



# Small Business, Enterprise and Employment Act 2015

## 2015 CHAPTER 26

### PART 9

#### DIRECTORS' DISQUALIFICATION ETC

##### *New grounds for disqualification*

#### 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.

- (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

---

*Status: This is the original version (as it was originally enacted).*

---

- (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 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.”