

**EXPLANATORY MEMORANDUM TO**  
**THE EDUCATION (COMPANY DIRECTORS DISQUALIFICATION ACT**  
**1986: AMENDMENTS TO DISQUALIFICATION PROVISIONS) (ENGLAND)**  
**REGULATIONS 2004**

**2004 No.3264**

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 The Education (Company Directors Disqualification Act 1986: Amendments to Disqualification Provisions) (England) Regulations 2004 make provision for amendments to certain regulations made under education legislation relating to foundation bodies, school companies, school governance and new schools.

- 2.2 These amendments reflect changes made to the Company Directors Disqualification Act 1986 by the Insolvency Act 2000 and the Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None

4. **Legislative Background**

- 4.1 Whilst persons subject to a disqualification "order" under the Company Directors Disqualification Act 1986 are disqualified from holding or continuing to hold various offices under education legislation, there is not currently any similar prohibition in relation to these offices in respect of persons who have given a disqualification "undertaking" not to act as a company director.

- 4.2 Under the Company Directors Disqualification Act 1986, as amended by the Insolvency Act 2000, the practical effect of a disqualification undertaking is the same as a disqualification order, it is merely the procedure that differs. This statutory instrument, therefore, seeks to make the relevant provisions of education legislation consistent with this position.

4.3 The Insolvency Act 2000 amended the Company Directors Disqualification Act 1986 to provide that a disqualification order made in Northern Ireland under the Companies (Northern Ireland) Order 1989 (SI 1989 No. 2404) also disqualifies the individual concerned from running a company in England, Wales or Scotland.

4.4 The Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004 (SI 2004 No. 1941) amended the Company Directors Disqualification Act 1986 to provide that a disqualification undertaking given under the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002 No.3150 (N.I.4)) also disqualifies the individual concerned from running a company in England, Wales or Scotland.

4.5 As a consequence of this statutory instrument, new paragraphs relating to the disqualification provisions of the –

- (a) Education (Foundation Body) (England) Regulations 2000 (S.I. 2000/2872);
- (b) School Companies Regulations 2002 (S.I. 2002/2978);
- (c) School Companies (Private Finance Initiative Companies) Regulations 2002 (S.I. 2002/3177);
- (d) School Governance (Constitution) (England) Regulations 2003 (S.I. 2003/348); and
- (e) New Schools (General) (England) Regulations 2003 (S.I. 2003/1558).

are inserted to reflect the changes made to the Company Directors Disqualification Act 1986 by the Insolvency Act 2000 and the Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004 as explained above.

## **5. Extent**

5.1 This instrument applies to England.

## **6. European Convention on Human Rights**

6.1 In the view of David Miliband, Minister of State for School Standards, the provisions of the Education (Company Directors Disqualification Act 1986: Amendments to Disqualification Provisions) (England) Regulations 2004 are compatible with the Convention rights.

## **7. Policy background**

7.1 Under current education legislation, persons who are disqualified from running a company because they are subject to a disqualification order under the Company Directors Disqualification Act 1986 are disqualified from holding or continuing to hold office as -

- (a) a member of a foundation body,
- (b) a school governor of a school;

- (c) a temporary governor of a new school;
- (d) a member of a school Private Finance Initiative (PFI) company; or
- (e) a member of a school company

7.2 This instrument ensures that all persons who are disqualified from running a company under Company Directors Disqualification Act 1986 are similarly disqualified from holding office or continuing to hold office in the bodies listed in 7.1 in England.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument since the statutory instrument will not impose any significant cost or increase in workload to schools or local education authorities.

8.2 There are no identifiable costs to the public sector.

## **9. Contact**

9.1 **Geoffrey Friston** at the Department for Education and Skills Tel: 01325 391288 or e-mail: [geoff.friston@dfes.gsi.gov.uk](mailto:geoff.friston@dfes.gsi.gov.uk) can answer any queries regarding the instrument.