

2003 No. 359

INSOLVENCY

**The Insolvent Partnerships (Amendment No. 2) Order
(Northern Ireland) 2003**

Made - - - - - *27th July 2003*

Coming into operation *5th September 2003*

To be laid before Parliament

The Lord Chancellor, in exercise of the powers conferred upon him by Article 364(1) of the Insolvency (Northern Ireland) Order 1989(a) and Article 24(1) of the Company Directors Disqualification (Northern Ireland) Order 2002(b) with the concurrence of the Department of Enterprise, Trade and Investment(c), hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Insolvent Partnerships (Amendment No. 2) Order (Northern Ireland) 2003 and shall come into operation on 5th September 2003.

(2) In this Order –

(a) “the 1995 Order” means the Insolvent Partnerships Order (Northern Ireland) 1995(d); and

(b) a reference to a “modified Article” is a reference to an Article of the Insolvency (Northern Ireland) Order 1989 as modified by, and set out in, the 1995 Order.

Amendments to the 1995 Order

2. In the Arrangement of Articles in the 1995 Order –

(a) for the words “16. Application of Part II of the Companies (Northern Ireland) Order 1989” there shall be substituted the words “16. Application of the Company Directors Disqualification (Northern Ireland) Order 2002.”;

(b) for the words “Schedule 8 – Provisions of Part II of the Companies (Northern Ireland) Order 1989 which apply with modifications for the purposes of Article 16” there shall be substituted the words “Schedule 8 – Provisions of the Company Directors Disqualification (Northern Ireland) Order 2002 which apply with modifications for the purposes of Article 16.”

3. In paragraph (1) of Article 3 of the 1995 Order, for the words “Companies (Northern Ireland) Order 1989” there shall be substituted the words “Company Directors Disqualification (Northern Ireland) Order 2002”.

(a) S.I. 1989/2405 (N.I. 19) – to which the most recent relevant amendments were made by the Insolvency (Northern Ireland) Order 1989 (Amendment) Regulations (Northern Ireland) (2002 S.R. 2002 No. 223)

(b) S.I. 2002/3150 (N.I. 4)

(c) Formerly the Department of Economic Development; see S.I. 1999/283 (N.I. 1)

(d) S.R. 1995 No. 225 as amended by the Insolvent Partnerships (Amendment) Order (Northern Ireland) 1996 (S.R. 1996 No. 472) and the Insolvent Partnerships (Amendment) Order (Northern Ireland) (2003 S.R. 2003 No. 144)

4. For Article 16 of the 1995 Order there shall be substituted the following Article -

“Application of the Company Directors Disqualification (Northern Ireland) Order 2002

16. Where an insolvent partnership is wound up as an unregistered company under Part VI of the Order the provisions of Articles 3, 4, 9-14, 18, 19, 21 and 23 of, and Schedule 1 to, the Company Directors Disqualification (Northern Ireland) Order 2002 shall apply, certain of those provisions being modified in such manner that, after modification, they are as set out in Schedule 8.”.

5. In paragraph (1) of Article 18 of the 1995 Order, for the words “Part II of the Companies (Northern Ireland) Order 1989” there shall be substituted the words “the Company Directors Disqualification (Northern Ireland) Order 2002”.

6. In paragraph 9 of Schedule 3 to, and paragraph 27 of Schedule 4 to, the 1995 Order (Article 198: Getting in the partnership property), in paragraph (2) of modified Article 198 for the words “Part II of the Companies (Northern Ireland) Order 1989” there shall be substituted the words “the Company Directors Disqualification (Northern Ireland) Order 2002”.

7. For Schedule 8 to the 1995 Order there shall be substituted the Schedule set out in Schedule 1 to this Order.

8. For Schedule 10 to the 1995 Order there shall be substituted the Schedule set out in Schedule 2 to this Order.

Dated 27th July 2003

Falconer of Thoroton, C.

The Department of Enterprise, Trade and Investment hereby concurs with the foregoing Order.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 30th July 2003.

(L.S.)

Michael J. Bohill

Senior Officer of the Department of Enterprise, Trade and Investment

SCHEDULE 1

Article 7

“SCHEDULE 8

Article 16

PROVISIONS OF THE COMPANY DIRECTORS DISQUALIFICATION (NORTHERN IRELAND) ORDER 2002(a) WHICH APPLY WITH MODIFICATIONS FOR THE PURPOSES OF ARTICLE 16

The following provisions of the Company Directors Disqualification (Northern Ireland) Order 2002 are modified so as to read as follows –

“Duty of High Court to disqualify unfit officers of insolvent partnership

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 an officer of a partnership which has at any time become insolvent (whether while he was an officer or subsequently), and
- (b) that his conduct as an officer of that partnership (either taken alone or taken together with his conduct as an officer of any other partnership or partnerships, or as a director of any 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) a partnership becomes insolvent if –
 - (i) the High Court makes an order for it to be wound up as an unregistered company at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up; or
 - (ii) an administration order is made in relation to the partnership; and
- (b) a company becomes insolvent if –
 - (i) 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,
 - (ii) an administration order is made in relation to the company, or
 - (iii) an administrative receiver of the company is appointed.

(3) For the purposes of this Article and Article 10 references to a person’s conduct as an officer of any partnership or partnerships, or as a director of any company or companies, include, where the partnership or company concerned or any of the partnerships or companies concerned has become insolvent, that person’s conduct in relation to any matter connected with or arising out of the insolvency of that partnership or company.

(4) In this Article and in Article 10 “director” includes a shadow director.

(5) Under this Article the minimum period of disqualification is 2 years, and the maximum period is 15 years.

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 an officer of a partnership which is being, or has been, wound up by the High Court as an unregistered company, 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 partnership of which that person is or has been an officer 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).

(a) S.I. 2002/3150 (N.I. 4)

- (4) If it appears to the office-holder responsible under this Article, that is to say –
- (a) in the case of a partnership which is being wound up by the High Court as an unregistered company, the official receiver, or
 - (b) in the case of a partnership in relation to which an administration order is in force, the administrator,

that the conditions mentioned in Article 9(1) are satisfied as respects a person who is or has been an officer of that partnership, the office-holder shall forthwith report the matter to the Department.

(5) The Department or the official receiver may require any of the persons mentioned in paragraph (6) –

- (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 an officer of a partnership or as a director of a company, and
- (b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such an officer or 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.

- (6) The persons referred to in paragraph (5) are –
- (a) the liquidator or administrator, or former liquidator or administrator of the partnership,
 - (b) the liquidator, administrator or administrative receiver, or former liquidator, administrator or administrative receiver of the company.

Disqualification after investigation

- 11.—(1) If it appears to the Department from –
- (a) a report made by an inspector or person appointed to conduct an investigation under a provision mentioned in paragraph (2), or
 - (b) information or documents obtained under a provision mentioned in paragraph (3),

that it is expedient in the public interest that a disqualification order should be made against any person who is, or has been, an officer of an insolvent partnership, the Department may apply to the High Court for such an order.

- (2) The provisions are –
- (a) Article 430 of the Companies Order;
 - (b) section 167, 168(3), 169(1)(b) or 284 of the Financial Services and Markets Act 2000^(a); or
 - (c) regulations made as a result of section 262(2)(k) of the Financial Services and Markets Act 2000 or section 1(2)(k) of the Open-Ended Investment Companies Act (Northern Ireland) 2002^(b).

- (3) The provisions are –
- (a) Article 440 or 441 of the Companies Order;
 - (b) section 2 of the Criminal Justice Act 1987^(c);
 - (c) section 28 of the Criminal Law (Consolidation) (Scotland) Act 1995^(d);
 - (d) section 83 of the Companies Act 1989^(e); or
 - (e) section 171 or 173 of the Financial Services and Markets Act 2000.

(4) 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 –

- (a) the conduct of the person in relation to an insolvent partnership of which the person is or has been an officer 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.

(5) 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 partnership makes him unfit to be concerned in the management of a company.

(a) 2000 c. 8
(b) 2002 c. 13
(c) 1987 c. 38
(d) 1995 c. 39
(e) 1989 c. 40

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

Matters for determining unfitness of officers of partnership

13.—(1) This Article applies where it falls to the High Court to determine whether a person's conduct as an officer of a partnership (either taken alone or taken together with his conduct as an officer of any other partnership or partnerships or as a director of any company or companies) makes him unfit to be concerned in the management of a company.

(2) The High Court shall, as respects that person's conduct as an officer of that partnership or each of those partnerships or as a director of that company or each of those companies, have regard in particular –

- (a) to the matters mentioned in Part I of Schedule 1, and
- (b) where the partnership or company (as the case may be) has become insolvent, to the matters mentioned in Part II of that Schedule;

and references in that Schedule to the officer and the partnership or, as the case may be, to the director and the company are to be read accordingly.

(3) In determining whether it may accept a disqualification undertaking from any person the Department shall, as respects the person's conduct as an officer of any partnership or 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 partnership or the company (as the case may be) has become insolvent, to the matters mentioned in Part II of that Schedule;

and references in that Schedule to the officer and the partnership or, as the case may be, to the director and the company are to be read accordingly.

(4) Article 9(2) and (3) applies for the purposes of this Article and Schedule 1 as it applies for the purposes of Article 9 and 10, and in this Article and that Schedule "director" includes a shadow director.

(5) Subject to paragraph (6), 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.

(6) 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.

Offences

18. If a person acts in contravention of a disqualification order or disqualification undertaking, 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 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(a), or
 - (iii) an undischarged bankrupt.

(a) 1986 c. 46

(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, 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 by that person.

Application for leave under an order or undertaking

21. 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.

SCHEDULE 1

Article 13

MATTERS FOR DETERMINING UNFITNESS OF OFFICERS OF PARTNERSHIP

PART I

MATTERS APPLICABLE IN ALL CASES

1. Any misfeasance or breach of any fiduciary or other duty by the officer in relation to the partnership or, as the case may be, by the director in relation to the company.

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

3. The extent of the officer's or the director's responsibility for the partnership or, as the case may be, the company entering into any transaction liable to be set aside under Article 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); and

(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^(a) for the coming into operation of paragraph 2 of Schedule 2 to that Order, sub-paragraph (1) shall have effect as if for paragraph (g) there were substituted –

“(g) 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 –

- (a) Articles 234 or 235 of the Companies Order (duty to prepare annual accounts), or
- (b) Article 241 of that Order (approvals and signing of accounts).

6. Any failure by the officer to comply with any obligation imposed on him by or under any of the following provisions of the Limited Partnerships Act 1907^(b) –

- (a) section 8 (registration of particulars of limited partnership);
- (b) section 9 (registration of changes in particulars);
- (c) section 10 (advertisement of general partner becoming limited partner and of assignment of share of limited partner).

PART II

MATTERS APPLICABLE WHERE PARTNERSHIP OR COMPANY HAS BECOME INSOLVENT

7. The extent of the officer’s or the director’s responsibility for the causes of the partnership or (as the case may be) the company becoming insolvent.

8. The extent of the officer’s or the director’s responsibility for any failure by the partnership or (as the case may be) the company to supply any goods or services which have been paid for (in whole or in part).

9. The extent of the officer’s or the director’s responsibility for the partnership or (as the case may be) 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 204 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’ 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 57 (company’s statement of affairs to administrative receiver);
- (b) Article 85 (directors’ duty to attend meeting; statement of affairs in creditors’ voluntary winding up).

12. Any failure by the officer or the director to comply with any obligation imposed on him by or under any of the following provisions of the Insolvency Order (both as they apply in relation to companies and as they apply in relation to insolvent partnerships by virtue of the provisions of the Insolvent Partnerships Order (Northern Ireland) 1995).

- (a) Article 34 (company’s statement of affairs in administration);
- (b) Article 111 (statement of affairs in winding up by the High Court);
- (c) Article 198 (duty of anyone with company’s property to deliver it up);
- (d) Article 199 (duty to co-operate with liquidator, etc.).”.

^(a) S.I. 1990 No. 1504 (N.I. 10)
^(b) 1907 c. 24

SCHEDULE 2

Article 8

“SCHEDULE 10

Article 18

SUBORDINATE LEGISLATION APPLIED

- The Insolvency Practitioners (Recognised Professional Bodies) Order (Northern Ireland) 1991**(a)**
- The Insolvency Rules (Northern Ireland) 1991**(b)**
- The Insolvency Regulations (Northern Ireland) 1996**(c)**
- The Insolvency (Monetary Limits) Order (Northern Ireland) 1991**(d)**
- The Administration of Insolvent Estates of Deceased Persons Order (Northern Ireland) 1991**(e)**
- The Insolvency (Fees) Order (Northern Ireland) 1991**(f)**
- The Insolvency (Deposits) Order (Northern Ireland) 1991**(g)**
- The Companies (Disqualification Orders) Regulations (Northern Ireland) 2003**(h)**
- The Insolvent Companies (Reports on Conduct of Directors) Rules (Northern Ireland) 2003**(i)**
- The Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules (Northern Ireland) 2003**(j)**
- The Insolvency Practitioners Regulations (Northern Ireland) 1991**(k)**”

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- (a)** S.R. 1991 No. 301
(b) S.R. 1991 No. 364 as amended by S.R. 1994 No. 26, S.R. 1995 No. 291, S.R. 2000 No. 247 and S.R. 2002 No. 261
(c) S.R. 1996 No. 574
(d) S.R. 1991 No. 386
(e) S.R. 1991 No. 365 as amended by S.R. 2003 No. 103
(f) S.R. 1991 No. 385 as amended by S.R. 1992 No. 398 and S.R. 1996 No. 576
(g) S.R. 1991 No. 384 as amended by S.R. 1996 No. 577
(h) S.R. 2003 No. 347
(i) S.R. 2003 No. 357
(j) S.R. 2003 No. 358
(k) S.R. 1991 No. 302 as amended by S.R. 1993 No. 317 and S.R. 1993 No. 454

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order amends the Insolvent Partnerships Order (Northern Ireland) 1995 (S.R. 1995 No. 225) by:

- substituting references to the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)) (“the CDDO”) into the Arrangement of Articles, Articles 3 and 18 and Schedules 3 and 4;
- substituting a new Article 16. The new Article applies Articles 3, 4, 9-14, 18, 19, 21 and 23 of the CDDO to insolvent partnerships. This will allow the Department of Enterprise, Trade and Investment (“the Department”) to accept a disqualification undertaking from a person who is or has been an officer of a partnership where an insolvent partnership is wound up as an unregistered company;
- substituting a new Schedule 8. The new Schedule:
 - will allow the Department to accept a disqualification undertaking if the conditions mentioned in Article 10(1) of the CDDO are satisfied;
 - will allow the Department to accept disqualification undertakings under Article 11 of the CDDO;
 - provides that the Department, when determining whether it may accept a disqualification undertaking, must have regard to the matters in Schedule 1 to the CDDO; and
 - modifies Articles 18, 19 and 21 of the CDDO in their application to insolvent partnerships; and
- substituting a new Schedule 10.

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