



Company Directors Disqualification Act 1986

1986 CHAPTER 46

Disqualification for unfitness

6 Duty of court to disqualify unfit directors of insolvent companies. E+W+S

- (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,
 - (b) an administration order is made in relation to the company, or
 - (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.

- [^{F1}(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

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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 ^{M1}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]
- (4) Under this section the minimum period of disqualification is 2 years, and the maximum period is 15 years.

Textual Amendments

- F1** 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**)

Modifications etc. (not altering text)

- C1** Ss. 4–6 extended (with modifications) (1.7.1989) by S.I. 1989/638, **regs. 20, 21**
- C2** Ss. 6–7 extended (with modifications) by S.I. 1986/2142, **art. 6**
- C3** 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

- M1** 1986 c. 45.

7 [F2 Disqualification order or undertaking; and reporting provisions.] **E+W+S**

- (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 [F3 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

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period of 2 years beginning with the day on which the company of which that person is or has been a director became insolvent.

[^{F4}(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,
 - (c) in the case of a company in relation to which an administration order is in force, the administrator, or
 - (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

- F2** 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)
- F3** 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)
- F4** 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)

Modifications etc. (not altering text)

- C4** S. 7 extended (with modifications) (1.7.1989) by S.I. 1989/638, **regs. 20, 21**
- C5** 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. 2001/3538, **art. 2(1)**

8 Disqualification after investigation of company. **E+W+S**

[^{F5}(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

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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 or 448 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.

[^{F6}(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.

Textual Amendments

- F5** S. 8(1)(1A) substituted (1.12.2001) for s. 8(1) by S.I. 2001/3649, **arts. 1, 39**
- F6** 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)

- C6** S. 8 extended (with modifications) by S.I. 1986/2142, **art. 6**
- C7** S. 8 extended (with modifications) (1.7.1989) by S.I. 1989/638, **regs. 20, 21**
- C8** 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**)

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[^{F7}8A Variation etc. of disqualification undertaking. E+W+S]

- (1) The court may, on the application of a person who is subject to a disqualification undertaking—
 - (a) reduce the period for which the undertaking is to be in force, or
 - (b) 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.
- (3) In this section “the court” has the same meaning as in section 7(2) or (as the case may be) 8.]

Textual Amendments

- F7** 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)

9 Matters for determining unfitness of directors. E+W+S

- (1) Where it falls to a court to determine whether a person’s conduct as a director ^{F8} . . . 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.

- [^{F9}(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 [^{F10}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.

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- (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

- F8** 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)
- F9** 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)
- F10** 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)
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Modifications etc. (not altering text)

- C9** Ss. 9, 10 extended (with modifications) by S.I. 1986/2142, **art. 6**
- C10** Ss. 9, 10 extended (with modifications) (1.7.1989) by S.I. 1989/638, **regs. 20, 21**
- C11** S. 9 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 16, **Sch. 8**

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