

Changes to legislation: There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, Cross Heading: Reports of office-holders on conduct of directors of insolvent companies. (See end of Document for details)

SCHEDULES

SCHEDULE 8

NORTHERN IRELAND: PROVISION CORRESPONDING TO SECTIONS 104 TO 111

Reports of office-holders on conduct of directors of insolvent companies

- 5 (1) The 2002 Order is amended as follows.
- (2) After Article 10 insert—

Office-holder's report on conduct of directors

“10A(1) The office-holder in respect of a company which is insolvent must prepare a report (a “conduct report”) about the conduct of each person who was a director of the company—

- (a) on the insolvency date, or
- (b) at any time during the period of 3 years ending with that date.

(2) For the purposes of this Article a company is insolvent if—

- (a) the company is in liquidation and at the time it went into liquidation its assets were insufficient for the payment of its debts and other liabilities and the expenses of the winding up,
- (b) the company has entered administration, or
- (c) an administrative receiver of the company has been appointed;

and paragraph (1A) of Article 9 applies for the purposes of this Article as it applies for the purposes of that Article.

(3) A conduct report must, in relation to each person, describe any conduct of the person which may assist the Department in deciding whether to exercise the power under Article 10(1) or (3) in relation to that person.

(4) The office-holder must send the conduct report to the Department before the end of—

- (a) the period of 3 months beginning with the insolvency date, or
- (b) such other longer period as the Department considers appropriate in the particular circumstances.

(5) If new information comes to the attention of an office-holder, the office-holder must send that information to the Department as soon as reasonably practicable.

(6) “New information” is information which an office-holder considers should have been included in a conduct report prepared in relation to the company, or would have been so included had it been available before the report was sent.

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- (7) If there is more than one office-holder in respect of a company at any particular time (because the company is insolvent by virtue of falling within more than one sub-paragraph of paragraph (2) at that time), paragraph (1) applies only to the first of the office-holders to be appointed.
- (8) In the case of a company which is at different times insolvent by virtue of falling within one or more different sub-paragraphs of paragraph (2)—
 - (a) the references in paragraph (1) to the insolvency date are to be read as references to the first such date during the period in which the company is insolvent, and
 - (b) paragraph (1) does not apply to an office-holder if at any time during the period in which the company is insolvent a conduct report has already been prepared and sent to the Department.
- (9) The “office-holder” in respect of a company which is insolvent is—
 - (a) in the case of a company being wound up by the High Court, the official receiver;
 - (b) in the case of a company being wound up otherwise, the liquidator;
 - (c) in the case of a company in administration, the administrator;
 - (d) in the case of a company of which there is an administrative receiver, the receiver.
- (10) The “insolvency date”—
 - (a) in the case of a company being wound up by the High Court, means the date on which the Court makes the winding-up order (see Article 105 of the Insolvency (Northern Ireland) Order 1989);
 - (b) in the case of a company being wound up by way of a members' voluntary winding up, means the date on which the liquidator forms the opinion that the company will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration of solvency under Article 75 of the Insolvency (Northern Ireland) Order 1989;
 - (c) in the case of a company being wound up by way of a creditors' voluntary winding up where no such declaration under Article 75 of that Order has been made, means the date of the passing of the resolution for voluntary winding up;
 - (d) in the case of a company which has entered administration, means the date the company did so;
 - (e) in the case of a company in respect of which an administrative receiver has been appointed, means the date of that appointment.
- (11) For the purposes of paragraph (10)(e), any appointment of an administrative receiver to replace an administrative receiver who has died or vacated office pursuant to Article 55 of the Insolvency (Northern Ireland) Order 1989 is to be ignored.
- (12) In this Article, “director” includes a shadow director.”
- (3) In Article 10 (disqualification order or undertaking and reporting provisions), omit paragraph (4).
- (4) For the heading to Article 10 substitute “ Disqualification orders under Article 9: applications and acceptance of undertakings ”.

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- (5) In consequence of the amendment made by sub-paragraph (3), omit paragraph 64 of Schedule 2 to the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)).

Commencement Information

- II** Sch. 8 para. 5 in force at 6.4.2016 by S.I. 2016/321, **reg. 3(c)** (with Sch. paras. 3, 4)

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