STATUTORY RULES OF NORTHERN IRELAND

2003 No. 358

INSOLVENCY

The Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules (Northern Ireland) 2003

Made - - - -	*27th July 2003*
To be laid before Parliament	
Coming into operation	*5th September 2003*

The Lord Chancellor, in exercise of the powers conferred on him by Article 359 of the Insolvency (Northern Ireland) Order 1989(**1**) and Article 24(1) of the Company Directors Disqualification (Northern Ireland) Order 2002(**2**), and of all other powers enabling him in that behalf, with the concurrence of the Department of Enterprise, Trade and Investment(**3**), and after consulting the committee existing for that purpose under Article 360 of the Insolvency (Northern Ireland) Order 1989, hereby makes the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules (Northern Ireland) 2003 and shall come into operation on 5th September 2003.

(2) In these Rules –

(a) "the Companies Order" means the Companies (Northern Ireland) Order 1986(**4**);

(b) "the Company Directors Disqualification Order" means the Company Directors Disqualification (Northern Ireland) Order 2002;

(c) "the court" means the High Court of Justice in Northern Ireland (Chancery Division);

(d) "the Department" means the Department of Enterprise, Trade and Investment;

(e) "file in court" means deliver to the Bankruptcy and Companies Office for filing;

(f) "the former Rules" means the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules (Northern Ireland) 1991(**5**);

(**1**) S.I.1989/2405 (N.I. 19)
(**2**) S.I. 2002/3150 (N.I. 4)
(**3**) Formerly the Department of Economic Development; *see* S.I. 1999/283 (N.I. 1)
(**4**) S.I. 1986/1032 (N.I. 6)
(**5**) S.R. 1991 No. 367 as amended by S.R. 1996 No. 471

(g) "the Judge" means the Chancery Judge or any Judge of the High Court or of the Court of Appeal for the time being acting as Chancery Judge;

(h) "the Master" means the Master (Bankruptcy); and

(i) "Supreme Court Rules" means the Rules of the Supreme Court (Northern Ireland) 1980(**6**).

(3) These Rules apply with respect to an application for a disqualification order against any person ("the respondent"), where made –

(a) by the Department or the official receiver under Article 10(1) of the Company Directors Disqualification Order (on the grounds of the person's unfitness to be concerned in the management of a company), or

(b) by the Department under Article 11 of that Order (alleged to be expedient in the public interest, following investigation of company),

on or after the date on which these Rules come into operation.

Form of application

2.—(1) An application to which these Rules apply shall be made by originating summons (Form 7 in Appendix A to the Supreme Court Rules, with such adaptation as may be appropriate), and the Supreme Court Rules apply accordingly, except where these Rules make provision to inconsistent effect.

(2) The summons shall be issued out of the Bankruptcy and the Companies Office.

The case against the respondent

3.—(1) There shall, at the time when the summons is issued, be filed in court evidence in support of the application for a disqualification order; and copies of the evidence shall be served with the summons on the respondent.

(2) The evidence shall be by one or more affidavits, except where the applicant is the official receiver, in which case it may be in the form of a written report (with or without affidavits by other persons) which shall be treated as if it had been verified by affidavit by him and shall be prima facie evidence of any matter contained in it.

(3) There shall in the affidavits or (as the case may be) the official receiver's report be included a statement of the matters by reference to which the respondent is alleged to be unfit to be concerned in the management of a company.

Endorsement on summons

4. There shall on the summons be endorsed information to the respondent as follows –

(a) that the application is made in accordance with these Rules;

(b) that, in accordance with the relevant enactments, the court has power to impose disqualifications as follows –

(i) where the application is under Article 10 of the Company Directors Disqualification Order, for a period of not less than 2, and up to 15, years; and

(ii) where the application is under Article 11 of that Order, for a period of up to 15 years;

(c) that the application for a disqualification order may, in accordance with these Rules, be heard and determined summarily, without further or other notice to the respondent, and

(**6**) S.I. 1980 No. 346; the relevant amending instruments are S.R. 1981 No. 224, S.R. 1983 No. 5, S.R. 1983 No. 114, S.R. 1991 No. 232 and S.R. 1993 No. 143

that, if it is so heard and determined, the court may impose disqualification for a period of up to 5 years;

(d) that if at the hearing of the application the court, on the evidence then before it, is minded to impose, in the respondent's case, disqualification for any period longer than 5 years, it will not make a disqualification order on that occasion but will adjourn the application to be heard (with further evidence, if any) at a later date to be notified;

(e) that the respondent must file in court the statement required by Rule 6 within the time limit imposed under that Rule (the provisions of which shall be endorsed on the summons); and

(f) that any evidence which the respondent wishes to be taken into consideration by the court must be filed in court in accordance with the time limits imposed under Rule 7 (the provisions of which shall be set out on the summons).

Service

5.—(1) The summons shall be served on the respondent forthwith after it is issued by sending it by first class post to his last known address; and the date of service shall, unless the contrary is shown, be deemed to be the 7th day next following that on which the summons was posted.

(2) Where any process or order of the court or other documents is required under proceedings subject to these Rules to be served on any person who is not in Northern Ireland, the court may order service on him of that process or order or other document to be effected within such time and in such manner as it thinks fit, and may also require such proof of service as it thinks fit.

Statement by respondent

6.—(1) The respondent shall within 14 days from the date of service of the summons file in court a statement indicating –

(a) whether he contests the application on the grounds, that in the case of any particular company –

(i) he was not a director or shadow director of the company at a time when conduct of his, or of other persons, in relation to that company is in question, or

(ii) his conduct as director or shadow director of that company was not as alleged in support of the application for a disqualification order,

(b) whether, in the case of any conduct of his, he disputes the allegation that such conduct makes him unfit to be concerned in the management of a company, and

(c) whether he, while not resisting the application for a disqualification order, intends to adduce mitigating factors with a view to justifying only a short period of disqualification.

(2) The respondent shall forthwith after filing such statement serve a copy upon the applicant.

Evidence

7.—(1) The respondent shall, within 28 days from the date of service of the summons, file in court any affidavit evidence in opposition to the application he wishes the court to take into consideration and shall forthwith serve upon the applicant a copy of such evidence.

(2) The applicant shall, within 14 days from receiving the copy of the respondent's evidence, file in court any further evidence in reply he wishes the court to take into consideration and shall forthwith serve a copy of that evidence upon the respondent.