

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

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

EXPLANATORY MEMORANDUM

COMMENTARY ON PROVISIONS

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.