Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2005 No. (N.I.)

NORTHERN IRELAND

The Company Directors Disqualification (Amendment) (Northern Ireland) Order 2005

Made - - - - 2005
Coming into operation in accordance with Article 1(2) and (3)

At the Court at Buckingham Palace, the ** day of ** 2005

Present,

The Queen's Most Excellent Majesty in Council

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

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) 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:—

Title and commencement

1.—(1) This Order may be cited as the Company Directors Disqualification (Amendment) (Northern Ireland) Order 2005.

(2) This Article and Article 2 shall come into operation on the expiration of 7 days from the day on which this Order is made.

(3) Articles 3 and 4 shall come into operation on such day as the Department of Enterprise, Trade and Investment may by order appoint.

Interpretation

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

Disqualification of company directors for breaches of competition law

3. After Article 13 of the Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4) (matters for determining unfitness in certain cases), there shall be inserted—

"Disqualification for competition infringements

Competition disqualification order

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

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

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

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

(a) the Chapter 1 prohibition (within the meaning of the Competition Act 1998) (prohibition on agreements, etc. preventing, restricting or distorting competition);

(b) the Chapter 2 prohibition (within the meaning of that Act) (prohibition on abuse of a dominant position);

(c) Article 81 of the Treaty establishing the European Community (prohibition on agreements, etc. preventing, restricting or distorting competition);

(d) Article 82 of that Treaty (prohibition on abuse of a dominant position).

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

(a) shall have regard to whether paragraph (6) applies to him;

(b) may have regard to his conduct as a director of a company in connection with any other breach of competition law;

(c) shall not have regard to the matters mentioned in Schedule 1.

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

(a) his conduct contributed to the breach of competition law mentioned in paragraph (2);

(b) his conduct did not contribute to the breach but he had reasonable grounds to suspect that the conduct of the undertaking constituted the breach and he took no steps to prevent it;

(c) he did not know but ought to have known that the conduct of the undertaking constituted the breach.

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

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

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

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

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

Competition undertakings

13B.—(1) This Article applies if—

(a) the OFT or a specified regulator thinks that in relation to any person an undertaking which is a company of which he is a director has committed or is committing a breach of competition law,

(b) the OFT or the specified regulator thinks that the conduct of the person as a director makes him unfit to be concerned in the management of a company, and

(c) the person offers to give the OFT or the specified regulator (as the case may be) a disqualification undertaking.

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

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

(a) be a director of a company;

(b) act as receiver of a company's property;

(c) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company;

(d) act as an insolvency practitioner.

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

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

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

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

Competition investigations

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

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

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