



# Company Directors Disqualification Act 1986

## 1986 CHAPTER 46

An Act to consolidate certain enactments relating to the disqualification of persons from being directors of companies, and from being otherwise concerned with a company's affairs. [25th July 1986]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Modifications etc. (not altering text)

- C1** Act applied (with modifications) (6.4.2001) by [S.I. 2001/1090, reg. 4\(2\), Sch. 2 Pt. II](#)  
Act applied (with modifications) (21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 121, 263\(1\)](#) (with s. 247); [S.I. 2009/296, art. 3, Sch. para. 2](#)  
Act applied (with modifications) (21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 155, 263\(1\)](#) (with s. 247); [S.I. 2009/296, art. 3, Sch. para. 3](#)  
Act applied (with modifications) (29.3.2009) by [1986 c. 53, s. 90E](#) (as inserted by The Building Societies (Insolvency and Special Administration) order 2009 ([S.I. 2009/2142](#)), {art. 6})  
Act applied (with modifications) (8.2.2011) by The Investment Bank Special Administration Regulations ([S.I. 2011/245](#)), reg. 24, {Sch. 3 para. 4}
- C2** Act modified by [S.I. 1986/2142, arts. 1\(2\), 3](#)  
Act modified (8.2.2011) by The Investment Bank Special Administration Regulations ([S.I. 2011/245](#)), {reg. 23}  
Act modified (8.2.2011) by The Investment Bank Special Administration Regulations ([S.I. 2011/245](#)), reg. 25, {Sch. 4 para. 3}  
Act modified (30.6.2011) by [The Investment Bank Special Administration \(England and Wales\) Rules 2011 \(S.I. 2011/1301\), rule 334](#)
- C3** Act applied (in part) by [S.I. 1989/638, reg. 20](#) (as amended (1.10.2009) by [The European Economic Interest Regulations 2009 \(S.I. 2009/2399\), reg. 21](#) (with reg. 2))  
Act applied (1.8.2007) by [The European Grouping of Territorial Cooperation Regulations 2007 \(S.I. 2007/1949\), reg. 9](#)

**Status:** Point in time view as at 06/04/2006. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Company Directors Disqualification Act 1986 is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- C4** Act: power to amend conferred (17.2.2009 for specified purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\), ss. 158\(2\)\(b\), 159\(2\)\(b\), 263\(1\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), Sch. para. 3

#### Commencement Information

- I1** Act wholly in force at 29.12.1986 by s. 25 and S.I. 1986/1924

### Preliminary

## 1 Disqualification orders: general.

- (1) In the circumstances specified below in this Act a court may, and under [<sup>F1</sup>sections 6 and 9A] shall, make against a person a disqualification order, that is to say an order that [<sup>F2</sup>for a period specified in the order—
- (a) he shall not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of the court, and
  - (b) he shall not act as an insolvency practitioner.]
- (2) In each section of this Act which gives to a court power or, as the case may be, imposes on it the duty to make a disqualification order there is specified the maximum (and, in section 6, the minimum) period of disqualification which may or (as the case may be) must be imposed by means of the order [<sup>F3</sup>and, unless the court otherwise orders, the period of disqualification so imposed shall begin at the end of the period of 21 days beginning with the date of the order].
- (3) Where a disqualification order is made against a person who is already subject to such an order [<sup>F4</sup>or to a disqualification undertaking], the periods specified in those orders [<sup>F4</sup>or, as the case may be, in the order and the undertaking] shall run concurrently.
- (4) A disqualification order may be made on grounds which are or include matters other than criminal convictions, notwithstanding that the person in respect of whom it is to be made may be criminally liable in respect of those matters.

#### Textual Amendments

- F1** Words in s. 1(1) substituted (20.6.2003) by [2002 c. 40, ss. 204\(3\), 279](#); S.I. 2003/1397, [art. 2](#), Sch.
- F2** Words in s. 1(1) substituted (2.4.2001) by [2000 c. 39, s. 5\(1\)](#); S.I. 2001/766, [art. 2\(1\)\(a\)](#) (subject to transitional provisions in [art. 3](#))
- F3** Words in s. 1(2) inserted (2.4.2001) by [2000 c. 39, s. 5\(2\)](#); S.I. 2001/766, [art. 2\(1\)\(a\)](#) (subject to transitional provisions in [art. 3](#))
- F4** Words in s. 1(3) inserted (2.4.2001) by [2000 c. 39, s. 8, Sch. 4 Pt. I para. 2](#); S.I. 2001/766, [art. 2\(1\)\(a\)](#) (subject to transitional provisions in [art. 3](#))

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

- C5** Ss. 1, 2 extended (with modifications) (1.7.1989) by S.I. 1989/638, [regs. 20, 21](#)

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## [<sup>F5</sup>1A Disqualification undertakings: general.

- (1) In the circumstances specified in sections 7 and 8 the Secretary of State may accept a disqualification undertaking, that is to say an undertaking by any person that, for a period specified in the undertaking, the person—
  - (a) will not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of a court, and
  - (b) will not act as an insolvency practitioner.
- (2) The maximum period which may be specified in a disqualification undertaking is 15 years; and the minimum period which may be specified in a disqualification undertaking under section 7 is two years.
- (3) Where a disqualification undertaking by a person who is already subject to such an undertaking or to a disqualification order is accepted, the periods specified in those undertakings or (as the case may be) the undertaking and the order shall run concurrently.
- (4) In determining whether to accept a disqualification undertaking by any person, the Secretary of State may take account of matters other than criminal convictions, notwithstanding that the person may be criminally liable in respect of those matters.]

### Textual Amendments

- F5** S. 1A inserted (2.4.2001) by 2000 c. 39, s. 6(2); S.I. 2001/766, art. 2(1)(a) (subject to transitional provisions in art. 3)

### *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>F6</sup>liquidation or striking off] of a company [<sup>F7</sup>with the receivership of a company's property or with his being an administrative receiver of a 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
  - (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>F8</sup>in the same local justice] area;and for the purposes of this section the definition of "indictable offence" in Schedule 1 to the <sup>M1</sup>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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#### Textual Amendments

- F6** 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**
- F7** 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**)
- F8** 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)

- C6** 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>F9</sup>section 242(4)] of the Companies Act (order requiring delivery of company accounts),
    - [<sup>F10</sup>(ia) section 245B of that Act (order requiring preparation of revised accounts),]
    - (ii) section 713 of that Act (enforcement of company’s duty to make returns),
    - (iii) section 41 of the Insolvency Act (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),
 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).
- (4) 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.

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

#### Textual Amendments

- F9** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 23, 213(2), [Sch. 10 para. 35\(2\)\(a\)](#) (subject to the transitional and saving provisions mentioned in [S.I. 1990/355](#), [arts. 6–9](#))
- F10** 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\(2\)\(b\)](#)

## 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—
- has been guilty of an offence for which he is liable (whether he has been convicted or not) under section 458 of the Companies Act (fraudulent trading), or
  - has otherwise been guilty, while an officer or liquidator of the company [<sup>F11</sup>receiver of the company’s property or administrative receiver of the company], of any fraud in relation to the company or of any breach of his duty as such officer, liquidator, [<sup>F11</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

- F11** 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)

- C7** 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>F12</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

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

#### Textual Amendments

**F12** 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\(y\)](#)

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

**C8** Ss. 4–6 extended (with modifications) (1.7.1989) by [S.I. 1989/638](#), [regs. 20, 21](#)

#### Marginal Citations

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

### *Disqualification for unfitness*

## 6 Duty of court to disqualify unfit directors of insolvent companies.

- (1) The court shall make a disqualification order against a person in any case where, on an application under this section, it is satisfied—
- (a) that he is or has been a director of a company which has at any time become insolvent (whether while he was a director or subsequently), and
  - (b) that his conduct as a director of that company (either taken alone or taken together with his conduct as a director of any other company or companies) makes him unfit to be concerned in the management of a company.
- (2) For the purposes of this section and the next, a company becomes insolvent if—
- (a) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up,
  - <sup>F13</sup>(b) the company enters administration,]
  - (c) an administrative receiver of the company is appointed;
- and references to a person’s conduct as a director of any company or companies include, where that company or any of those companies has become insolvent, that person’s conduct in relation to any matter connected with or arising out of the insolvency of that company.
- <sup>F14</sup>(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,

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- [ where neither paragraph (a) nor (b) applies but an administrator or  
<sup>F15</sup>(c) administrative receiver has at any time been appointed in respect of the company in question, any court which has jurisdiction to wind it up.]
- (3A) Sections 117 and 120 of the <sup>M3</sup>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,
- [ in a case within paragraph (c) of that subsection, to the appointment of the  
<sup>F16</sup>(b) administrator or (as the case may be) 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]
- (4) Under this section the minimum period of disqualification is 2 years, and the maximum period is 15 years.

#### Textual Amendments

- F13** S. 6(2)(b) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 41(a) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F14** S. 6(3)-(3C) substituted (2.4.2001) for s. 6(3) by 2000 c. 39, s. 8, Sch. 4 Pt. I para. 5; S.I. 2001/766, art. 2(1)(a) (subject to transitional provisions in art. 3)
- F15** S. 6(3)(c) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 41(b) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F16** S. 6(3A)(b) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 41(c) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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

- C9** Ss. 4–6 extended (with modifications) (1.7.1989) by S.I. 1989/638, regs. 20, 21
- C10** Ss. 6–7 extended (with modifications) by S.I. 1986/2142, art. 6
- C11** s. 6 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 16, Sch. 8  
S. 6 amended (1.12.2001) by 2000 c. 8, s. 356(1) (as substituted by 2000 c. 39, ss. 15(3)(a)(b), 16(1)); S.I. 2001/3538, art. 2(1)

#### Marginal Citations

- M3** 1986 c. 45.

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## 7 <sup>[F17]</sup> Disqualification order or undertaking; and reporting provisions.]

(1) If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order under section 6 should be made against any person, an application for the making of such an order against that person may be made—

- (a) by the Secretary of State, or
- (b) if the Secretary of State so directs in the case of a person who is or has been a director of a company which is being <sup>[F18]</sup>or has been] wound up by the court in England and Wales, by the official receiver.

(2) Except with the leave of the court, an application for the making under that section of a disqualification order against any person shall not be made after the end of the period of 2 years beginning with the day on which the company of which that person is or has been a director became insolvent.

<sup>[F19]</sup>(2A) If it appears to the Secretary of State that the conditions mentioned in section 6(1) are satisfied as respects any person who has offered to give him a disqualification undertaking, he may accept the undertaking if it appears to him that it is expedient in the public interest that he should do so (instead of applying, or proceeding with an application, for a disqualification order).]

(3) If it appears to the office-holder responsible under this section, that is to say—

- (a) in the case of a company which is being wound up by the court in England and Wales, the official receiver,
- (b) in the case of a company which is being wound up otherwise, the liquidator,
- <sup>[F20]</sup>(c) in the case of a company which is in administration, the administrator,]
- (d) in the case of a company of which there is an administrative receiver, that receiver,

that the conditions mentioned in section 6(1) are satisfied as respects a person who is or has been a director of that company, the office-holder shall forthwith report the matter to the Secretary of State.

(4) The Secretary of State or the official receiver may require the liquidator, administrator or administrative receiver of a company, or the former liquidator, administrator or administrative receiver of a company—

- (a) to furnish him with such information with respect to any person's conduct as a director of the company, and
- (b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director,

as the Secretary of State or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function of his under this section.

### Textual Amendments

- F17** S. 7 sidenote substituted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 6(b)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in **art. 3**)
- F18** Words in s. 7(1)(b) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 6(a)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in **art. 3**)
- F19** S. 7(2A) inserted (2.4.2001) by 2000 c. 39, s. **6(3)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in **art. 3**)



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**F20** S. 7(3)(c) substituted (15.9.2003) by 2002 c. 40, s. 248(3), 279, Sch. 17 para. 42 (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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

**C12** S. 7 extended (with modifications) (1.7.1989) by S.I. 1989/638, regs. 20, 21

**C13** S. 7 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 16, Sch. 8  
S. 7 amended (1.12.2001) by 2000 c. 8, s. 356(1) (as substituted by 2000 c. 39, ss. 15(3)(a)(b), 16(1)); S.I. 3538, art. 2(1)

## 8 Disqualification after investigation of company.

[<sup>F21</sup>(1) If it appears to the Secretary of State from investigative material that it is expedient in the public interest that a disqualification order should be made against a person who is, or has been, a director or shadow director of a company, he may apply to the court for such an order.

(1A) “Investigative material” means—

- (a) a report made by inspectors under—
  - (i) section 437 of the Companies Act 1985;
  - (ii) section 167, 168, 169 or 284 of the Financial Services and Markets Act 2000; or
  - (iii) where the company is an open-ended investment company (within the meaning of that Act) regulations made as a result of section 262(2) (k) of that Act; and
- (b) information or documents obtained under—
  - (i) section 447 [<sup>F22</sup>, 448 or 453A] of the Companies Act 1985;
  - (ii) section 2 of the Criminal Justice Act 1987;
  - (iii) section 28 of the Criminal Law (Consolidation)(Scotland) Act 1995;
  - (iv) section 83 of the Companies Act 1989; or
  - (v) section 165, 171, 172, 173 or 175 of the Financial Services and Markets Act 2000.]

(2) The court may make a disqualification order against a person where, on an application under this section, it is satisfied that his conduct in relation to the company makes him unfit to be concerned in the management of a company.

[<sup>F23</sup>(2A) Where it appears to the Secretary of State from such report, information or documents that, in the case of a person who has offered to give him a disqualification undertaking—

- (a) the conduct of the person in relation to a company of which the person is or has been a director or shadow director makes him unfit to be concerned in the management of a company, and
- (b) it is expedient in the public interest that he should accept the undertaking (instead of applying, or proceeding with an application, for a disqualification order),

he may accept the undertaking.]

(3) In this section “the court” means the High Court or, in Scotland, the Court of Session.

(4) The maximum period of disqualification under this section is 15 years.

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### Textual Amendments

- F21** S. 8(1)(1A) substituted (1.12.2001) for s. 8(1) by S.I. 2001/3649, **arts. 1, 39**
- F22** Words in s. 8(1A)(b)(i) substituted (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 25(1), 65(1), **Sch. 2 para. 28**; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to **arts. 4-13**)
- F23** S. 8(2A) inserted (2.4.2001) by 2000 c. 39, s. 6(4); S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in **art. 3**)

### Modifications etc. (not altering text)

- C14** S. 8 extended (with modifications) by S.I. 1986/2142, **art. 6**
- C15** S. 8 extended (with modifications) (1.7.1989) by S.I. 1989/638, **regs. 20, 21**
- C16** S. 8 applied (with modifications) (1.12.1994) by S.I. 1994/2421, **art. 16, Sch. 8** (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1, 470**)

## [<sup>F24</sup>8A Variation etc. of disqualification undertaking.

- (1) The court may, on the application of a person who is subject to a disqualification undertaking—
- reduce the period for which the undertaking is to be in force, or
  - provide for it to cease to be in force.
- (2) On the hearing of an application under subsection (1), 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.

[ Subsection (2) does not apply to an application in the case of an undertaking given <sup>F25</sup>(2A) under section 9B, and in such a case on the hearing of the application whichever of the OFT or a specified regulator (within the meaning of section 9E) accepted the undertaking—

- must appear and call the attention of the court to any matters which appear to it or him (as the case may be) to be relevant;
- may give evidence or call witnesses.]

[ In this section “the court”—

- <sup>F26</sup>(3) (a) in the case of an undertaking given under section 9B means the High Court or (in Scotland) the Court of Session;
- (b) in any other case has the same meaning as in section 7(2) or 8 (as the case may be).]]

### Textual Amendments

- F24** S. 8A inserted (2.4.2001) by 2000 c. 39, s. 6(5); S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in **art. 3**)
- F25** S. 8A(2A) inserted (20.6.2003) by 2002 c. 40, ss. 204(4), 279; S.I. 2003/1397, **art. 2**, Sch.
- F26** S. 8A(3) substituted (20.6.2003) by 2002 c. 40, ss. 204(5), 279; S.I. 2003/1397, **art. 2**, Sch.

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## 9 Matters for determining unfitness of directors.

- (1) Where it falls to a court to determine whether a person's conduct as a director<sup>F27</sup> . . . or any particular company or companies makes him unfit to be concerned in the management of a company, the court shall, as respects his conduct as a director of that company or, as the case may be, each of those companies, have regard in particular—
- (a) to the matters mentioned in Part I of Schedule 1 to this Act, and
  - (b) where the company has become insolvent, to the matters mentioned in Part II of that Schedule;

and references in that Schedule to the director and the company are to be read accordingly.

[<sup>F28</sup>(1A) In determining whether he may accept a disqualification undertaking from any person the Secretary of State shall, as respects the person's conduct as a director of any company concerned, have regard in particular—

- (a) to the matters mentioned in Part I of Schedule 1 to this Act, and
- (b) where the company has become insolvent, to the matters mentioned in Part II of that Schedule;

and references in that Schedule to the director and the company are to be read accordingly.]

- (2) Section 6(2) applies for the purposes of this section and Schedule 1 as it applies for the purposes of sections 6 and 7 [<sup>F29</sup>and in this section and that Schedule “director” includes a shadow director].
- (3) Subject to the next subsection, any reference in Schedule 1 to an enactment contained in the Companies Act or the Insolvency Act includes, in relation to any time before the coming into force of that enactment, the corresponding enactment in force at that time.
- (4) The Secretary of State may by order modify any of the provisions of Schedule 1; and such an order may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.
- (5) The power to make orders under this section is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

### Textual Amendments

- F27** Words in s. 9(1) repealed (2.4.2001) by 2000 c. 39, ss. 8, 15(1), Sch. 4 Pt. I para. 7(a), **Sch. 5**; S.I. 2001/766, **art. 2(1)(a)(c)(ii)** (subject to transitional provisions in art. 3)
- F28** S. 9(1A) inserted (2.4.2001) by 2000 c. 39, s. 6(6); S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F29** Words in s. 9(2) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 7(b)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)

### Modifications etc. (not altering text)

- C17** Ss. 9, 10 extended (with modifications) by S.I. 1986/2142, **art. 6**
- C18** Ss. 9, 10 extended (with modifications) (1.7.1989) by S.I. 1989/638, **regs. 20, 21**
- C19** S. 9 applied (with modifications) (1.12.1994) by S.I. 1994/2421, **art. 16, Sch. 8**

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## *[<sup>F30</sup>Disqualification for competition infringements*

### Textual Amendments

**F30** Ss. 9A-9E and cross-heading inserted (20.6.2003) by 2002 c. 40, ss. 204(2), 279; S.I. 2003/1397, art. 2, Sch.

## 9A Competition disqualification order

- (1) The court must make a disqualification order against a person if the following two conditions are satisfied in relation to him.
- (2) The first condition is that an undertaking which is a company of which he is a director commits a breach of competition law.
- (3) The second condition is that the court considers that his conduct as a director makes him unfit to be concerned in the management of a company.
- (4) An undertaking commits a breach of competition law if it engages in conduct which infringes any of the following—
  - (a) the Chapter 1 prohibition (within the meaning of the Competition Act 1998) (prohibition on agreements, etc. preventing, restricting or distorting competition);
  - (b) the Chapter 2 prohibition (within the meaning of that Act) (prohibition on abuse of a dominant position);
  - (c) Article 81 of the Treaty establishing the European Community (prohibition on agreements, etc. preventing, restricting or distorting competition);
  - (d) Article 82 of that Treaty (prohibition on abuse of a dominant position).
- (5) For the purpose of deciding under subsection (3) whether a person is unfit to be concerned in the management of a company the court—
  - (a) must have regard to whether subsection (6) applies to him;
  - (b) may have regard to his conduct as a director of a company in connection with any other breach of competition law;
  - (c) must not have regard to the matters mentioned in Schedule 1.
- (6) This subsection applies to a person if as a director of the company—
  - (a) his conduct contributed to the breach of competition law mentioned in subsection (2);
  - (b) his conduct did not contribute to the breach but he had reasonable grounds to suspect that the conduct of the undertaking constituted the breach and he took no steps to prevent it;
  - (c) he did not know but ought to have known that the conduct of the undertaking constituted the breach.
- (7) For the purposes of subsection (6)(a) it is immaterial whether the person knew that the conduct of the undertaking constituted the breach.
- (8) For the purposes of subsection (4)(a) or (c) references to the conduct of an undertaking are references to its conduct taken with the conduct of one or more other undertakings.
- (9) The maximum period of disqualification under this section is 15 years.

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- (10) An application under this section for a disqualification order may be made by the OFT or by a specified regulator.
- (11) Section 60 of the Competition Act 1998 (c. 41) (consistent treatment of questions arising under United Kingdom and Community law) applies in relation to any question arising by virtue of subsection (4)(a) or (b) above as it applies in relation to any question arising under Part 1 of that Act.

## **9B Competition undertakings**

- (1) This section applies if—
  - (a) the OFT or a specified regulator thinks that in relation to any person an undertaking which is a company of which he is a director has committed or is committing a breach of competition law,
  - (b) the OFT or the specified regulator thinks that the conduct of the person as a director makes him unfit to be concerned in the management of a company, and
  - (c) the person offers to give the OFT or the specified regulator (as the case may be) a disqualification undertaking.
- (2) The OFT or the specified regulator (as the case may be) may accept a disqualification undertaking from the person instead of applying for or proceeding with an application for a disqualification order.
- (3) A disqualification undertaking is an undertaking by a person that for the period specified in the undertaking he will not—
  - (a) be a director of a company;
  - (b) act as receiver of a company's property;
  - (c) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company;
  - (d) act as an insolvency practitioner.
- (4) But a disqualification undertaking may provide that a prohibition falling within subsection (3)(a) to (c) does not apply if the person obtains the leave of the court.
- (5) The maximum period which may be specified in a disqualification undertaking is 15 years.
- (6) If a disqualification undertaking is accepted from a person who is already subject to a disqualification undertaking under this Act or to a disqualification order the periods specified in those undertakings or the undertaking and the order (as the case may be) run concurrently.
- (7) Subsections (4) to (8) of section 9A apply for the purposes of this section as they apply for the purposes of that section but in the application of subsection (5) of that section the reference to the court must be construed as a reference to the OFT or a specified regulator (as the case may be).

## **9C Competition investigations**

- (1) If the OFT or a specified regulator has reasonable grounds for suspecting that a breach of competition law has occurred it or he (as the case may be) may carry out

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an investigation for the purpose of deciding whether to make an application under section 9A for a disqualification order.

- (2) For the purposes of such an investigation sections 26 to 30 of the Competition Act 1998 (c. 41) apply to the OFT and the specified regulators as they apply to the OFT for the purposes of an investigation under section 25 of that Act.
- (3) Subsection (4) applies if as a result of an investigation under this section the OFT or a specified regulator proposes to apply under section 9A for a disqualification order.
- (4) Before making the application the OFT or regulator (as the case may be) must—
  - (a) give notice to the person likely to be affected by the application, and
  - (b) give that person an opportunity to make representations.

## **9D Co-ordination**

- (1) The Secretary of State may make regulations for the purpose of co-ordinating the performance of functions under sections 9A to 9C (relevant functions) which are exercisable concurrently by two or more persons.
- (2) Section 54(5) to (7) of the Competition Act 1998 (c. 41) applies to regulations made under this section as it applies to regulations made under that section and for that purpose in that section—
  - (a) references to Part 1 functions must be read as references to relevant functions;
  - (b) references to a regulator must be read as references to a specified regulator;
  - (c) a competent person also includes any of the specified regulators.
- (3) The power to make regulations under this section must be exercised by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Such a statutory instrument may—
  - (a) contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks appropriate;
  - (b) make different provision for different cases.

## **9E Interpretation**

- (1) This section applies for the purposes of sections 9A to 9D.
- (2) Each of the following is a specified regulator for the purposes of a breach of competition law in relation to a matter in respect of which he or it has a function—
  - [<sup>F31</sup>(a) the Office of Communications;]
  - (b) the Gas and Electricity Markets Authority;
  - [<sup>F32</sup>(c) the Water Services Regulation Authority;]
  - (d) [<sup>F33</sup>Office of Rail Regulation];
  - (e) the Civil Aviation Authority.
- (3) The court is the High Court or (in Scotland) the Court of Session.
- (4) Conduct includes omission.
- (5) Director includes shadow director.]

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#### Textual Amendments

- F31** S. 9E(2)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406(1), 411(2), [Sch. 17 para. 83](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#)
- F32** S. 9E(2)(c) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 7 para. 25](#); S.I. 2005/2714, [art. 4\(f\)](#) (with [Sch. para. 8](#))
- F33** Words in s. 9E(2)(d) substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16(5), 120(1), [Sch. 2 para. 19\(j\)](#); S.I. 2004/827, [art. 4\(g\)](#)

#### *Other cases of disqualification*

### 10 Participation in wrongful trading.

- (1) Where the court makes a declaration under section 213 or 214 of the Insolvency Act that a person is liable to make a contribution to a company's assets, then, whether or not an application for such an order is made by any person, the court may, if it thinks fit, also make a disqualification order against the person to whom the declaration relates.
- (2) The maximum period of disqualification under this section is 15 years.

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

- C20** Ss. 9, 10 extended (with modifications) by [S.I. 1986/2142](#), [art. 6](#)
- C21** Ss. 9, 10 extended (with modifications) (1.7.1989) by [S.I. 1989/638](#), [regs. 20, 21](#)
- C22** S. 10 applied (1.12.1994) by [S.I. 1994/2421](#), [art. 16](#), [Sch. 8](#)

### 11 Undischarged bankrupts.

- [<sup>F34</sup>(1) It is an offence for a person to act as director of a company or directly or indirectly to take part in or be concerned in the promotion, formation or management of a company, without the leave of the court, at a time when—
- (a) he is an undischarged bankrupt, or
  - (b) a bankruptcy restrictions order is in force in respect of him.]
- (2) "The court" for this purpose is the court by which the person was adjudged bankrupt or, in Scotland, sequestration of his estates was awarded.
- (3) In England and Wales, the leave of the court shall not be given unless notice of intention to apply for it has been served on the official receiver; and it is the latter's duty, if he is of opinion that it is contrary to the public interest that the application should be granted, to attend on the hearing of the application and oppose it.

#### Textual Amendments

- F34** S. 11(1) substituted (1.4.2004) by [2002 c. 40](#), ss. 257(3), 279, [Sch. 21 para. 5](#); S.I. 2003/2093, [art. 2\(2\)](#), [Sch. 2](#) (subject to transitional provisions in [arts. 3-8](#) (as amended by [S.I. 2003/2332](#), [art. 2](#)))

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

- C23** Ss. 11, 12(2) extended (with modifications) (1.7.1989) by [S.I. 1989/638](#), [regs. 20, 21](#)

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## 12 Failure to pay under county court administration order.

- (1) The following has effect where a court under section 429 of the Insolvency Act revokes an administration order under Part VI of the <sup>M4</sup>County Courts Act 1984.
- (2) A person to whom that section applies by virtue of the order under section 429(2) (b) shall not, except with the leave of the court which made the order, act as director or liquidator of, or directly or indirectly take part or be concerned in the promotion, formation or management of, a company.

### Modifications etc. (not altering text)

**C24** Ss. 11, 12(2) extended (with modifications) (1.7.1989) by [S.I. 1989/638](#), [regs. 20, 21](#)

### Marginal Citations

**M4** [1984 c. 28](#).

## [<sup>F35</sup>12A Northern Irish disqualification orders.

A person subject to a disqualification order under Part II of the <sup>M5</sup>Companies (Northern Ireland) Order 1989—

- (a) shall not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of the High Court of Northern Ireland, and
- (b) shall not act as an insolvency practitioner.]

### Textual Amendments

**F35** S. 12A inserted (2.4.2001) by [2000 c. 39](#), [s. 7\(1\)](#); [S.I. 2001/766](#), [art. 2\(1\)\(a\)](#) (subject to transitional provisions in [art. 3](#))

### Marginal Citations

**M5** [S.I. 1989/2404 \(N.I. 18\)](#).

## [<sup>F36</sup>12B Northern Irish disqualification undertakings

A person subject to a disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002—

- (a) shall not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of the High Court of Northern Ireland, and
- (b) shall not act as an insolvency practitioner.]

### Textual Amendments

**F36** S. 12B inserted (1.9.2004) by [The Insolvency Act 2000 \(Company Directors Disqualification Undertakings\) Order 2004 \(S.I. 2004/1941\)](#), [art. 2\(2\)](#) (with [art. 1\(2\)](#))



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### Consequences of contravention

#### 13 Criminal penalties.

—If a person acts in contravention of a disqualification order or [F37 disqualification undertaking or in contravention] of section 12(2) [F38, 12A or 12B], or is guilty of an offence under section 11, he is liable—

- (a) on conviction on indictment, to imprisonment for not more than 2 years or a fine, or both; and
- (b) on summary conviction, to imprisonment for not more than 6 months or a fine not exceeding the statutory maximum, or both.

#### Textual Amendments

- F37** Words in s. 13 inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 8(a)(b)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F38** Words in s. 13 substituted (1.9.2004) by **The Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004 (S.I. 2004/1941)**, **art. 2(3)** (with art. 1(2))

#### 14 Offences by body corporate.

- (1) Where a body corporate is guilty of an offence of acting in contravention of a disqualification order [F39 or disqualification undertaking or in contravention of section 12A][F40 or 12B], and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

#### Textual Amendments

- F39** Words in s. 14(1) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 9**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F40** Words in s. 14(1) inserted (1.9.2004) by **The Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004 (S.I. 2004/1941)**, **art. 2(4)** (with art. 1(2))

#### 15 Personal liability for company's debts where person acts while disqualified.

- (1) A person is personally responsible for all the relevant debts of a company if at any time—
  - (a) in contravention of a disqualification order or [F41 disqualification undertaking or in contravention] of section 11 [F42, 12A or 12B] of this Act he is involved in the management of the company, or
  - (b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given without the leave of the court by a person whom he knows at that time to be the subject of a disqualification

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order <sup>F43</sup>or disqualification undertaking or a disqualification order under Part II of the <sup>M6</sup>Companies (Northern Ireland) Order 1989<sup>F44</sup> or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002] or to be an undischarged bankrupt.

- (2) Where a person is personally responsible under this section for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this section or otherwise, is so liable.
- (3) For the purposes of this section the relevant debts of a company are—
  - (a) in relation to a person who is personally responsible under paragraph (a) of subsection (1), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company, and
  - (b) in relation to a person who is personally responsible under paragraph (b) of that subsection, such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that paragraph.
- (4) For the purposes of this section, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.
- (5) For the purposes of this section a person who, as a person involved in the management of a company, has at any time acted on instructions given without the leave of the court by a person whom he knew at that time to be the subject of a disqualification order <sup>F45</sup>or disqualification undertaking or a disqualification order under Part II of the Companies (Northern Ireland) Order 1989<sup>F46</sup> or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002] or to be an undischarged bankrupt is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

#### Textual Amendments

- F41** Words in s. 15(1)(a) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 10(2)(a)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F42** Words in s. 15(1)(a) substituted (1.9.2004) by *The Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004* (S.I. 2004/1941), **art. 2(5)(a)(i)** (with art. 1(2))
- F43** Words in s. 15(1)(b) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 10(2)(b)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F44** Words in s. 15(1)(b) inserted (1.9.2004) by *The Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004* (S.I. 2004/1941), **art. 2(5)(a)(ii)** (with art. 1(2))
- F45** Words in s. 15(5) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 10(3)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F46** Words in s. 15(5) inserted (1.9.2004) by *The Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004* (S.I. 2004/1941), **art. 2(5)(b)** (with art. 1(2))

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

- C25** S. 15 extended (with modifications) by S.I. 1986/2142, **art. 6**
- C26** S. 15 extended (with modifications) (1.7.1989) by S.I. 1989/638, **regs. 20, 21**
- C27** S. 15 applied (1.12.1994) by S.I. 1994/2421, **art. 16, Sch. 8**

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### Marginal Citations

**M6** S.I. 1989/2404 (N.I. 18).

## Supplementary provisions

### 16 Application for disqualification order.

- (1) A person intending to apply for the making of a disqualification order by the court having jurisdiction to wind up a company shall give not less than 10 days' notice of his intention to the person against whom the order is sought; and on the hearing of the application the last-mentioned person may appear and himself give evidence or call witnesses.
  - (2) An application to a court with jurisdiction to wind up companies for the making against any person of a disqualification order under any of sections 2 to [F474] may be made by the Secretary of State or the official receiver, or by the liquidator or any past or present member or creditor of any company in relation to which that person has committed or is alleged to have committed an offence or other default.
  - (3) On the hearing of any application under this Act made by [F48 a person falling within subsection (4)], the applicant 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.
- [F49(4) The following fall within this subsection—
- (a) the Secretary of State;
  - (b) the official receiver;
  - (c) the OFT;
  - (d) the liquidator;
  - (e) a specified regulator (within the meaning of section 9E).]

### Textual Amendments

**F47** Figure in s. 16(2) substituted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 11(1)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3

**F48** Words in s. 16(3) substituted (20.6.2003) by 2002 c. 40, ss. 204(6), 279; S.I. 2003/1397, **art. 2**, **Sch.**

**F49** S. 16(4) inserted (20.6.2003) by 2002 c. 40, ss. 204(7), 279; S.I. 2003/1397, **art. 2**, **Sch.**

### Modifications etc. (not altering text)

**C28** Ss. 16, 17 extended (with modifications) (1.7.1989) by S.I. 1989/638, **regs. 20, 21**

### [F5017 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

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- (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.
- [ Where a person is subject to a disqualification undertaking accepted at any time under <sup>F51</sup>(3A) section 9B any application for leave for the purposes of section 9B(4) must be made to the High Court or (in Scotland) the Court of Session.]
- (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) [<sup>F52</sup>1A(1)(a) or 9B(4)] 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.
- [ Subsection (5) does not apply to an application for leave for the purposes of <sup>F53</sup>(6) section 1(1)(a) if the application for the disqualification order was made under section 9A.
- (7) In such a case and in the case of an application for leave for the purposes of section 9B(4) on the hearing of the application whichever of the OFT or a specified regulator (within the meaning of section 9E) applied for the order or accepted the undertaking (as the case may be)—
- (a) must appear and draw the attention of the court to any matters which appear to it or him (as the case may be) to be relevant;
  - (b) may give evidence or call witnesses.]]

#### Textual Amendments

- F50** S. 17 substituted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 12(1)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F51** S. 17(3A) inserted (20.6.2003) by 2002 c. 40, ss. 204(8), 279; S.I. 2003/1397, **art. 2**, Sch.
- F52** Words in s. 17(4) substituted (20.6.2003) by 2002 c. 40, ss. 204(9), 279; S.I. 2003/1397, **art. 2**, Sch.
- F53** S. 17(6)(7) inserted (20.6.2003) by 2002 c. 40, ss. 204(10), 279; S.I. 2003/1397, **art. 2**, Sch.

#### 18 [<sup>F54</sup> Register of disqualification orders and undertakings.]

- (1) The Secretary of State may make regulations requiring officers of courts to furnish him with such particulars as the regulations may specify of cases in which—
- (a) a disqualification order is made, or
  - (b) any action is taken by a court in consequence of which such an order [<sup>F55</sup>or a disqualification undertaking] is varied or ceases to be in force, or

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- (c) leave is granted by a court for a person subject to such an order to do any thing which otherwise the order prohibits him from doing; <sup>F56</sup>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]
- and the regulations may specify the time within which, and the form and manner in which, such particulars are to be furnished.
- (2) The Secretary of State shall, from the particulars so furnished, continue to maintain the register of orders, and of cases in which leave has been granted as mentioned in subsection (1)(c), which was set up by him under section 29 of the <sup>M7</sup>Companies Act 1976 and continued under section 301 of the <sup>M8</sup>Companies Act 1985.
- <sup>F57</sup>(2A) The Secretary of State must include in the register such particulars as he considers appropriate of—
- (a) disqualification undertakings accepted by him under section 7 or 8;
  - (b) disqualification undertakings accepted by the OFT or a specified regulator under section 9B;
  - (c) cases in which leave has been granted as mentioned in subsection (1)(d).]
- (3) When an order <sup>F58</sup>or undertaking] of which entry is made in the register ceases to be in force, the Secretary of State shall delete the entry from the register and all particulars relating to it which have been furnished to him under this section or any previous corresponding provision <sup>F58</sup>and, in the case of a disqualification undertaking, any other particulars he has included in the register].
- (4) The register shall be open to inspection on payment of such fee as may be specified by the Secretary of State in regulations.
- <sup>F59</sup>(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 <sup>M9</sup>Companies (Northern Ireland) Order 1989 <sup>F60</sup>or disqualification undertakings made under the Company Directors Disqualification (Northern Ireland) Order 2002].]
- (5) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F54** S. 18 sidenote substituted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 13(6)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F55** Words in s. 18(1)(b) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 13(2)(a)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F56** S. 18(1)(d) and word inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 13(2)(b)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F57** S. 18(2A) substituted (20.6.2003) by 2002 c. 40, ss. 204(11), 279; S.I. 2003/1397, **art. 2**, Sch.
- F58** Words in s. 18(3) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 13(4)(a)(b)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F59** S. 18(4A) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 13(5)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F60** Words in s. 18(4A) inserted (1.9.2004) by **The Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004** (S.I. 2004/1941), **art. 2(6)** (with art. 1(2))

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

**C29** S. 18(2) extended (6.4.2001) by [S.I. 2001/967](#), [regs. 5, 9\(1\)](#)

#### Marginal Citations

**M7** [1976 c. 69](#).

**M8** [1985 c. 6](#).

**M9** [S.I. 1989/2404 \(N.I. 18\)](#).

## 19 Special savings from repealed enactments.

Schedule 2 to this Act has effect—

- (a) in connection with certain transitional cases arising under sections 93 and 94 of the <sup>M10</sup>Companies Act 1981, so as to limit the power to make a disqualification order, or to restrict the duration of an order, by reference to events occurring or things done before those sections came into force,
- (b) to preserve orders made under section 28 of the Companies Act 1976 (repealed by the Act of 1981), and
- (c) to preclude any applications for a disqualification order under section 6 or 8, where the relevant company went into liquidation before 28th April 1986.

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

**C30** Ss. 19(c), 20 extended (with modifications) by [S.I. 1986/2142](#), [art. 6](#)

**C31** S. 19(c) applied (1.12.1994) [S.I. 1994/2421](#), [art. 16](#), [Sch. 8](#)

#### Marginal Citations

**M10** [1981 c. 62](#).

### *Miscellaneous and general*

## 20 Admissibility in evidence of statements.

<sup>F61</sup>(1) In any proceedings (whether or not under this Act), any statement made in pursuance of a requirement imposed by or under sections 6 to 10, 15 or 19(c) of, or Schedule 1 to, this Act, or by or under rules made for the purposes of this Act under the Insolvency Act, may be used in evidence against any person making or concurring in making the statement.

[<sup>F62</sup>(2) However, in criminal proceedings in which any such person is charged with an offence to which this subsection applies—

- (a) no evidence relating to the statement may be adduced, and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Subsection (2) applies to any offence other than—

- (a) an offence which is—
  - (i) created by rules made for the purposes of this Act under the Insolvency Act, and

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- (ii) designated for the purposes of this subsection by such rules or by regulations made by the Secretary of State;
  - (b) an offence which is—
    - (i) created by regulations made under any such rules, and
    - (ii) designated for the purposes of this subsection by such regulations;
  - (c) an offence under section 5 of the <sup>M11</sup>Perjury Act 1911 (false statements made otherwise than on oath); or
  - (d) an offence under section 44(2) of the <sup>M12</sup>Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath).
- (4) Regulations under subsection (3)(a)(ii) shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.]

#### Textual Amendments

- F61** S. 20 renumbered as s. 20(1) (E.W.) (14.4.2000) and (S.) (1.1.2001) by 1999 c. 23, ss. 59, **Sch. 3 para. 8(2)** (with s. 63(2), **Sch. 7 paras. 3(3), 5(2)**); S.I. 2000/1034, **art. 2(a)** and S.S.I. 2000/445, **art. 2**
- F62** S. 20(2)-(4) inserted (E.W.) (14.4.2000) and (S.) (1.1.2001) by 1999 c. 23, ss. 59, **Sch. 3 para. 8(1)(3)** (with s. 63(2), **Sch. 7 paras. 3(3), 5(2)**); S.I. 2000/1034, **art. 2(a)** and S.S.I. 2000/445, **art. 2**

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

- C32** Ss. 19(c), 20 extended (with modifications) by S.I. 1986/2142, **art. 6**
- C33** S. 20 extended (with modifications) (1.7.1989) by S.I. 1989/638, **regs. 20, 21**
- C34** S. 20 applied (1.12.1994) by S.I. 1994/2421, **art. 16, Sch. 8**

#### Marginal Citations

- M11** 1911 c. 6.
- M12** 1995 c. 39.

VALID FROM 06/04/2008

## 20A Legal professional privilege

In proceedings against a person for an offence under this Act nothing in this Act is to be taken to require any person to disclose any information that he is entitled to refuse to disclose on grounds of legal professional privilege (in Scotland, confidentiality of communications).

## 21 Interaction with Insolvency Act.

- (1) References in this Act to the official receiver, in relation to the winding up of a company or the bankruptcy of an individual, are to any person who, by virtue of section 399 of the Insolvency Act, is authorised to act as the official receiver in relation to that winding up or bankruptcy; and, in accordance with section 401(2) of that Act, references in this Act to an official receiver includes a person appointed as his deputy.
- (2) Sections [F63 1A]6 to 10 [F63 13, 14], 15, 19(c) and 20 of, and Schedule 1 to, this Act [F63 and sections 1 and 17 of this Act as they apply for the purposes of those provisions] are deemed included in Parts I to VII of the Insolvency Act for the purposes of the following sections of that Act—

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section 411 (power to make insolvency rules);  
 section 414 (fees orders);  
 section 420 (orders extending provisions about insolvent companies to insolvent partnerships);  
 section 422 (modification of such provisions in their application to recognised banks); . . . <sup>F64</sup>

(3) Section 434 of that Act (Crown application) applies to sections [<sup>F65</sup>1A]6 to 10 [<sup>F65</sup>13, 14], 15, 19(c) and 20 of, and Schedule 1 to, this Act [<sup>F65</sup>and sections 1 and 17 of this Act as they apply for the purposes of those provisions]as it does to the provisions of that Act which are there mentioned.

[<sup>F66</sup>(4) For the purposes of summary proceedings in Scotland, section 431 of that Act applies to summary proceedings for an offence under section 11 or 13 of this Act as it applies to summary proceedings for an offence under Parts I to VII of the Act.]

#### Textual Amendments

- F63** Words in s. 21(2) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 14(2)(a)(b)(c)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F64** Word repealed by **Companies Act 1989** (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**
- F65** Words in s. 21(3) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 14(3)(a)(b)(c)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F66** S. 21(4) added by **Companies Act 1989** (c. 40, SIF 27), **ss. 208**, 213(2)

VALID FROM 21/02/2009

#### [<sup>F67</sup>21A Bank insolvency

Section 121 of the Banking Act 2009 provides for this Act to apply in relation to bank insolvency as it applies in relation to liquidation.]

#### Textual Amendments

- F67** S. 21A inserted (21.2.2009) by **Banking Act 2009** (c. 1), ss. 121(4), 263(1) (with s. 247); S.I. 2009/296, **art. 3**, **Sch. para. 2**

VALID FROM 21/02/2009

#### [<sup>F68</sup>21B Bank administration

Section 155 of the Banking Act 2009 provides for this Act to apply in relation to bank administration as it applies in relation to liquidation.]



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#### Textual Amendments

**F68** S. 21B inserted (21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 155\(4\), 263\(1\) \(with s. 247\); S.I. 2009/296, art. 3, Sch. para. 3](#)

VALID FROM 29/03/2009

#### [<sup>F69</sup>21C Building society insolvency and special administration

Section 90E of the Building Societies Act 1986 provides for this Act to apply in relation to building society insolvency and building society special administration as it applies in relation to liquidation.]

#### Textual Amendments

**F69** S. 21C inserted (29.3.2009) by [The Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\), art. 12](#)

## 22 Interpretation.

- (1) This section has effect with respect to the meaning of expressions used in this Act, and applies unless the context otherwise requires.
- (2) The expression “company”—
  - (a) in section 11, includes an unregistered company and a company incorporated outside Great Britain which has an established place of business in Great Britain, and
  - (b) elsewhere, includes any company which may be wound up under Part V of the Insolvency Act.
- (3) Section 247 in Part VII of the Insolvency Act (interpretation for the first Group of Parts of that Act) applies as regards references to a company’s insolvency and to its going into liquidation; and “administrative receiver” has the meaning given by section 251 of that Act [<sup>F70</sup>and references to acting as an insolvency practitioner are to be read in accordance with section 388 of that Act].
- (4) “Director” includes any person occupying the position of director, by whatever name called <sup>F71</sup> . . . .
- (5) “Shadow director”, in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act (but so that a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity).
- (6) Section 740 of the Companies Act applies as regards the meaning of “body corporate”; and “officer” has the meaning given by section 744 of that Act.
- (7) In references to legislation other than this Act—

“the Companies Act” means the <sup>M13</sup>Companies Act 1985;

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“the Companies Acts” has the meaning given by section 744 of that Act; and

“the Insolvency Act” means the Insolvency Act 1986;

and in sections 3(1) and 5(1) of this Act “the companies legislation” means the Companies Acts (except the Insider Dealing Act), Parts I to VII of the Insolvency Act and, in Part XV of that Act, sections 411, 413, 414, 416 and 417.

- (8) Any reference to provisions, or a particular provision, of the Companies Acts or the Insolvency Act includes the corresponding provisions or provision of the former Companies Acts (as defined by section 735(1)(c) of the Companies Act, but including also that Act itself) or, as the case may be, the <sup>M14</sup>Insolvency Act 1985.
- (9) Any expression for whose interpretation provision is made by Part XXVI of the Companies Act (and not by subsections (3) to (8) above) is to be construed in accordance with that provision.

[<sup>F72</sup>(10) Any reference to acting as receiver—

- (a) includes acting as manager or as both receiver and manager, but
- (b) does not include acting as administrative receiver;

and “receivership” is to be read accordingly.]

#### Textual Amendments

- F70** Words in s. 22(3) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 15(2)**; S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
- F71** Words in s. 22(4) repealed (2.4.2001) by 2000 c. 39, s. 8, 15(1), **Sch. 4 Pt. I para. 15(3)**, **Sch. 5**; S.I. 2001/766, **art. 2(1)(a)(c)(ii)** (subject to transitional provisions in art. 3)
- F72** S. 22(10) inserted (2.4.2001) by 2000 c. 39, s. 5(3); S.I. 2001/766, **art. 2(1)(a)** (subject to transitional provisions in art. 3)

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

- C35** S. 22 extended (with modifications) (1.7.1989) by S.I. 1989/638, **regs. 20, 21**

#### Marginal Citations

- M13** 1985 c. 6.
- M14** 1985 c. 65.

#### [<sup>F73</sup>22A Application of Act to building societies.

- (1) This Act applies to building societies as it applies to companies.
- (2) References in this Act to a company, or to a director or an officer of a company include, respectively, references to a building society within the meaning of the Building Societies Act 1986 or to a director or officer, within the meaning of that Act, of a building society.
- (3) In relation to a building society the definition of “shadow director” in section 22(5) applies with the substitution of “building society” for “company”.
- (4) In the application of Schedule 1 to the directors of a building society, references to provisions of the Insolvency Act or the Companies Act include references to the corresponding provisions of the Building Societies Act 1986.]

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#### Textual Amendments

**F73** S. 22A added by [Companies Act 1989 \(c. 40, SIF 27\)](#), **s. 211(3)**

### [22B <sup>F74</sup> Application of Act to incorporated friendly societies.

- (1) This Act applies to incorporated friendly societies as it applies to companies.
- (2) References in this Act to a company, or to a director or an officer of a company include, respectively, references to an incorporated friendly society within the meaning of the Friendly Societies Act 1992 or to a member of the committee of management or officer, within the meaning of that Act, of an incorporated friendly society.
- (3) In relation to an incorporated friendly society every reference to a shadow director shall be omitted.
- (4) In the application of Schedule 1 to the members of the committee of management of an incorporated friendly society, references to provisions of the Insolvency Act or the Companies Act include references to the corresponding provisions of the Friendly Societies Act 1992.]

#### Textual Amendments

**F74** S. 22B added (1.2.1993) by [Friendly Societies Act 1992 \(c. 40\)](#), ss. 120, **Sch. 21 Pt. I para. 8** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3**

VALID FROM 01/10/2009

### [<sup>F75</sup>22C Application of Act to NHS foundation trusts

- (1) This Act applies to NHS foundation trusts as it applies to companies within the meaning of this Act.
- (2) References in this Act to a company, or to a director or officer of a company, include, respectively, references to an NHS foundation trust or to a director or officer of the trust; but references to shadow directors are omitted.
- (3) In the application of Schedule 1 to the directors of an NHS foundation trust, references to the provisions of [<sup>F76</sup>the Companies Act 2006 or the Insolvency Act 1986] include references to the corresponding provisions of [<sup>F77</sup>Chapter 5 of Part 2 of the National Health Service Act 2006].]

#### Textual Amendments

**F75** S. 22C inserted (20.11.2003 for certain purposes and 1.4.2004 for E.W. otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 34, 199, **Sch. 4 para. 68**; S.I. 2004/759, **art. 2**

**F76** Words in s. 22C(3) 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(12)** (with art. 10)

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**F77** Words in s. 22C(3) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), ss. 2, 8\(2\), Sch. 1 para. 92](#) (with Sch. 3 Pt. 1)

VALID FROM 01/10/2009

**[<sup>F78</sup>22D Application of Act to open-ended investment companies**

- (1) This Act applies to open-ended investment companies with the following modifications.
- (2) In section 8(1) (disqualification after investigation), the reference to investigative material shall be read as including a report made by inspectors under regulations made by virtue of section 262(2)(k) of the Financial Services and Markets Act 2000.
- (3) In the application of Part 1 of Schedule 1 (matters for determining unfitness of directors: matters applicable in all cases) in relation to a director of an open-ended investment company, a reference to a provision of the Companies Act 2006 is to be taken to be a reference to the corresponding provision of the Open-Ended Investment Companies Regulations 2001 or of rules made under regulation 6 of those Regulations.
- (4) In this section “open-ended investment company” has the meaning given by section 236 of the Financial Services and Markets Act 2000.]

**Textual Amendments**

**F78** S. 22D 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\(13\)](#) (with art. 10)

**23 Transitional provisions, savings, repeals.**

- (1) The transitional provisions and savings in Schedule 3 to this Act have effect, and are without prejudice to anything in the <sup>M15</sup> Interpretation Act 1978 with regard to the effect of repeals.
- (2) The enactments specified in the second column of Schedule 4 to this Act are repealed to the extent specified in the third column of that Schedule.

**Marginal Citations**

**M15** 1978 c. 30.

**24 Extent.**

- (1) This Act extends to England and Wales and to Scotland.
- (2) Nothing in this Act extends to Northern Ireland.

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**25 Commencement.**

This Act comes into force simultaneously with the Insolvency Act 1986.

**26 Citation.**

This Act may be cited as the Company Directors Disqualification Act 1986.

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## SCHEDULES

### SCHEDULE 1

Section 9.

#### MATTERS FOR DETERMINING UNFITNESS OF DIRECTORS

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

**C36** Sch. 1 extended (with modifications) by S.I. 1986/2142, art. 6

**C37** Sch. 1 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 16, Sch. 8

#### PART I

##### MATTERS APPLICABLE IN ALL CASES

- 1 Any misfeasance or breach of any fiduciary or other duty by the director in relation to the company.
- 2 Any misapplication or retention by the director of, or any conduct by the director giving rise to an obligation to account for, any money or other property of the company.
- 3 The extent of the director's responsibility for the company entering into any transaction liable to be set aside under Part XVI of the Insolvency Act (provisions against debt avoidance).
- 4 The extent of the director's responsibility for any failure by the company to comply with any of the following provisions of the Companies Act, namely—
  - (a) section 221 (companies to keep accounting records);
  - (b) section 222 (where and for how long records to be kept);
  - (c) section 288 (register of directors and secretaries);
  - (d) section 352 (obligation to keep and enter up register of members);
  - (e) section 353 (location of register of members);
  - [<sup>F79</sup>(f) section 363 (duty of company to make annual returns);]
  - [<sup>F80</sup>(h) sections 398 and 703D (duty of company to deliver particulars of charges on its property).]

**Textual Amendments**

**F79** Sch. 1 para. 4(f) substituted for sub-paras. (f) and (g) by Companies Act 1989 (c. 40, SIF 27), ss. 139(4), 213(2)

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**F80** Sch. 1 para. 4(h) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 107, 213(2), 215(2) Sch. 16 para. 4

VALID FROM 06/04/2008

[<sup>F81</sup>4A The extent of the director's responsibility for any failure by the company to comply with any of the following provisions of the Companies Act 2006, namely—  
(a) section 386 (companies to keep accounting records); and  
(b) section 388 (where and for how long records to be kept).]

#### Textual Amendments

**F81** Sch. 1 paras. 4, 4A substituted (6.4.2008) for Sch. 1 para. 4 by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 3(1), **Sch. 1 para. 106(8)(a)** (with arts. 6, 11, 12)

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

**C38** Sch. 1 para. 4 substituted (1.10.2009) for Sch. 1 paras. 4, 4A by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 85(14)(b)** (with art. 10)

[<sup>F82</sup>5 The extent of the director's responsibility for any failure by the directors of the company to comply with—  
(a) section 226 or 227 of the Companies Act (duty to prepare annual accounts),  
or  
(b) section 233 of that Act (approval and signature of accounts).]

#### Textual Amendments

**F82** Sch. 1 para. 5 substituted (subject to the transitional and saving provisions mentioned in S.I. 1990/355, arts. 6–9) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 35(3)**

[<sup>F83</sup>5A In the application of this Part of this Schedule in relation to any person who is a director of an open-ended investment company, any reference to a provision of the Companies Act is to be taken to be a reference to the corresponding provision of the Open-Ended Investment Companies Regulations 2001 or of any rules made under regulation 6 of those Regulations (Financial Services Authority rules).]

#### Textual Amendments

**F83** Sch. 1 para. 5A substituted (1.12.2001) by S.I. 2001/1228, reg. 84, **Sch. 7 Pt. I para. 9** (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**

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## PART II

### MATTERS APPLICABLE WHERE COMPANY HAS BECOME INSOLVENT

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

**C39** Sch. 1 Pt. II applied (with modifications) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. II

- 6 The extent of the director's responsibility for the causes of the company becoming insolvent.
- 7 The extent of the director's responsibility for any failure by the company to supply any goods or services which have been paid for (in whole or in part).
- 8 The extent of the director's responsibility for the company entering into any transaction or giving any preference, being a transaction or preference—
- (a) liable to be set aside under section 127 or sections 238 to 240 of the Insolvency Act, or
  - (b) challengeable under section 242 or 243 of that Act or under any rule of law in Scotland.
- 9 The extent of the director's responsibility for any failure by the directors of the company to comply with section 98 of the Insolvency Act (duty to call creditors' meeting in creditors' voluntary winding up).
- 10 Any failure by the director to comply with any obligation imposed on him by or under any of the following provisions of the Insolvency Act —
- (a) [<sup>F84</sup>paragraph 47 of Schedule B1](company's statement of affairs in administration);
  - (b) section 47 (statement of affairs to administrative receiver);
  - (c) section 66 (statement of affairs in Scottish receivership);
  - (d) section 99 (directors' duty to attend meeting; statement of affairs in creditors' voluntary winding up);
  - (e) section 131 (statement of affairs in winding up by the court);
  - (f) section 234 (duty of any one with company property to deliver it up);
  - (g) section 235 (duty to co-operate with liquidator, etc.).

#### Textual Amendments

**F84** Words in Sch. 1 para. 10(a) substituted (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 4, Sch. para. 12 (with art. 6)



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## SCHEDULE 2

Section 19.

### SAVINGS FROM COMPANIES ACT 1981 SS. 93, 94, AND INSOLVENCY ACT 1985 SCHEDULE 9

- 1 Sections 2 and 4(1)(b) do not apply in relation to anything done before 15th June 1982 by a person in his capacity as liquidator of a company or as receiver or manager of a company's property.
- 2 Subject to paragraph 1—
- (a) section 2 applies in a case where a person is convicted on indictment of an offence which he committed (and, in the case of a continuing offence, has ceased to commit) before 15th June 1982; but in such a case a disqualification order under that section shall not be made for a period in excess of 5 years;
- (b) that section does not apply in a case where a person is convicted summarily—
- (i) in England and Wales, if he had consented so to be tried before that date, or
- (ii) in Scotland, if the summary proceedings commenced before that date.
- 3 Subject to paragraph 1, section 4 applies in relation to an offence committed or other thing done before 15th June 1982; but a disqualification order made on the grounds of such an offence or other thing done shall not be made for a period in excess of 5 years.
- 4 The powers of a court under section 5 are not exercisable in a case where a person is convicted of an offence which he committed (and, in the case of a continuing offence, had ceased to commit) before 15th June 1982.
- 5 For purposes of section 3(1) and section 5, no account is to be taken of any offence which was committed, or any default order which was made, before 1st June 1977.
- 6 An order made under section 28 of the <sup>M16</sup>Companies Act 1976 has effect as if made under section 3 of this Act; and an application made before 15th June 1982 for such an order is to be treated as an application for an order under the section last mentioned.

#### Marginal Citations

M16 1976 c. 69.

- 7 Where—
- (a) an application is made for a disqualification order under section 6 of this Act by virtue of paragraph (a) of subsection (2) of that section, and
- (b) the company in question went into liquidation before 28th April 1986 (the coming into force of the provision replaced by section 6),
- the court shall not make an order under that section unless it could have made a disqualification order under section 300 of the Companies Act as it had effect immediately before the date specified in sub-paragraph (b) above.
- 8 An application shall not be made under section 8 of this Act in relation to a report made or information or documents obtained before 28th April 1986.

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## SCHEDULE 3

Section 23(1).

## TRANSITIONAL PROVISIONS AND SAVINGS

- 1 In this Schedule, “the former enactments” means so much of the Companies Act, and so much of the Insolvency Act, as is repealed and replaced by this Act; and “the appointed day” means the day on which this Act comes into force.
- 2 So far as anything done or treated as done under or for the purposes of any provision of the former enactments could have been done under or for the purposes of the corresponding provision of this Act, it is not invalidated by the repeal of that provision but has effect as if done under or for the purposes of the corresponding provision; and any order, regulation, rule or other instrument made or having effect under any provision of the former enactments shall, insofar as its effect is preserved by this paragraph, be treated for all purposes as made and having effect under the corresponding provision.
- 3 Where any period of time specified in a provision of the former enactments is current immediately before the appointed day, this Act has effect as if the corresponding provision had been in force when the period began to run; and (without prejudice to the foregoing) any period of time so specified and current is deemed for the purposes of this Act—
- (a) to run from the date or event from which it was running immediately before the appointed day, and
  - (b) to expire (subject to any provision of this Act for its extension) whenever it would have expired if this Act had not been passed;
- and any rights, priorities, liabilities, reliefs, obligations, requirements, powers, duties or exemptions dependent on the beginning, duration or end of such a period as above mentioned shall be under this Act as they were or would have been under the former enactments.
- 4 Where in any provision of this Act there is a reference to another such provision, and the first-mentioned provision operates, or is capable of operating, in relation to things done or omitted, or events occurring or not occurring, in the past (including in particular past acts of compliance with any enactment, failures of compliance, contraventions, offences and convictions of offences) the reference to the other provision is to be read as including a reference to the corresponding provision of the former enactments.
- 5 Offences committed before the appointed day under any provision of the former enactments may, notwithstanding any repeal by this Act, be prosecuted and punished after that day as if this Act had not passed.
- 6 A reference in any enactment, instrument or document (whether express or implied, and in whatever phraseology) to a provision of the former enactments (including the corresponding provision of any yet earlier enactment) is to be read, where necessary to retain for the enactment, instrument or document the same force and effect as it would have had but for the passing of this Act, as, or as including, a reference to the corresponding provision by which it is replaced in this Act.

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## SCHEDULE 4

Section 23(2).

## REPEALS

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1985 c. 6.	The Companies Act 1985.	Sections 295 to 299. Section 301. Section 302. Schedule 12. In Schedule 24, the entries relating to sections 295(7) and 302(1).
1985 c. 65.	The Insolvency Act 1985.	Sections 12 to 14. Section 16. Section 18. Section 108(2). Schedule 2. In Schedule 6, paragraphs 1, 2, 7 and 14. In Schedule 9, paragraphs 2 and 3.

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