



# Company Directors Disqualification Act 1986

## 1986 CHAPTER 46

### *Disqualification for general misconduct in connection with companies*

#### **2 Disqualification on conviction of indictable offence.**

- (1) The court may make a disqualification order against a person where he is convicted of an indictable offence (whether on indictment or summarily) in connection with the promotion, formation, management [<sup>F1</sup>liquidation or striking off] of a company [<sup>F2</sup>with the receivership of a company's property or with his being an administrative receiver of a company].

[<sup>F3</sup>(1A) In subsection (1), “company” includes overseas company.]

- (2) “The court” for this purpose means—
- (a) any court having jurisdiction to wind up the company in relation to which the offence was committed, or
  - [<sup>F4</sup>(aa) in relation to an overseas company not falling within paragraph (a), the High Court or, in Scotland, the Court of Session, or]
  - (b) the court by or before which the person is convicted of the offence, or
  - (c) in the case of a summary conviction in England and Wales, any other magistrates' court acting [<sup>F5</sup>in the same local justice] area;

<sup>M1</sup>and for the purposes of this section the definition of “indictable offence” in Schedule 1 to the Interpretation Act 1978 applies for Scotland as it does for England and Wales.

- (3) The maximum period of disqualification under this section is—
- (a) where the disqualification order is made by a court of summary jurisdiction, 5 years, and
  - (b) in any other case, 15 years.

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**Changes to legislation:** There are currently no known outstanding effects for the Company Directors Disqualification Act 1986, Cross Heading: Disqualification for general misconduct in connection with companies. (See end of Document for details)

#### Textual Amendments

- F1** Words in s. 2(1) substituted (1.7.1995) by 1994 c. 40, s. 39, **Sch. 11 para. 6**; S.I. 1995/1433, **art. 3**
- F2** Words in s. 2(1) substituted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 3**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in **art. 3**)
- F3** S. 2(1A) inserted (26.5.2015 for specified purposes, 1.10.2015 in so far as not already in force) by **Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 7 para. 4(2)**; S.I. 2015/1329, **reg. 3(c)**; S.I. 2015/1689, **reg. 2(g)**
- F4** S. 2(2)(aa) inserted (26.5.2015 for specified purposes, 1.10.2015 in so far as not already in force) by **Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 7 para. 4(3)**; S.I. 2015/1329, **reg. 3(c)**; S.I. 2015/1689, **reg. 2(g)**
- F5** Words in s. 2(2)(c) substituted (1.4.2005) by **Courts Act 2003 (c. 39), ss. 109(1), 110, Sch. 8 para. 30(a)**; S.I. 2005/910, **art. 3(y)**

#### Modifications etc. (not altering text)

- C1** Ss. 1, 2 extended (with modifications) (1.7.1989) by S.I. 1989/638, **regs. 20, 21**

#### Marginal Citations

- M1** 1978 c. 30.

### 3 Disqualification for persistent breaches of companies legislation.

- (1) The court may make a disqualification order against a person where it appears to it that he has been persistently in default in relation to provisions of the companies legislation requiring any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the registrar of companies.
- (2) On an application to the court for an order to be made under this section, the fact that a person has been persistently in default in relation to such provisions as are mentioned above may (without prejudice to its proof in any other manner) be conclusively proved by showing that in the 5 years ending with the date of the application he has been adjudged guilty (whether or not on the same occasion) of three or more defaults in relation to those provisions.
- (3) A person is to be treated under subsection (2) as being adjudged guilty of a default in relation to any provision of that legislation if—
  - (a) he is convicted (whether on indictment or summarily) of an offence consisting in a contravention of or failure to comply with that provision (whether on his own part or on the part of any company), or
  - (b) a default order is made against him, that is to say an order under any of the following provisions—
    - (i) [<sup>F6</sup>section 452 of the Companies Act 2006] (order requiring delivery of company accounts),
    - [<sup>F7</sup>(ia) [<sup>F8</sup>section 456] of that Act (order requiring preparation of revised accounts),]
    - [<sup>F9</sup>(ii) section 1113 of that Act (enforcement of company's filing obligations)]
    - (iii) section 41 of the Insolvency Act [<sup>F10</sup>1986](enforcement of receiver's or manager's duty to make returns), or
    - (iv) section 170 of that Act (corresponding provision for liquidator in winding up),

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in respect of any such contravention of or failure to comply with that provision (whether on his own part or on the part of any company).

[<sup>F11</sup>(3A) In this section “company” includes overseas company.]

(4) In this section “the court” means

[<sup>F12</sup>(a)] any court having jurisdiction to wind up any of the companies in relation to which the offence or other default has been or is alleged to have been committed[<sup>F13</sup>, or

(b) in relation to an overseas company not falling within paragraph (a), the High Court or, in Scotland, the Court of Session.]

[<sup>F14</sup>(4A) In this section “the companies legislation” means the Companies Acts and Parts 1 to 7 of the Insolvency Act 1986 (company insolvency and winding up).]

(5) The maximum period of disqualification under this section is 5 years.

#### Textual Amendments

- F6** Words in s. 3(3)(b)(i) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 3(1), **Sch. 1 para. 106(2)(a)** (with arts. 6, 11, 12)
- F7** S. 3(3)(b)(ia) added (subject to the transitional and savings provisions in [S.I. 1990/2569](#), **arts. 3, 6**) after s. 3(3)(b)(i) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 23, 213(2), **Sch. 10 para. 35(2)(b)**
- F8** Words in s. 3(3)(b)(ia) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 3(1), **Sch. 1 para. 106(2)(b)** (with arts. 6, 11, 12)
- F9** Words in s. 3(b)(ii) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 85(2)(a)(i)** (with art. 10)
- F10** Words in s. 3(b)(iii) inserted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 85(2)(a)(ii)** (with art. 10)
- F11** S. 3(3A) inserted (26.5.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), **Sch. 7 para. 5(2)**; [S.I. 2015/1329](#), reg. 3(c); [S.I. 2015/1689](#), reg. 2(g)
- F12** Words in s. 3(4) inserted (26.5.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), **Sch. 7 para. 5(3)(a)**; [S.I. 2015/1329](#), reg. 3(c); [S.I. 2015/1689](#), reg. 2(g)
- F13** S. 3(4)(b) and preceding word inserted (26.5.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), **Sch. 7 para. 5(3)(b)**; [S.I. 2015/1329](#), reg. 3(c); [S.I. 2015/1689](#), reg. 2(g)
- F14** S. 3(4A) inserted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 85(2)(b)** (with art. 10)

## 4 Disqualification for fraud, etc., in winding up.

(1) The court may make a disqualification order against a person if, in the course of the winding up of a company, it appears that he—

(a) has been guilty of an offence for which he is liable (whether he has been convicted or not) under [<sup>F15</sup>section 993 of the Companies Act 2006] (fraudulent trading), or

(b) has otherwise been guilty, while an officer or liquidator of the company [<sup>F16</sup>receiver of the company’s property or administrative receiver of the

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company], of any fraud in relation to the company or of any breach of his duty as such officer, liquidator, [<sup>F16</sup>receiver or administrative receiver].

- (2) In this section “the court” means any court having jurisdiction to wind up any of the companies in relation to which the offence or other default has been or is alleged to have been committed; and “officer” includes a shadow director.
- (3) The maximum period of disqualification under this section is 15 years.

#### Textual Amendments

- F15** Words in s. 4(1)(a) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), [Sch. 4 para. 46](#) (with art. 12)
- F16** Words in s. 4(1)(b) substituted (2.4.2001) by [2000 c. 39, s. 8, Sch. 4 Pt. I para. 4](#); [S.I. 2001/766, art. 2\(1\)\(a\)](#) (subject to transitional provisions in art. 3)

#### Modifications etc. (not altering text)

- C2** Ss. 4–6 extended (with modifications) (1.7.1989) by [S.I. 1989/638, regs. 20, 21](#)

## 5 Disqualification on summary conviction.

- (1) An offence counting for the purposes of this section is one of which a person is convicted (either on indictment or summarily) in consequence of a contravention of, or failure to comply with, any provision of the companies legislation requiring a return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the registrar of companies (whether the contravention or failure is on the person’s own part or on the part of any company).
  - (2) Where a person is convicted of a summary offence counting for those purposes, the court by which he is convicted (or, in England and Wales, any other magistrates’ court acting [<sup>F17</sup>in the same local justice] area) may make a disqualification order against him if the circumstances specified in the next subsection are present.
  - (3) Those circumstances are that, during the 5 years ending with the date of the conviction, the person has had made against him, or has been convicted of, in total not less than 3 default orders and offences counting for the purposes of this section; and those offences may include that of which he is convicted as mentioned in subsection (2) and any other offence of which he is convicted on the same occasion.
  - (4) For the purposes of this section—
    - (a) the definition of “summary offence” in Schedule 1 to the <sup>M2</sup>Interpretation Act 1978 applies for Scotland as for England and Wales, and
    - (b) “default order” means the same as in section 3(3)(b).
- [<sup>F18</sup>(4A) In this section “the companies legislation” means the Companies Acts and Parts 1 to 7 of the Insolvency Act 1986 (company insolvency and winding up).]
- [<sup>F19</sup>(4B) In this section “company” includes overseas company.]
- (5) The maximum period of disqualification under this section is 5 years.

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#### Textual Amendments

- F17** Words in s. 5(2) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), ss. 109(1), 110, [Sch. 8 para. 30\(b\)](#); [S.I. 2005/910](#), [art. 3\(y\)](#)
- F18** S. 5(4A) inserted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), [Sch. 1 para. 85\(3\)](#) (with art. 10)
- F19** S. 5(4B) inserted (26.5.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 7 para. 6](#); [S.I. 2015/1329](#), reg. 3(c); [S.I. 2015/1689](#), reg. 2(g)

#### Modifications etc. (not altering text)

- C3** Ss. 4–6 extended (with modifications) (1.7.1989) by [S.I. 1989/638](#), [regs. 20, 21](#)

#### Marginal Citations

- M2** [1978 c. 30](#).

### [<sup>F20</sup>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.]

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### Textual Amendments

- F20** S. 5A inserted (26.5.2015 for specified purposes, 1.10.2015 in so far as not already in force with effect in accordance with s. 104(2) of the amending Act) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), [ss. 104\(1\)](#), [164\(1\)](#) (with s. 104(2)); S.I. 2015/1329, reg. 3(c); S.I. 2015/1689, reg. 2(c) (with Sch. para. 3)

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