



Small Business, Enterprise and Employment Act 2015

2015 CHAPTER 26

PART 9

DIRECTORS' DISQUALIFICATION ETC

New grounds for disqualification

104 Convictions abroad

(1) After section 5 of the Company Directors Disqualification Act 1986 insert—

“5A Disqualification for certain convictions abroad

- (1) If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order under this section should be made against a person, the Secretary of State may apply to the court for such an order.
- (2) The court may, on an application under subsection (1), make a disqualification order against a person who has been convicted of a relevant foreign offence.
- (3) A “relevant foreign offence” is an offence committed outside Great Britain—
 - (a) in connection with—
 - (i) the promotion, formation, management, liquidation or striking off of a company (or any similar procedure),
 - (ii) the receivership of a company’s property (or any similar procedure), or
 - (iii) a person being an administrative receiver of a company (or holding a similar position), and
 - (b) which corresponds to an indictable offence under the law of England and Wales or (as the case may be) an indictable offence under the law of Scotland.

- (4) Where it appears to the Secretary of State that, in the case of a person who has offered to give a disqualification undertaking—
- (a) the person has been convicted of a relevant foreign offence, and
 - (b) it is expedient in the public interest that the Secretary of State should accept the undertaking (instead of applying, or proceeding with an application, for a disqualification order),
- the Secretary of State may accept the undertaking.
- (5) In this section—
- “company” includes an overseas company;
- “the court” means the High Court or, in Scotland, the Court of Session.
- (6) The maximum period of disqualification under an order under this section is 15 years.”
- (2) Section 5A(2) and (4) of the Company Directors Disqualification Act 1986, as inserted by this section, applies in relation to a conviction of a relevant foreign offence which occurs on or after the day on which this section comes into force regardless of whether the act or omission which constituted the offence occurred before that day.

105 Persons instructing unfit director

After section 8 of the Company Directors Disqualification Act 1986 insert—

“Persons instructing unfit directors

8ZA Order disqualifying person instructing unfit director of insolvent company

- (1) The court may make a disqualification order against a person (“P”) if, on an application under section 8ZB, it is satisfied—
- (a) either—
 - (i) that a disqualification order under section 6 has been made against a person who is or has been a director (but not a shadow director) of a company, or
 - (ii) that the Secretary of State has accepted a disqualification undertaking from such a person under section 7(2A), and
 - (b) that P exercised the requisite amount of influence over the person.

That person is referred to in this section as “the main transgressor”.

- (2) For the purposes of this section, P exercised the requisite amount of influence over the main transgressor if any of the conduct—
- (a) for which the main transgressor is subject to the order made under section 6, or
 - (b) in relation to which the undertaking was accepted from the main transgressor under section 7(2A),
- was the result of the main transgressor acting in accordance with P’s directions or instructions.

Status: This is the original version (as it was originally enacted).

- (3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.
- (4) Under this section the minimum period of disqualification is 2 years and the maximum period is 15 years.
- (5) In this section and section 8ZB “the court” has the same meaning as in section 6; and subsection (3B) of section 6 applies in relation to proceedings mentioned in subsection (6) below as it applies in relation to proceedings mentioned in section 6(3B)(a) and (b).
- (6) The proceedings are proceedings—
 - (a) for or in connection with a disqualification order under this section, or
 - (b) in connection with a disqualification undertaking accepted under section 8ZC.

8ZB Application for order under section 8ZA

- (1) If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order should be made against a person under section 8ZA, the Secretary of State may—
 - (a) make an application to the court for such an order, or
 - (b) in a case where an application for an order under section 6 against the main transgressor has been made by the official receiver, direct the official receiver to make such an application.
- (2) Except with the leave of the court, an application for a disqualification order under section 8ZA must not be made after the end of the period of 3 years beginning with the day on which the company in question became insolvent (within the meaning given by section 6(2)).
- (3) Subsection (4) of section 7 applies for the purposes of this section as it applies for the purposes of that section.

8ZC Disqualification undertaking instead of an order under section 8ZA

- (1) If it appears to the Secretary of State that it is expedient in the public interest to do so, the Secretary of State may accept a disqualification undertaking from a person (“P”) if—
 - (a) any of the following is the case—
 - (i) a disqualification order under section 6 has been made against a person who is or has been a director (but not a shadow director) of a company,
 - (ii) the Secretary of State has accepted a disqualification undertaking from such a person under section 7(2A), or
 - (iii) it appears to the Secretary of State that such an undertaking could be accepted from such a person (if one were offered), and
 - (b) it appears to the Secretary of State that P exercised the requisite amount of influence over the person.

That person is referred to in this section as “the main transgressor”.

Status: This is the original version (as it was originally enacted).

- (2) For the purposes of this section, P exercised the requisite amount of influence over the main transgressor if any of the conduct—
- (a) for which the main transgressor is subject to the disqualification order made under section 6,
 - (b) in relation to which the disqualification undertaking was accepted from the main transgressor under section 7(2A), or
 - (c) which led the Secretary of State to the conclusion set out in subsection (1)(a)(iii),
- was the result of the main transgressor acting in accordance with P's directions or instructions.
- (3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.
- (4) Subsection (4) of section 7 applies for the purposes of this section as it applies for the purposes of that section.

8ZD Order disqualifying person instructing unfit director: other cases

- (1) The court may make a disqualification order against a person ("P") if, on an application under this section, it is satisfied—
- (a) either—
 - (i) that a disqualification order under section 8 has been made against a person who is or has been a director (but not a shadow director) of a company, or
 - (ii) that the Secretary of State has accepted a disqualification undertaking from such a person under section 8(2A), and
 - (b) that P exercised the requisite amount of influence over the person.

That person is referred to in this section as "the main transgressor".

- (2) The Secretary of State may make an application to the court for a disqualification order against P under this section if it appears to the Secretary of State that it is expedient in the public interest for such an order to be made.
- (3) For the purposes of this section, P exercised the requisite amount of influence over the main transgressor if any of the conduct—
- (a) for which the main transgressor is subject to the order made under section 8, or
 - (b) in relation to which the undertaking was accepted from the main transgressor under section 8(2A),
- was the result of the main transgressor acting in accordance with P's directions or instructions.
- (4) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.
- (5) Under this section the maximum period of disqualification is 15 years.
- (6) In this section "the court" means the High Court or, in Scotland, the Court of Session.

8ZE Disqualification undertaking instead of an order under section 8ZD

- (1) If it appears to the Secretary of State that it is expedient in the public interest to do so, the Secretary of State may accept a disqualification undertaking from a person (“P”) if—
- (a) any of the following is the case—
 - (i) a disqualification order under section 8 has been made against a person who is or has been a director (but not a shadow director) of a company,
 - (ii) the Secretary of State has accepted a disqualification undertaking from such a person under section 8(2A), or
 - (iii) it appears to the Secretary of State that such an undertaking could be accepted from such a person (if one were offered), and
 - (b) it appears to the Secretary of State that P exercised the requisite amount of influence over the person.

That person is referred to in this section as “the main transgressor”.

- (2) For the purposes of this section, P exercised the requisite amount of influence over the main transgressor if any of the conduct—
- (a) for which the main transgressor is subject to the disqualification order made under section 8,
 - (b) in relation to which the disqualification undertaking was accepted from the main transgressor under section 8(2A), or
 - (c) which led the Secretary of State to the conclusion set out in subsection (1)(a)(iii),
- was the result of the main transgressor acting in accordance with P’s directions or instructions.
- (3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.”