

SCHEDULES

SCHEDULE 4

MINOR AND CONSEQUENTIAL AMENDMENTS ABOUT DISQUALIFICATION OF COMPANY DIRECTORS ETC.

PART I

AMENDMENTS OF THE COMPANY DIRECTORS DISQUALIFICATION ACT 1986

- 1 The Company Directors Disqualification Act 1986 is amended in accordance with this Part.
- 2 In section 1(3) (disqualification orders), after “an order” there is inserted “or to a disqualification undertaking” and after “those orders” there is inserted “or, as the case may be, in the order and the undertaking”.
- 3 In section 2(1) (disqualification on conviction of indictable offence), for the words following “a company” there is substituted “with the receivership of a company’s property or with his being an administrative receiver of a company”.
- 4 In section 4 (disqualification for fraud, etc., in winding up), in subsection (1)(b), for “or receiver or manager of its property” there is substituted “receiver of the company’s property or administrative receiver of the company” and for “receiver or manager” (in the second place) there is substituted “receiver or administrative receiver”.
- 5 (1) In section 6 (disqualification of unfit directors)—
 - (a) for subsection (3) there is substituted—

“(3) In this section and section 7(2), “the court” means—

 - (a) where the company in question is being or has been wound up by the court, that court,
 - (b) where the company in question is being or has been wound up voluntarily, any court which has or (as the case may be) had jurisdiction to wind it up,
 - (c) where neither of the preceding paragraphs applies but an administration order has at any time been made, or an administrative receiver has at any time been appointed, in relation to the company in question, any court which has jurisdiction to wind it up.
- (3A) Sections 117 and 120 of the Insolvency Act 1986 (jurisdiction) shall apply for the purposes of subsection (3) as if the references in the definitions of “registered office” to the presentation of the petition for winding up were references—
 - (a) in a case within paragraph (b) of that subsection, to the passing of the resolution for voluntary winding up,

- (b) in a case within paragraph (c) of that subsection, to the making of the administration order or (as the case may be) the appointment of the administrative receiver.
- (3B) Nothing in subsection (3) invalidates any proceedings by reason of their being taken in the wrong court; and proceedings—
 - (a) for or in connection with a disqualification order under this section, or
 - (b) in connection with a disqualification undertaking accepted under section 7,
 may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.
- (3C) In this section and section 7, “director” includes a shadow director”.
- 6 In section 7 (applications to court under section 6; reporting provisions)—
 - (a) in subsection (1)(b), after “being” there is inserted “or has been”,
 - (b) for the sidenote there is substituted “Disqualification order or undertaking; and reporting provisions”.
- 7 In section 9 (matters for determining unfitness of directors)—
 - (a) in subsection (1), “or shadow director” is omitted,
 - (b) at the end of subsection (2) there is inserted “and in this section and that Schedule “director” includes a shadow director”.
- 8 In section 13 (criminal penalties)—
 - (a) after “disqualification order or” there is inserted “disqualification undertaking or in contravention”,
 - (b) after “12(2)” there is inserted “or 12A”.
- 9 In section 14(1) (offences by body corporate), after “disqualification order” there is inserted “or disqualification undertaking or in contravention of section 12A”.
- 10 (1) Section 15 (personal liability for company’s debts where person acts while disqualified) is amended as follows.
 - (2) In subsection (1)—
 - (a) in paragraph (a), after “disqualification order or” there is inserted “disqualification undertaking or in contravention” and after “11” there is inserted “or 12A”,
 - (b) in paragraph (b), after “disqualification order” there is inserted “or disqualification undertaking or a disqualification order under Part II of the Companies (Northern Ireland) Order 1989”.
 - (3) In subsection (5), after “disqualification order” there is inserted “or disqualification undertaking or a disqualification order under Part II of the Companies (Northern Ireland) Order 1989”.
- 11 (1) In section 16 (application for disqualification order), in subsection (2), for “5” there is substituted “4”.
- 12 (1) For section 17 (application for leave under an order) there is substituted—

“17 Application for leave under an order or undertaking

- (1) Where a person is subject to a disqualification order made by a court having jurisdiction to wind up companies, any application for leave for the purposes of section 1(1)(a) shall be made to that court.
- (2) Where—
 - (a) a person is subject to a disqualification order made under section 2 by a court other than a court having jurisdiction to wind up companies, or
 - (b) a person is subject to a disqualification order made under section 5, any application for leave for the purposes of section 1(1)(a) shall be made to any court which, when the order was made, had jurisdiction to wind up the company (or, if there is more than one such company, any of the companies) to which the offence (or any of the offences) in question related.
- (3) Where a person is subject to a disqualification undertaking accepted at any time under section 7 or 8, any application for leave for the purposes of section 1A(1)(a) shall be made to any court to which, if the Secretary of State had applied for a disqualification order under the section in question at that time, his application could have been made.
- (4) But where a person is subject to two or more disqualification orders or undertakings (or to one or more disqualification orders and to one or more disqualification undertakings), any application for leave for the purposes of section 1(1)(a) or 1A(1)(a) shall be made to any court to which any such application relating to the latest order to be made, or undertaking to be accepted, could be made.
- (5) On the hearing of an application for leave for the purposes of section 1(1)(a) or 1A(1)(a), the Secretary of State shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.”

13 (1) Section 18 (register of disqualification orders) is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (b), after “order” there is inserted “or a disqualification undertaking”,
- (b) after paragraph (c) there is inserted “or
 - (d) leave is granted by a court for a person subject to such an undertaking to do anything which otherwise the undertaking prohibits him from doing”.

(3) After subsection (2) there is inserted—

“(2A) The Secretary of State shall include in the register such particulars as he considers appropriate of disqualification undertakings accepted by him under section 7 or 8 and of cases in which leave has been granted as mentioned in subsection (1)(d).”

(4) In subsection (3)—

- (a) after “order” there is inserted “or undertaking”,
- (b) at the end there is inserted—

“and, in the case of a disqualification undertaking, any other particulars he has included in the register”.

- (5) After subsection (4) there is inserted—
- “(4A) Regulations under this section may extend the preceding provisions of this section, to such extent and with such modifications as may be specified in the regulations, to disqualification orders made under Part II of the Companies (Northern Ireland) Order 1989.”
- (6) For the sidenote there is substituted “Register of disqualification orders and undertakings”.
- 14 (1) Section 21 (interaction with Insolvency Act 1986) is amended as follows.
- (2) In subsection (2)—
- (a) after “Sections” there is inserted “1A”,
 - (b) after “10” there is inserted “13, 14”,
 - (c) after “this Act” there is inserted “and sections 1 and 17 of this Act as they apply for the purposes of those provisions”.
- (3) In subsection (3)—
- (a) after “sections” there is inserted “1A”,
 - (b) after “10” there is inserted “13, 14”,
 - (c) after “this Act” there is inserted “and sections 1 and 17 of this Act as they apply for the purposes of those provisions”.
- 15 (1) Section 22 (interpretation) is amended as follows.
- (2) At the end of subsection (3) there is inserted “and references to acting as an insolvency practitioner are to be read in accordance with section 388 of that Act”.
- (3) In subsection (4), the words following “called” are omitted.