#### **21**

<sup>[F13]</sup>(1)] On the hearing of an application for leave for the purposes of Article 3(1)(a) or 4(1)(a), the Department shall appear and call the attention of the High Court to any matters which seem to the Department to be relevant, and may give evidence or call witnesses.

<sup>[F14]</sup>(2) Paragraph (1) does not apply to an application for leave for the purposes of Article 3(1)(a) if the application for the disqualification order was made under Article 13A.

(3) In such a case and in the case of an application for leave for the purposes of Article 13B(4) on the hearing of the application whichever of the OFT or a specified regulator (within the meaning of Article 13E) applied for the order or accepted the undertaking (as the case may be)—

- (a) must appear and draw the attention of the Court to any matters which appears to it to be relevant;
- (b) may give evidence or call witnesses.]

**F13** 2005 NI 9

**F14** 2005 NI 9

#### **Modifications etc. (not altering text)**

**C15** Art. 21 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))

## Register of disqualification orders and undertakings

### 22.—(1) Where—

- (a) a disqualification order is made, or
- (b) any action is taken by a court in consequence of which such an order or a disqualification undertaking 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, or
- (d) leave is granted by the High Court for a person subject to such an undertaking to do anything which otherwise the undertaking prohibits him from doing,

the clerk of the court shall furnish to the Department and to the Secretary of State 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.

<sup>F15</sup>(3) The Department shall include in the register such particulars as it considers appropriate of—

- (a) disqualification undertakings accepted by it under Article 10 or 11;
- (b) disqualification undertakings accepted by the OFT or a specified regulator under Article 13B;
- (c) cases in which leave has been granted as mentioned in paragraph (1)(d).]

(4) When an order or undertaking 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 the Department under this Article or any previous corresponding provision and, in the case of a disqualification undertaking, any other particulars the Department has included in the register.

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

(6) The Department may furnish to the Secretary of State such particulars as the Department considers appropriate of disqualification undertakings accepted by it under Article 10 or 11.

(7) Regulations under this Article may extend the preceding provisions of this Article, to such extent and with such modifications as may be specified in the regulations, to disqualification orders made and disqualification undertakings accepted under the Company Directors Disqualification Act 1986 (c. 46).

**F15** 2005 NI 9

## Miscellaneous and general

### Admissibility in evidence of statements

23.—(1) In any proceedings (whether or not under this Order), any statement made in pursuance of a requirement imposed by or under Articles 9 to 14 or 19 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.

(2) However, in criminal proceedings in which any such person is charged with an offence to which this paragraph applies—

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(a) no evidence relating to the statement may be adduced, and  
 (b) no question relating to it may be asked,  
 by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Paragraph (2) applies to any offence other than—

(a) an offence which is—

- (i) created by rules made for the purposes of this Order under the Insolvency Order, and
- (ii) designated for the purposes of this paragraph by such rules or by regulations;

(b) an offence which is—

- (i) created by regulations made under any such rules, and
- (ii) designated for the purposes of this paragraph by such regulations; or

(c) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (NI 19) (false statements made otherwise than on oath).

(4) Regulations under paragraph (3)(a)(ii) shall after being made be laid before the Assembly.

VALID FROM 06/04/2008

#### **[<sup>F16</sup>Legal professional privilege]**

**23A.** In proceedings against a person for an offence under this Order nothing in this Order is to be taken to require any person to disclose any information that he is entitled to refuse to disclose on grounds of legal professional privilege.]

**F16** Art. 23A inserted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), Sch. 1 para. 226(4) (with arts. 6, 11, 12)

### **Interaction with the Insolvency Order**

**24.—**(1) Articles 4, 9 to 14, 18, 19 and 23 and Schedule 1, and Articles 3 and 21 as they apply for the purposes of those provisions, 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).

(2) Article 378 of that Order (Crown application) applies to Articles 4, 9 to 14, 18, 19 and 23 and Schedule 1, and Articles 3 and 21 as they apply for the purposes of those provisions, as it does to the provisions of that Order which are there mentioned.



VALID FROM 21/02/2009

**[<sup>F17</sup>Bank insolvency]**

**24A** Section 121 of the Banking Act 2009 provides for this Act to apply in relation to bank insolvency as it applies in relation to liquidation.]

**F17** [Art. 24A](#) inserted (21.2.2009) by virtue of [Banking Act 2009 \(c. 1\)](#), **ss. 121(4)**, 134, 263(1) (with s. 247); S.I. 2009/296, **art. 3**, Sch. para. 2

VALID FROM 21/02/2009

**[<sup>F18</sup>Bank administration]**

**24B** Section 155 of the Banking Act 2009 provides for this Act to apply in relation to bank administration as it applies in relation to liquidation.]

**F18** [Art. 24B](#) inserted (21.2.2009) by virtue of [Banking Act 2009 \(c. 1\)](#), **ss. 155(4)**, 167, 263(1) (with s. 247); S.I. 2009/296, **art. 3**, Sch. para. 3

VALID FROM 29/03/2009

**[<sup>F19</sup>Building society insolvency and special administration]**

**24C.** Section 90E of the Building Societies Act 1986 provides for this Act to apply in relation to building society insolvency and building society special administration as it applies in relation to liquidation.]

**F19** [Art. 24C](#) inserted (29.3.2009) by virtue of [Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), **arts. 12**, 17

VALID FROM 01/10/2009

**[<sup>F20</sup>Application of Order to building societies]**

**24D.—**(1) This Order applies to building societies as it applies to companies.

(2) References in this Order to a company, or to a director or an officer of a company, include, respectively, references to a building society within the meaning of the Building Societies Act 1986 or to a director or officer, within the meaning of that Act, of a building society.

(3) In relation to a building society the definition of “shadow director” in Article 2(2) applies with the substitution of “building society” for “company”.

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(4) In the application of Schedule 1 to the directors of a building society references to provisions of the Companies Act 2006 or the Insolvency (Northern Ireland) Order 1989 include references to the corresponding provisions of the Building Societies Act 1986.

**F20** Arts. 24D, 24E inserted (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. 212** (with art. 10)

VALID FROM 01/10/2009

### Application of Order to open-ended investment companies

**24E.**—(1) This Order applies to open-ended investment companies with the following modifications.

(2) In Article 11(1) (disqualification after investigation), the reference to investigative material shall be read as including a report made by inspectors under regulations made by virtue of section 262(2)(k) of the Financial Services and Markets Act 2000.

(3) In the application of Part 1 of Schedule 1 (matters for determining unfitness of directors: matters applicable in all cases) in relation to a director of an open-ended investment company, a reference to a provision of the Companies Act 2006 is to be taken to be a reference to the corresponding provision of the Open-Ended Investment Companies Regulations 2001 or of rules made under regulation 6 of those Regulations.

(4) In this Article “open-ended investment company” has the meaning given by section 236 of the Financial Services and Markets Act 2000.]

**F20** Arts. 24D, 24E inserted (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. 212** (with art. 10)

### Application of Order to incorporated friendly societies

**25**<sup>F21</sup>.—(1) This Order applies to incorporated friendly societies as it applies to companies.

(2) References in this Order to a company, or to a director or an officer of a company include, respectively, references to an incorporated friendly society within the meaning of the Friendly Societies Act 1992 (c. 40) or to a member of the committee of management or officer, within the meaning of that Act, of an incorporated friendly society.

(3) In relation to an incorporated friendly society every reference to a shadow director shall be omitted.

(4) In the application of Schedule 1 to the members of the committee of management of an incorporated friendly society, references to provisions of the Insolvency Order or the Companies Order include references to the corresponding provisions of the Friendly Societies Act 1992.

**F21** Mod. SR 2004/307

VALID FROM 01/07/2006

### Application of Order to registered societies

<sup>[F22]</sup>**25A.**—(1) This Order applies to societies registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24) (“registered societies”) as it applies to companies.

(2) In its application to registered societies, this Order shall have effect as follows—

- (a) references in this Order to a company, or to a director or an officer of a company shall include, respectively, references to a registered society or to a member of the committee of management or officer, within the meaning of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24), of a registered society;
- (b) in Article 5(1) “striking off of a company” shall include the cancellation of the registration of a registered society under that Act;
- (c) in Articles 6(1) and 8(1) “the companies legislation” shall include that Act;
- (d) in Article 11(2) “investigative material” shall include a report made under section 43A, 56 or 58(1) of that Act and information, books, accounts or other documents obtained under section 57 of that Act;
- (e) references to the registrar shall have effect as references to the registrar as defined in section 101(1) of that Act;
- (f) references to a shadow director shall be omitted.

(3) In the application of Schedule 1 to the members of the committee of management of a registered society, references to provisions of the Insolvency Order or the Companies Order include references to the corresponding provisions of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24).]

**F22** Art. 25A inserted (1.7.2006) by [Industrial and Provident Societies \(Northern Ireland\) Order 2006 \(S.I. 2006/314 \(N.I. 3\)\)](#), arts. 1(3), 8; S.R. 2006/242, [art. 2](#)

### Transitional provisions, savings, amendments and repeals

**26.**—(1) The transitional provisions and savings in Schedule 2 shall have effect for the purposes of this Order.

(2) The statutory provisions specified in Schedule 3 shall have effect subject to the amendments specified there, being amendments consequential on the provisions of this Order.

(3) The Department may by order, subject to negative resolution, make—

- (a) any supplementary, incidental or consequential provision, and
- (b) any transitory, transitional or saving provision,

which it considers necessary or expedient for the purposes of this Order.

(4) An order under paragraph (3) may—

- (a) modify, exclude or apply (with or without modifications) any statutory provision;
- (b) make consequential amendments, repeals and revocations of any such provision.

(5) Subject to paragraph (1) and any transitory, transitional or saving provision made under paragraph (3), the statutory provisions specified in Schedule 4 are hereby repealed to the extent specified in column 2 of that Schedule.

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## SCHEDULES

### SCHEDULE 1

#### MATTERS FOR DETERMINING UNFITNESS OF DIRECTORS

##### Modifications etc. (not altering text)

**C16** Sch. 1 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))

### <sup>F23</sup>PART I

#### MATTERS APPLICABLE IN ALL CASES

**F23** Mod. SR 2004/307

1. Any misfeasance or breach of any fiduciary or other duty by the director in relation to the company.

2. Any misapplication or retention by the director of, or any conduct by the director giving rise to an obligation to account for, any money or other property of the company.

3. The extent of the director's responsibility for the company entering into any transaction liable to be set aside under Articles 367 to 369 of the Insolvency Order (provisions against debt avoidance).

4.—(1) The extent of the director's responsibility for any failure by the company to comply with any of the following provisions of the Companies Order, namely—

- (a) Article 229 (companies to keep accounting records);
- (b) Article 230 (where and for how long records to be kept);
- (c) Article 296 (register of directors and secretaries);
- (d) Article 360 (obligation to keep and enter up register of members);
- (e) Article 361 (location of register of members);
- (f) Article 371 (duty of company to make annual returns);
- (g) Articles 405 and 652D (duty of company to deliver particulars of charges on its property).

(2) Until the day appointed by order under Article 1 of the Companies (No. 2) (Northern Ireland) Order 1990 (NI 10) for the coming into operation of paragraph 2 of Schedule 2 to that Order, subparagraph (l) shall have effect as if for paragraph (g) there were substituted—

“(g) Article 406 (company's duty to register charges it creates)”.

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5. The extent of the director's responsibility for any failure by the directors of the company to comply with—

- (a) Article 234 or 235 of the Companies Order (duty to prepare annual accounts); or
- (b) Article 241 of that Order (approval and signature of accounts).

[<sup>F24</sup>6. In the application of this Part in relation to any person who is a director of an open-ended investment company, any reference to a provision of the Companies Order is to be taken to be a reference to the corresponding provision of the Open-Ended Investment Companies Regulations (Northern Ireland) 2004 or of any rules made under regulation 6 of those Regulations (Financial Services Authority rules).]

**F24** SR 2004/335

7. In the application of this Schedule to the directors of a building society, references to provisions of this Order or of the Companies Order other than provisions which apply to building societies or their directors in any event, whether by virtue of this Order or the Building Societies Act 1986, shall be construed as references to the corresponding provisions (if any) of the Building Societies Act 1986

## <sup>F25</sup>PART II

### MATTERS APPLICABLE WHERE COMPANY HAS BECOME INSOLVENT

**F25** Mod. SR 2004/307

8. The extent of the director's responsibility for the causes of the company becoming insolvent.

9. The extent of the director's responsibility for any failure by the company to supply any goods or services which have been paid for (in whole or in part).

10. The extent of the director's responsibility for the company entering into any transaction or giving any preference, being a transaction or preference liable to be set aside under Article 107 or Articles 202 to 205 of the Insolvency Order.

11. The extent of the director's responsibility for any failure by the directors of the company to comply with Article 84 of the Insolvency Order (duty to call creditors' meeting in creditors' voluntary winding up).

12. Any failure by the director to comply with any obligation imposed on him by or under any of the following provisions of the Insolvency Order—

- (a) [<sup>F26</sup>paragraph 48 of Schedule B1] (company's statement of affairs in administration);
- (b) Article 57 (statement of affairs to administrative receiver);
- (c) Article 85 (directors' duty to attend meeting; statement of affairs in creditors' voluntary winding up);
- (d) Article 111 (statement of affairs in winding up by the High Court);

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- (e) Article 198 (duty of anyone with company's property to deliver it up);
- (f) Article 199 (duty to co-operate with liquidator, etc.).

**F26** Words in [Sch. 1 para. 12\(a\)](#) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), [Sch. 2 para. 65](#); [S.R. 2006/21](#), [art. 2](#) (subject to [S.R. 2006/22](#), arts. 2-7)

## SCHEDULE 2

### TRANSITIONAL PROVISIONS AND SAVINGS

**1.** In this Schedule, “the commencement date” for the purposes of any provision of this Schedule, means the day appointed under Article 1 for the coming into operation of that provision.

**2.** Where any period of time specified in any provision repealed by Article 26(3) and Schedule 4 is current immediately before the commencement date, this Order has effect as if the corresponding provision had been in operation when the period began to run; and (without prejudice to the foregoing) any period of time so specified and current is deemed for the purposes of this Order—

- (a) to run from the date or event from which it was running immediately before the commencement date, and
- (b) to expire (subject to any provision of this Order for its extension) whenever it would have expired if this Order had not been passed;

and any rights, priorities, liabilities, reliefs, obligations, requirements, powers, duties or exemptions dependent on the beginning, duration or end of such a period as above mentioned shall be under this Order as they were or would have been under that repealed provision.

**3.** The provision of this Schedule shall have effect without prejudice to sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954 (c. 33).

### *Schedule 3—Amendments*

### *Schedule 4—Repeals*

**Status:**

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**Changes to legislation:**

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