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STATUTORY INSTRUMENTS

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1989 No. 2404 (N.I. 18)

NORTHERN IRELAND

**The Companies (Northern Ireland) Order 1989**

*Made*

19th December 1989

*Coming into operation in accordance with Article 1(2)*

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At the Court at Buckingham Palace, the 19th day of December 1989

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1974 c. 28

**PART I**

**INTRODUCTORY**

*Title and commencement*

1.—(1) This Order may be cited as the Companies (Northern Ireland) Order 1989.

(2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint.

*Interpretation*

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

1954 c. 33 (N.I.)

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**(2) In this Order—**

- 1986 NI 6 “the Companies Order” means the Companies (Northern Ireland) Order 1986;
- 1986 NI 8 “the Insider Dealing Order” means the Company Securities (Insider Dealing) (Northern Ireland) Order 1986.

**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”—

- 1985 c. 6 (a) includes a company within the meaning of the Companies Act 1985;
- 1986 c. 45 (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
- 1986 c. 53 (c) except in Article 11, includes a building society within the meaning of the Building Societies Act 1986;

“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;

1989 NI 19 “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;

“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;

“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.

1954 c. 33 (N.I.)

(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

**PART II**

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).

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(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*

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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

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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.

1986 c. 60 (2) The Department may, on receipt of a report made by inspectors under section 94 or 177 of the Financial Services Act 1986 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 applica-

tion 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 is revoked.

1981 NI 6

(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 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.

1986 c. 46

*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.

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*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

**PART II**  
1982 NI 17

Articles 93 and 94 of the Companies (Northern Ireland) Order 1982, 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.

PART III

AMENDMENTS OF THE COMPANIES ORDER AND THE  
INSIDER DEALING ORDER

*Takeover offers*

26.—(1) For Articles 421, 422 and 423 of the Companies Order there shall be substituted—

“PART XIVA

TAKEOVER OFFERS

*Takeover offers*

421.—(1) In this Part “a takeover offer” means an offer to acquire all the shares, or all the shares of any class or classes, in a company (other than shares which at the date of the offer are already held by the offeror), being an offer on terms which are the same in relation to all the shares to which the offer relates or, where those shares include shares of different classes, in relation to all the shares of each class.

(2) In paragraph (1) “shares” means shares which have been allotted on the date of the offer but a takeover offer may include among the shares to which it relates all or any shares that are subsequently allotted before a date specified in or determined in accordance with the terms of the offer.

(3) The terms offered in relation to any shares shall for the purposes of this Article be treated as being the same in relation to all the shares or, as the case may be, all the shares of a class to which the offer relates notwithstanding any variation permitted by paragraph (4).

(4) A variation is permitted by this paragraph where—

- (a) the law of a country or territory outside the United Kingdom precludes an offer of consideration in the form or any of the forms specified in the terms in question or precludes it except after compliance by the offeror with conditions with which he is unable to comply or which he regards as unduly onerous; and
- (b) the variation is such that the persons to whom an offer of consideration in that form is precluded are able to receive consideration otherwise than in that form but of substantially equivalent value.

(5) The reference in paragraph (1) to shares already held by the offeror includes a reference to shares which he has contracted to acquire but that shall not be construed as including shares which are the subject of a contract binding the holder to accept the offer when it is made, being a contract entered into by the holder either for no consideration and under seal or for no consideration other than a promise by the offeror to make the offer.

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(6) Where the terms of an offer make provision for their revision and for acceptances on the previous terms to be treated as acceptances on the revised terms, the revision shall not be regarded for the purposes of this Part as the making of a fresh offer and references in this Part to the date of the offer shall accordingly be construed as references to the date on which the original offer was made.

(7) In this Part "the offeror" means, subject to Article 423D, the person making a takeover offer and "the company" means the company whose shares are the subject of the offer.

*Right of offeror to buy out minority shareholders*

422.—(1) If, in a case in which a takeover offer does not relate to shares of different classes, the offeror has by virtue of acceptances of the offer acquired or contracted to acquire not less than nine-tenths in value of the shares to which the offer relates he may give notice to the holder of any shares to which the offer relates which the offeror has not acquired or contracted to acquire that he desires to acquire those shares.

(2) If, in a case in which a takeover offer relates to shares of different classes, the offeror has by virtue of acceptances of the offer acquired or contracted to acquire not less than nine-tenths in value of the shares of any class to which the offer relates, he may give notice to the holder of any shares of that class which the offeror has not acquired or contracted to acquire that he desires to acquire those shares.

(3) No notice shall be given under paragraph (1) or (2) unless the offeror has acquired or contracted to acquire the shares necessary to satisfy the minimum specified in that paragraph within 4 months from the date of the offer; and no such notice shall be given after the expiration of 2 months from the date on which he has acquired or contracted to acquire shares which satisfy that minimum.

(4) Any notice under this Article shall be given in the prescribed manner; and when the offeror gives the first notice in relation to an offer he shall send a copy of it to the company together with a statutory declaration by him in the prescribed form stating that the conditions for the giving of the notice are satisfied.

(5) Where the offeror is a company (whether or not a company within the meaning of this Order) the statutory declaration shall be signed by a director.

(6) Any person who fails to send a copy of a notice or a statutory declaration as required by paragraph (4) or makes such a declaration for the purposes of that paragraph knowing it to be false or without having reasonable grounds for believing it to be



true shall be liable to imprisonment or a fine, or both, and for continued failure to send the copy or declaration, to a daily default fine.

(7) If any person is charged with an offence for failing to send a copy of a notice as required by paragraph (4) it is a defence for him to prove that he took reasonable steps for securing compliance with that paragraph.

(8) Where during the period within which a takeover offer can be accepted the offeror acquires or contracts to acquire any of the shares to which the offer relates but otherwise than by virtue of acceptances of the offer, then, if—

- (a) the value of the consideration for which they are acquired or contracted to be acquired (“the acquisition consideration”) does not at that time exceed the value of the consideration specified in the terms of the offer; or
- (b) those terms are subsequently revised so that when the revision is announced the value of the acquisition consideration, at the time mentioned in sub-paragraph (a), no longer exceeds the value of the consideration specified in those terms,

the offeror shall be treated for the purposes of this Article as having acquired or contracted to acquire those shares by virtue of acceptances of the offer; but in any other case those shares shall be treated as excluded from those to which the offer relates.

*Effect of notice under Article 422*

423.—(1) The following provisions shall, subject to Article 423C, have effect where a notice is given in respect of any shares under Article 422.

(2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer.

(3) Where the terms of an offer are such as to give the holder of any shares a choice of consideration the notice shall give particulars of the choice and state—

- (a) that the holder of the shares may within 6 weeks from the date of the notice indicate his choice by a written communication sent to the offeror at an address specified in the notice; and
  - (b) which consideration specified in the offer is to be taken as applying in default of his indicating a choice as aforesaid;
- and the terms of the offer mentioned in paragraph (2) shall be determined accordingly.

(4) Paragraph (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with; and if the consideration chosen by the holder of the shares—

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(a) is not cash and the offeror is no longer able to provide it;  
or

(b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration shall be taken to consist of an amount of cash payable by the offeror which at the date of the notice is equivalent to the chosen consideration.

(5) At the end of 6 weeks from the date of the notice the offeror shall forthwith—

(a) send a copy of the notice to the company; and

(b) pay or transfer to the company the consideration for the shares to which the notice relates.

(6) If the shares to which the notice relates are registered the copy of the notice sent to the company under paragraph (5)(a) shall be accompanied by an instrument of transfer executed on behalf of the shareholder by a person appointed by the offeror; and on receipt of that instrument the company shall register the offeror as the holder of those shares.

(7) If the shares to which the notice relates are transferable by the delivery of warrants or other instruments the copy of the notice sent to the company under paragraph (5)(a) shall be accompanied by a statement to that effect; and the company shall on receipt of the statement issue the offeror with warrants or other instruments in respect of the shares and those already in issue in respect of the shares shall become void.

(8) Where the consideration referred to in sub-paragraph (b) of paragraph (5) consists of shares or securities to be allotted by the offeror the reference in that sub-paragraph to the transfer of the consideration shall be construed as a reference to the allotment of the shares or securities to the company.

(9) Any sum received by a company under sub-paragraph (b) of paragraph (5) and any other consideration received under that sub-paragraph shall be held by the company on trust for the person entitled to the shares in respect of which the sum or other consideration was received.

(10) Any sum received by a company under sub-paragraph (b) of paragraph (5), and any dividend or other sum accruing from any other consideration received by a company under that sub-paragraph, shall be paid into a separate bank account, being an account the balance on which bears interest at an appropriate rate and can be withdrawn by such notice (if any) as is appropriate.

(11) Where after reasonable enquiry made at such intervals as are reasonable the person entitled to any consideration held on trust by virtue of paragraph (9) cannot be found and 12 years have elapsed since the consideration was received or the company is wound up the consideration (together with any interest, dividend

or other benefit that has accrued from it) shall be paid into the Insolvency Account.

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(12) The costs of any such enquiry as is mentioned in paragraph (11) may be defrayed out of the money or other property held on trust for the person or persons to whom the enquiry relates.

*Right of minority shareholder to be bought out by offeror*

**423A.—**(1) If a takeover offer relates to all the shares in a company and at any time before the end of the period within which the offer can be accepted—

- (a) the offeror has by virtue of acceptances of the offer acquired or contracted to acquire some (but not all) of the shares to which the offer relates; and
- (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire, amount to not less than nine-tenths in value of all the shares in the company,

the holder of any shares to which the offer relates who has not accepted the offer may by a written communication addressed to the offeror require him to acquire those shares.

(2) If a takeover offer relates to shares of any class or classes and at any time before the end of the period within which the offer can be accepted—

- (a) the offeror has by virtue of acceptances of the offer acquired or contracted to acquire some (but not all) of the shares of any class to which the offer relates; and
- (b) those shares, with or without any other shares of that class which he has acquired or contracted to acquire, amount to not less than nine-tenths in value of all the shares of that class,

the holder of any shares of that class who has not accepted the offer may by a written communication addressed to the offeror require him to acquire those shares.

(3) Within one month of the time specified in paragraph (1) or, as the case may be, paragraph (2) the offeror shall give any shareholder who has not accepted the offer notice in the prescribed manner of the rights that are exercisable by him under that paragraph; and if the notice is given before the end of the period mentioned in that paragraph shall state that the offer is still open for acceptance.

(4) A notice under paragraph (3) may specify a period for the exercise of the rights conferred by this Article and in that event the rights shall not be exercisable after the end of that period; but no such period shall expire within 3 months from the expiration of the period within which the offer can be accepted.

**PART III**

(5) Paragraph (3) does not apply if the offeror has given the shareholder a notice in respect of the shares in question under Article 422.

(6) If the offeror fails to comply with paragraph (3) he and, if the offeror is a company, every officer of the company who is in default or to whose neglect the failure is attributable, shall be liable to a fine and, for continued contravention, to a daily default fine.

(7) If an offeror other than a company is charged with an offence for failing to comply with paragraph (3) it is a defence for him to prove that he took all reasonable steps for securing compliance with that paragraph.

*Effect of requirement under Article 423A*

**423B.**—(1) The following provisions shall, subject to Article 423C, have effect where a shareholder exercises his rights in respect of any shares under Article 423A.

(2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed.

(3) Where the terms of an offer are such as to give the holder of shares a choice of consideration the holder of the shares may indicate his choice when requiring the offeror to acquire them and the notice given to the holder under Article 423A(3)—

(a) shall give particulars of the choice and of the rights conferred by this paragraph; and

(b) may state which consideration specified in the offer is to be taken as applying in default of his indicating a choice; and the terms of the offer mentioned in paragraph (2) shall be determined accordingly.

(4) Paragraph (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with; and if the consideration chosen by the holder of the shares—

(a) is not cash and the offeror is no longer able to provide it; or

(b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration shall be taken to consist of an amount of cash payable by the offeror which at the date when the holder of the shares requires the offeror to acquire them is equivalent to the chosen consideration.

*Applications to the court*

**423C.**—(1) Where a notice is given under Article 422 to the holder of any shares the court may, on an application made by him

within 6 weeks from the date on which the notice was given,—

- (a) order that the offeror shall not be entitled and bound to acquire the shares; or
- (b) specify terms of acquisition different from those of the offer.

(2) If an application to the court under paragraph (1) is pending at the end of the period mentioned in paragraph (5) of Article 423 that paragraph shall not have effect until the application has been disposed of.

(3) Where the holder of any shares exercises his rights under Article 423A the court may, on an application made by him or the offeror, order that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the court thinks fit.

(4) No order for costs shall be made against a shareholder making an application under paragraph (1) or (3) unless the court considers—

- (a) that the application was unnecessary, improper or vexatious; or
- (b) that there has been unreasonable delay in making the application or unreasonable conduct on his part in conducting the proceedings on the application.

(5) Where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under paragraph (1) or (2) of Article 422 the court may, on the application of the offeror, make an order authorising him to give notices under that paragraph if satisfied—

- (a) that the offeror has after reasonable enquiry been unable to trace one or more of the persons holding shares to which the offer relates;
- (b) that the shares which the offeror has acquired or contracted to acquire by virtue of acceptances of the offer, together with the shares held by the person or persons mentioned in sub-paragraph (a), amount to not less than the minimum specified in that paragraph; and
- (c) that the consideration offered is fair and reasonable;

but the court shall not make an order under this paragraph unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the offer.

#### *Joint offers*

**423D.**—(1) A takeover offer may be made by 2 or more persons jointly and in that event this Part has effect with the following modifications.

(2) The conditions for the exercise of the rights conferred by Articles 422 and 423A shall be satisfied by the joint offerors

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acquiring or contracting to acquire the necessary shares jointly (as respects acquisitions by virtue of acceptances of the offer) and either jointly or separately (in other cases); and, subject to the following provisions, the rights and obligations of the offeror under those Articles and Articles 423 and 423B shall be respectively joint rights and joint and several obligations of the joint offerors.

(3) It shall be a sufficient compliance with any provision of those Articles requiring or authorising a notice or other document to be given or sent by or to the joint offerors that it is given or sent by or to any of them; but the statutory declaration required by Article 422(4) shall be made by all of them and, in the case of a joint offeror being a company, signed by a director of that company.

(4) In Articles 421, 423(8) and 423E references to the offeror shall be construed as references to the joint offerors or any of them.

(5) In Article 423(6) and (7) references to the offeror shall be construed as references to the joint offerors or such of them as they may determine.

(6) In Articles 423(4)(a) and 423B(4)(a) references to the offeror being no longer able to provide the relevant consideration shall be construed as references to none of the joint offerors being able to do so.

(7) In Article 423C references to the offeror shall be construed as references to the joint offerors except that any application under paragraph (3) or (5) may be made by any of them and the reference in paragraph (5)(a) to the offeror having been unable to trace one or more of the persons holding shares shall be construed as a reference to none of the offerors having been able to do so.

*Associates*

**423E.**—(1) The requirement in Article 421(1) that a takeover offer must extend to all the shares, or all the shares of any class or classes, in a company shall be regarded as satisfied notwithstanding that the offer does not extend to shares which associates of the offeror hold or have contracted to acquire; but, subject to paragraph (2), shares which any such associate holds or has contracted to acquire, whether at the time when the offer is made or subsequently, shall be disregarded for the purposes of any reference in this Part to the shares to which a takeover offer relates.

(2) Where during the period within which a takeover offer can be accepted any associate of the offeror acquires or contracts to acquire any of the shares to which the offer relates, then, if the condition specified in paragraph (8)(a) or (b) of Article 422 is satisfied as respects those shares they shall be treated for the purposes of that Article as shares to which the offer relates.

(3) In Article 423A(1)(b) and (2)(b) the reference to shares

which the offeror has acquired or contracted to acquire shall include a reference to shares which any associate of his has acquired or contracted to acquire.

(4) In this Article "associate", in relation to an offeror means—

- (a) a nominee of the offeror;
- (b) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary;
- (c) a body corporate in which the offeror is substantially interested; or
- (d) any person who is, or is a nominee of, a party to an agreement with the offeror for the acquisition of, or of an interest in, the shares which are the subject of the takeover offer, being an agreement which includes provisions imposing obligations or restrictions such as are mentioned in Article 212(2)(a).

(5) For the purposes of paragraph (4)(b) a company is a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.

(6) For the purposes of paragraph (4)(c) an offeror has a substantial interest in a body corporate if—

- (a) that body or its directors are accustomed to act in accordance with his directions or instructions; or
- (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body.

(7) Paragraphs (5) and (6) of Article 212 shall apply to paragraph (4)(d) of this Article as they apply to that Article and paragraphs (3) and (4) of Article 211 shall apply for the purposes of paragraph (6) of this Article as they apply for the purposes of paragraph (2)(b) of that Article.

(8) Where the offeror is an individual his associates shall also include his spouse and any minor child or step-child of his.

#### *Convertible securities*

**423F.**—(1) For the purposes of this Part securities of a company shall be treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares; and references to the holder of shares or a shareholder shall be construed accordingly.

(2) Paragraph (1) shall not be construed as requiring any securities to be treated—

- (a) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe; or

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(b) as shares of the same class as other securities by reason only that the shares into which they are convertible or for which the holder is entitled to subscribe are of the same class.”.

(2) Paragraph (1) does not affect any case in which the offer in respect of the scheme or contract mentioned in Article 421 was made before the coming into operation of this Article.

*“Deal in securities”: contracts for differences*

**27.** For paragraphs (1) to (3) of Article 7 of the Insider Dealing Order (definition of “deal in securities” and “off-market dealer”) there shall be substituted—

“(1) For the purposes of this Order, a person deals in securities if (whether as principal or agent) he buys or sells or agrees to buy or sell any securities.

(2) For the purposes of this Order, a person who (whether as principal or agent) buys or sells or agrees to buy or sell investments within paragraph 9 of Schedule 1 to the Financial Services Act 1986 (contracts for differences, etc.) where the purpose or pretended purpose mentioned in that paragraph is to secure a profit or avoid a loss wholly or partly by reference to fluctuations in the value or price of securities shall be treated as if he were dealing in those securities.

(3) ‘Off-market dealer’ means a person who is an authorised person within the meaning of the Financial Services Act 1986.”.

*Information obtained in official capacity: public bodies, etc.*

**28.** In Article 11 of the Insider Dealing Order (abuse of information obtained by Crown servants in official capacity)—

(a) for “Crown” wherever it occurs there shall be substituted “public”;

(b) at the end of paragraph (3) there shall be inserted—

“(4) ‘Public servant’ means—

(a) a Crown servant;

(b) a member, officer or servant of a designated agency, competent authority or transferee body (within the meaning of the Financial Services Act 1986);

(c) an officer or servant of a recognised self-regulating organisation, recognised investment exchange or recognised clearing house (within the meaning of that Act);

(d) any person declared by an order under paragraph (5) to be a public servant for the purposes of this Article.



(5) If it appears to the Department that the members, officers or employees of or persons otherwise connected with any body appearing to the Department to exercise public functions may have access to unpublished price sensitive information relating to securities, the Department may, by order subject to affirmative resolution, declare that those persons are to be public servants for the purposes of this Article.”.

*Market makers, off-market dealers, etc.*

29.—(1) In paragraph (1) of Article 12 of the Insider Dealing Order (actions not prohibited by Articles 10 and 11 of that Order)—

(a) in sub-paragraph (b) “or” shall be omitted in the third place where it occurs;

(b) at the end of sub-paragraph (c) there shall be inserted “; or

(d) doing any particular thing in relation to any particular securities if the information—

(i) was obtained by him in the course of a business of a market maker in those securities in which he was engaged or employed, and

(ii) was of a description which it would be reasonable to expect him to obtain in the ordinary course of that business,

and he does that thing in good faith in the course of that business.”;

(c) at the end of paragraph (1) there shall be inserted—

“ ‘Market maker’ means a person (whether an individual, partnership or company) who—

(a) holds himself out at all normal times in compliance with the rules of a recognised stock exchange as willing to buy and sell securities at prices specified by him; and

(b) is recognised as doing so by that recognised stock exchange.”.

(2) In Article 13 of the Insider Dealing Order (off-market deals in advertised securities)—

(a) the existing provisions shall become paragraph (1) of that Article;

(b) at the end there shall be inserted—

“(2) In its application by virtue of this Article the definition of “market maker” in Article 12(1) shall have effect as if the references to a recognised stock exchange were references to a recognised investment exchange (other than an overseas investment exchange) within the meaning of the Financial Services Act 1986.”.

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*Price stabilisation*

30. For Article 15 of the Insider Dealing Order (international bonds) there shall be substituted—

*“Price stabilisation*

15.—(1) No provision of Article 10, 11, 13 or 14 prohibits an individual from doing anything for the purpose of stabilising the price of securities if it is done in conformity with rules made under section 48 of the Financial Services Act 1986 and—

- (a) in respect of securities which fall within any of paragraphs 1 to 5 of Schedule 1 to that Act and are specified by the rules; and
- (b) during such period before or after the issue of those securities as is specified by the rules.

(2) Any order under subsection (8) of section 48 of that Act shall apply also in relation to paragraph (1) of this Article.”.

*Investigations into insider dealing*

31. After Article 16 of the Insider Dealing Order there shall be inserted—

*“Investigations into insider dealing*

16A.—(1) If it appears to the Department that there are circumstances suggesting that there may have been a contravention of Articles 10, 11, 13 or 14, the Department may appoint one or more competent inspectors to carry out such investigations as are requisite to establish whether or not any such contravention has occurred and to report the results of their investigations to the Department.

(2) The appointment under this Article of an inspector may limit the period during which he is to continue his investigation or confine it to particular matters.

(3) If the inspectors consider that any person is or may be able to give information concerning any such contravention they may require that person—

- (a) to produce to them any documents in his possession or under his control relating to the company in relation to whose securities the contravention is suspected to have occurred or to its securities;
- (b) to attend before them; and
- (c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give;

and it shall be the duty of that person to comply with that requirement.

(4) An inspector may examine on oath any person who he considers is or may be able to give information concerning any such contravention, and may administer an oath accordingly.

(5) The inspectors shall make such interim reports to the Department as they think fit or the Department may direct and on the conclusion of the investigation they shall make a final report to the Department.

(6) A statement made by a person in compliance with a requirement imposed by virtue of this Article may be used in evidence against him.

(7) A person shall not under this Article be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court.

(8) Nothing in this Article shall require a person carrying on the business of banking to disclose any information or produce any document relating to the affairs of a customer unless—

(a) the customer is a person who the inspectors have reason to believe may be able to give information concerning a suspected contravention; and

(b) the Department is satisfied that the disclosure or production is necessary for the purposes of the investigation.

(9) Where a person claims a lien on a document its production under this Article shall be without prejudice to his lien.

(10) In this Article “document” includes information recorded in any form; and in relation to information recorded otherwise than in legible form references to its production include references to producing a copy of the information in legible form.

(11) Section 178 of the Financial Services Act 1986 (penalties for failure to co-operate with investigations into insider dealing) shall have effect as if the reference in subsection (1)(a) to subsection (3) of section 177 of that Act included a reference to paragraph (3) of this Article and as if any reference in that section to the court included the High Court.”.

*Restrictions on disclosure of information*

32. After Article 16A of the Insider Dealing Order (inserted by Article 31 of this Order) there shall be inserted—

*“Restrictions on disclosure of information*

16B.—(1) Subject to paragraph (5), information which is restricted information for the purposes of this Article and relates to the business or other affairs of any person shall not be disclosed by a person mentioned in paragraph (3) (“the primary recipient”) or

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any person obtaining the information directly or indirectly from him without the consent of the person from whom the primary recipient obtained the information and if different, the person to whom it relates.

(2) Subject to paragraph (4), information is restricted information for the purposes of this Article if it was obtained by the primary recipient for the purposes of, or in the discharge of his functions under, this Order (whether or not by virtue of any requirement to supply it made under provisions of this Order).

(3) The persons mentioned in paragraph (1) are—

- (a) the Department;
- (b) any person appointed or authorised to exercise any powers under Article 16A; and
- (c) any officer or servant of any such person.

(4) Information shall not be treated as restricted information for the purposes of this Article if it has been made available to the public by virtue of being disclosed in any circumstances in which or for any purpose for which disclosure is not precluded by this Article.

(5) Paragraph (1) shall not preclude the disclosure of information—

- (a) for any of the purposes specified in paragraph (1) of Article 442 of the Companies (Northern Ireland) Order 1986 or to a competent authority within the meaning of paragraph (3) of that Article; or
- (b) for the purposes of any public or other authority designated by an order under Article 442(1B) of that Order of 1986; or
- (c) by a person to whom Article 442(1D) of that Order of 1986 applies.”.

*False and misleading statements*

**33.** After Article 16B of the Insider Dealing Order (inserted by Article 32 of this Order) there shall be inserted—

*“False and misleading statements*

**16C.** Any person who, in purported compliance with any requirement imposed on him by or under this Order, furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular shall be guilty of an offence.”.

*Powers of entry*

**34.** After Article 16C of the Insider Dealing Order (inserted by Article 33 of this Order) there shall be inserted—

*"Powers of entry*

**16D.—(1)** A justice of the peace may issue a warrant under this Article if satisfied by complaint on oath made by or on behalf of the Department that there are reasonable grounds for believing that an offence has been committed under Article 10, 11, 13 or 14 and that there are on any premises documents relevant to the question whether that offence has been committed.

(2) A warrant under this Article shall authorise any constable, together with any other person named in it—

- (a) to enter the premises specified in the complaint, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in paragraph (1) or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of any such documents; and
- (d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.

(3) A warrant under this Article shall continue in force until the end of one month after the date on which it is issued.

(4) Any documents of which possession is taken under this Article may be retained—

- (a) for a period of 3 months; or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person for an offence under Article 10, 11, 13 or 14, until the conclusion of those proceedings.

(5) In this Article "documents" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form."

*Offences*

**35.—(1)** In Schedule 23 to the Companies Order (punishment of offences) after the entry relating to Article 420(5) there shall be inserted—

"422(6) Offeror failing to send copy of notice of making statutory declaration knowing it to be false, etc.	1. On indictment.	2 years or a fine; or both.	
	2. Summary.	6 months or the statutory maximum; or both.	One-fiftieth of the statutory maximum.

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423A(6) Offeror failing to give notice of rights to minority shareholder.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-fiftieth of the statutory maximum.”.
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(2) In Article 17 of the Insider Dealing Order (punishment of contraventions)—

- (a) in paragraph (1)(a) for “2” there shall be substituted “7”;
- (b) after paragraph (1) there shall be inserted—

“(1A) Any person who contravenes Article 16B shall be guilty of an offence and shall be liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine, or both; and
- (b) on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding the statutory maximum, or both.

(1B) A person guilty of an offence under Article 16C shall be liable—

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

(1C) Any person who obstructs the exercise of any rights conferred by a warrant issued under Article 16D or fails without reasonable excuse to comply with any requirement imposed in accordance with Article 16D(2)(d) shall be guilty of an offence and shall be liable—

- (a) on conviction on indictment to a fine;
- (b) on summary conviction to a fine not exceeding the statutory maximum.”.

(3) Nothing in paragraph (2)(a) shall affect the punishment for an offence committed before the coming into operation of that paragraph.

*Amendments*

36.—(1) The Companies Order shall have effect subject to the amendments specified in Part II of Schedule 4 being amendments making minor corrections in that Order.

1987 c. 22

(2) The Banking Act 1987 shall have effect subject to the amendments specified in Part II of Schedule 4 being amendments consequential on the provisions of this Part.

***Repeals***

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**37.** The statutory provisions specified in Part II of Schedule 5 are hereby repealed to the extent specified in column 3 of that Part.

***G. I. de Deney***  
**Clerk of the Privy Council**

## **SCHEDULES**

Article 12.

### **SCHEDULE 1**

#### **MATTERS FOR DETERMINING UNFITNESS OF DIRECTORS**

##### **PART I**

###### **MATTERS APPLICABLE IN ALL CASES**

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. 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) Articles 371 and 372 (company's duty to make annual return);
- (g) Article 373 (time for completion of annual return); and
- (h) Article 406 (company's duty to register charges it creates).

5. The extent of the director's responsibility for any failure by the directors of the company to comply with Article 235 (directors' duty to prepare annual accounts) or Article 246 (signing of balance sheet and documents to be annexed) of the Companies Order.

1986 c. 53

6. In the application of this Schedule to the directors of a building society, references to Articles of this Order or of the Companies Order other than Articles 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.

##### **PART II**

###### **MATTERS APPLICABLE WHERE COMPANY HAS BECOME INSOLVENT**

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

8. 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).

9. 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.



10. 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).

11. 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) Article 34 (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);
- (e) Article 198 (duty of anyone with company's property to deliver it up);
- (f) Article 199 (duty to co-operate with liquidator, etc.).

## SCHEDULE 2

Article 22.

### SAVINGS FROM COMPANIES (NORTHERN IRELAND) ORDER 1982 ARTICLES 93 AND 94

1. Articles 5 and 7(1)(b) do not apply in relation to anything done before 1st July 1983 by a person in his capacity as liquidator of a company or as receiver or manager of a company's property.

2. Subject to paragraph 1—

- (a) Article 5 applies in a case where a person is convicted on indictment of an offence which he committed (and, in the case of a continuing offence, has ceased to commit) before 1st July 1983; but in such a case a disqualification order under that Article shall not be made for a period in excess of 5 years;
- (b) that Article does not apply in a case where a person is convicted on summary conviction if he had consented to be dealt with summarily before that date.

3. Subject to paragraph 1, Article 7 applies in relation to an offence committed or other thing done before 1st July 1983; but a disqualification order made on the grounds of such an offence or other thing done shall not be made for a period in excess of 5 years.

4. The powers of a court under Article 8 are not exercisable in a case where a person is convicted of an offence which he committed (and, in the case of a continuing offence, had ceased to commit) before 1st July 1983.

5. For the purposes of Article 6(1) and Article 8, no account is to be taken of any offence which was committed, or any default order which was made, before 1st January 1982.

6. Where—

- (a) an application is made for a disqualification order under Article 9(2)(a), and
- (b) the company in question went into liquidation before the date of the coming into operation of Part II,

the court shall not make an order under that Article unless it could have made a disqualification order under Article 308 of the Companies Order as it had effect immediately before the date specified in sub-paragraph (b).

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7. An application shall not be made under Article 11 in relation to a report made or information or documents obtained before the date of the coming into operation of Part II.

Article 25(1).

**SCHEDULE 3**

**TRANSITIONAL PROVISIONS AND SAVINGS**

1. In this Schedule, "the commencement date" for the purpose of any provision of this Schedule, means the day appointed under Article 1(2) for the coming into operation of that provision.

2. Where any period of time specified in any provision repealed by Article 25(3) and Part I of Schedule 5 is current immediately before the commencement date, Part II 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 Part II—

(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 Part II for its extension) whenever it would have expired if Part II had not been made;

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 Part II as they were or would have been under that repealed provision.

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

Articles 25(2), 36.

**SCHEDULE 4**

**AMENDMENTS**

**PART I**

**AMENDMENTS CONSEQUENTIAL ON PART II**

*The Insolvency Act 1986 (c. 45)*

1. In section 426(10)(c) (co-operation between courts exercising jurisdiction in relation to insolvency) at the end insert "or Part II of the Companies (Northern Ireland) Order 1989".

*The Companies (Northern Ireland) Order 1986 (NI 6)*

2. In Article 2A (relationship of this Order to Insolvency Order)—

(a) in paragraph (2) at the end insert "and Part II of the Companies (Northern Ireland) Order 1989";

(b) in paragraph (3) at the end insert "and Part II of the Companies (Northern Ireland) Order 1989".

3. In Article 434(1) (inspector's report to be evidence) at the end insert "and in proceedings on an application under Article 11 of the Companies (Northern Ireland) Order 1989, as evidence of any fact stated in the report".

4. After Article 442(1)(a) (provision for security of information obtained) insert—

"(b) with a view to the institution of, or otherwise for the purposes of, any proceedings on an application under Articles 9, 10 or 11 of the Companies (Northern Ireland) Order 1989;"

*The Banking Act 1987 (c. 22)*

5. In section 85(1)(e) (permitted disclosure of information) after "1986" insert "or Article 10 or 11 of the Companies (Northern Ireland) Order 1989".

PART II

MISCELLANEOUS MINOR AMENDMENTS TO THE COMPANIES (NORTHERN IRELAND) ORDER 1986 AND AMENDMENTS CONSEQUENTIAL ON PART III

*The Companies (Northern Ireland) Order 1986 (NI 6)*

6. In Article 9(1) (definition of "director") for "named" substitute "name".

7. In Article 388(4)(h) (registration, etc., of resolutions and agreements) for "or revoking" substitute ", revoking or renewing".

8. In Article 436(1) (provisions applicable on investigation under Article 435) for "to (4)" substitute "and (3)".

9. After Article 442(3)(c) (provision for security of information obtained) insert—

"(cc) an inspector appointed under Part XIV of the Companies Act 1985 by the Secretary of State;"

10. In Article 445(2) (privileged information) after "legal" insert "professional".

11. In Schedule 21 (provisions applying to unregistered companies)—

(a) in the entry relating to Article 29, in column 2, for "registered" substitute "recorded";

(b) in the entry relating to Article 46(4), in column 1 for "46(4)" substitute "46(3)";

(c) in the entry relating to Articles 351 to 355, in column 3 insert "subject to Article 667(3)";

(d) in the entry relating to Article 359(1), (2) and (5)(a), in column 1 for "(5)(a)" substitute "(3)(a)";

(e) in the entry relating to Articles 424 to 437 and 445(1), in column 1 for "437" substitute "438".

*The Banking Act 1987 (c. 22)*

12. In the Table in section 84(1) (disclosure of information to facilitate in discharge of supervisory functions) in the entry relating to an inspector appointed by the Department of Economic Development in Northern Ire-

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land, in column 2 for "that Order" substitute "the Companies (Northern Ireland) Order 1986 and Article 16A of the Company Securities (Insider Dealing) (Northern Ireland) Order 1986".

13. In section 87(3)(a) (disclosure of information obtained under the Companies Order) for "Secretary of State" substitute "Department of Economic Development in Northern Ireland".

Articles 25(3), 37.

**SCHEDULE 5**

**REPEALS**

**PART I**

**REPEALS CONSEQUENTIAL ON PART II**

Chapter or Number	Short title	Extent of repeal
1986 c. 53.	The Building Societies Act 1986.	In Schedule 18, paragraph 26.
1986 NI 6.	The Companies (Northern Ireland) Order 1986.	Articles 303 to 310. Schedule 12. In Schedule 23, the entries relating to Articles 303(7) and 310(1).

**PART II**

**REPEALS CONSEQUENTIAL ON PART III**

Chapter or Number	Short title	Extent of repeal
1977 c. 3.	The Aircraft and Shipbuilding Industries Act 1977.	In section 3(5) the words "Articles 421 to 423 of the Companies (Northern Ireland) Order 1986".
1986 NI 8.	The Company Securities (Insider Dealing) (Northern Ireland) Order 1986.	Article 9. In Article 12(1)(b) the word "or" in the third place where it occurs.
1986 NI 9.	The Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986.	In Schedule 1, in Part II, the entry relating to section 3(5) of the Aircraft and Shipbuilding Industries Act 1977.

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

**This Order—**

- (a)** in Part II re-enacts provisions of the Companies (Northern Ireland) Order 1986 relating to the disqualification of company directors and imposes a duty on the High Court to disqualify a company director if he is found to be unfit to be concerned in the management of a company;
- (b)** in Part III makes miscellaneous amendments to the Companies (Northern Ireland) Order 1986 and the Company Securities (Insider Dealing) (Northern Ireland) Order 1986. The main amendments are—
  - (i)** to make new provision with respect to takeover offers in respect of companies;
  - (ii)** to make provision for the investigation of insider dealing;
  - (iii)** to restrict the disclosure of information obtained as the result of an investigation of insider dealing;
  - (iv)** to provide a power of entry and inspection for the purpose of investigating insider dealing;
  - (v)** to increase the term of imprisonment on conviction of the offence of insider dealing from 2 years to 7 years; and
  - (vi)** to make minor corrections in the consolidated Companies (Northern Ireland) Order 1986.



