



Small Business, Enterprise and Employment Act 2015

2015 CHAPTER 26

PART 9 **U.K.**

DIRECTORS' DISQUALIFICATION ETC

Determining unfitness

106 Determining unfitness and disqualifications: matters to be taken into account **U.K.**

- (1) The Company Directors Disqualification Act 1986 is amended as follows.
- (2) In section 6 (duty of court to disqualify unfit directors of insolvent companies)—
 - (a) in subsection (1)(b), for “any other company or companies” substitute “one or more other companies or overseas companies”,
 - (b) after subsection (1) insert—

“(1A) In this section references to a person's conduct as a director of any company or overseas company include, where that company or overseas company has become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency.”,
 - (c) in subsection (2), omit the words from “and references” to the end, and
 - (d) after subsection (2) insert—

“(2A) For the purposes of this section, an overseas company becomes insolvent if the company enters into insolvency proceedings of any description (including interim proceedings) in any jurisdiction.”
- (3) In section 8 (disqualification where expedient in public interest)—

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- (a) in subsection (2), after “the company” insert “ (either taken alone or taken together with his conduct as a director or shadow director of one or more other companies or overseas companies) ”,
- (b) in subsection (2A)(a), after “shadow director” insert “ (either taken alone or taken together with his conduct as a director or shadow director of one or more other companies or overseas companies) ”, and
- (c) after subsection (2A) insert—
 - “(2B) Subsection (1A) of section 6 applies for the purposes of this section as it applies for the purposes of that section.”

(4) Omit section 9 (matters for determining unfitness of directors).

(5) After section 12B insert—

“12C Determining unfitness etc: matters to be taken into account

- (1) This section applies where a court must determine—
 - (a) whether a person's conduct as a director of one or more companies or overseas companies makes the person unfit to be concerned in the management of a company;
 - (b) whether to exercise any discretion it has to make a disqualification order under any of sections 2 to 4, 5A, 8 or 10;
 - (c) where the court has decided to make a disqualification order under any of those sections or is required to make an order under section 6, what the period of disqualification should be.
- (2) But this section does not apply where the court in question is one mentioned in section 2(2)(b) or (c).
- (3) This section also applies where the Secretary of State must determine—
 - (a) whether a person's conduct as a director of one or more companies or overseas companies makes the person unfit to be concerned in the management of a company;
 - (b) whether to exercise any discretion the Secretary of State has to accept a disqualification undertaking under section 5A, 7 or 8.
- (4) In making any such determination in relation to a person, the court or the Secretary of State must—
 - (a) in every case, have regard in particular to the matters set out in paragraphs 1 to 4 of Schedule 1;
 - (b) in a case where the person concerned is or has been a director of a company or overseas company, also have regard in particular to the matters set out in paragraphs 5 to 7 of that Schedule.
- (5) In this section “director” includes a shadow director.
- (6) Subsection (1A) of section 6 applies for the purposes of this section as it applies for the purposes of that section.
- (7) The Secretary of State may by order modify Schedule 1; and such an order may contain such transitional provision as may appear to the Secretary of State to be necessary or expedient.

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- (8) The power to make an order under this section is exercisable by statutory instrument.
- (9) An order under this section may not be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.”
- (6) For Schedule 1 (matters determining unfitness of directors) substitute—

“SCHEDULE

Section 12C

1 U.K.

DETERMINING UNFITNESS ETC: MATTERS TO BE TAKEN INTO ACCOUNT

Matters to be taken into account in all cases

- 1 The extent to which the person was responsible for the causes of any material contravention by a company or overseas company of any applicable legislative or other requirement.
- 2 Where applicable, the extent to which the person was responsible for the causes of a company or overseas company becoming insolvent.
- 3 The frequency of conduct of the person which falls within paragraph 1 or 2.
- 4 The nature and extent of any loss or harm caused, or any potential loss or harm which could have been caused, by the person's conduct in relation to a company or overseas company.

Additional matters to be taken into account where person is or has been a director

- 5 Any misfeasance or breach of any fiduciary duty by the director in relation to a company or overseas company.
- 6 Any material breach of any legislative or other obligation of the director which applies as a result of being a director of a company or overseas company.
- 7 The frequency of conduct of the director which falls within paragraph 5 or 6.

Interpretation

- 8 Subsections (1A) to (2A) of section 6 apply for the purposes of this Schedule as they apply for the purposes of that section.
- 9 In this Schedule “director” includes a shadow director.”

Commencement Information

- 11** S. 106 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)
- 12** S. 106 in force at 1.10.2015 in so far as not already in force by S.I. 2015/1689, reg. 2(d) (with Sch. para. 2)

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107 Reports of office-holders on conduct of directors of insolvent companies **U.K.**

- (1) The Company Directors Disqualification Act 1986 is amended in accordance with subsections (2) to (4).
- (2) After section 7 insert—

“7A Office-holder's report on conduct of directors

- (1) The office-holder in respect of a company which is insolvent must prepare a report (a “conduct report”) about the conduct of each person who was a director of the company—
 - (a) on the insolvency date, or
 - (b) at any time during the period of 3 years ending with that date.
- (2) For the purposes of this section a company is insolvent if—
 - (a) the company is in liquidation and at the time it went into liquidation its assets were insufficient for the payment of its debts and other liabilities and the expenses of the winding up,
 - (b) the company has entered administration, or
 - (c) an administrative receiver of the company has been appointed;and subsection (1A) of section 6 applies for the purposes of this section as it applies for the purpose of that section.
- (3) A conduct report must, in relation to each person, describe any conduct of the person which may assist the Secretary of State in deciding whether to exercise the power under section 7(1) or (2A) in relation to the person.
- (4) The office-holder must send the conduct report to the Secretary of State before the end of—
 - (a) the period of 3 months beginning with the insolvency date, or
 - (b) such other longer period as the Secretary of State considers appropriate in the particular circumstances.
- (5) If new information comes to the attention of an office-holder, the office-holder must send that information to the Secretary of State as soon as reasonably practicable.
- (6) “New information” is information which an office-holder considers should have been included in a conduct report prepared in relation to the company, or would have been so included had it been available before the report was sent.
- (7) If there is more than one office-holder in respect of a company at any particular time (because the company is insolvent by virtue of falling within more than one paragraph of subsection (2) at that time), subsection (1) applies only to the first of the office-holders to be appointed.
- (8) In the case of a company which is at different times insolvent by virtue of falling within one or more different paragraphs of subsection (2)—
 - (a) the references in subsection (1) to the insolvency date are to be read as references to the first such date during the period in which the company is insolvent, and

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- (b) subsection (1) does not apply to an office-holder if at any time during the period in which the company is insolvent a conduct report has already been prepared and sent to the Secretary of State.
- (9) The “office-holder” in respect of a company which is insolvent is—
- (a) in the case of a company being wound up by the court in England and Wales, the official receiver;
 - (b) in the case of a company being wound up otherwise, the liquidator;
 - (c) in the case of a company in administration, the administrator;
 - (d) in the case of a company of which there is an administrative receiver, the receiver.
- (10) The “insolvency date”—
- (a) in the case of a company being wound up by the court, means the date on which the court makes the winding-up order (see section 125 of the Insolvency Act 1986);
 - (b) in the case of a company being wound up by way of a members' voluntary winding up, means the date on which the liquidator forms the opinion that the company will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration of solvency under section 89 of the Insolvency Act 1986;
 - (c) in the case of a company being wound up by way of a creditors' voluntary winding up where no such declaration under section 89 of that Act has been made, means the date of the passing of the resolution for voluntary winding up;
 - (d) in the case of a company which has entered administration, means the date the company did so;
 - (e) in the case of a company in respect of which an administrative receiver has been appointed, means the date of that appointment.
- (11) For the purposes of subsection (10)(e), any appointment of an administrative receiver to replace an administrative receiver who has died or vacated office pursuant to section 45 of the Insolvency Act 1986 is to be ignored.
- (12) In this section—
- “court” has the same meaning as in section 6;
 - “director” includes a shadow director.”
- (3) In section 7 (disqualification order or undertaking and reporting provisions), omit subsection (3).
- (4) For the heading of section 7 substitute “ Disqualification orders under section 6: applications and acceptance of undertakings ”.
- (5) In consequence of the repeal made by subsection (3), in Schedule 17 to the Enterprise Act 2002, omit paragraph 42.

Commencement Information

- I3** S. 107 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(c)
- I4** S. 107 in force at 6.4.2016 by S.I. 2016/321, reg. 3(b) (with Sch. paras. 1, 2)

Changes to legislation:

There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, Cross Heading: Determining unfitness.