

EXPLANATORY MEMORANDUM TO
THE COMPENSATION ORDERS (DISQUALIFIED DIRECTORS) PROCEEDINGS
(ENGLAND AND WALES) RULES 2016

2016 No. 890

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department for Business, Energy and Industrial Strategy in conjunction with the Insolvency Service and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Compensation Orders (Disqualified Directors) Proceedings (England and Wales) Rules 2016 (the “Rules”) set out the procedure to be followed by all parties in court actions relating to compensation claims against a disqualified company director.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 110 of the Small Business, Enterprise and Employment Act 2015 (“SBEEA”) inserted sections 15A – 15C into the Company Directors Disqualification Act 1986. These provisions give the Secretary of State the power to apply to court for an order requiring a disqualified director to compensate creditors for the loss suffered as a result of the conduct for which the director was disqualified. Alternatively, the Secretary of State can accept a voluntary undertaking from a disqualified director to the same effect. These provisions came into force in October 2015.
- 4.2 Since the commencement of Section 110 of SBEEA in October 2015, the Secretary of State has had the power to bring compensation actions but there has been no specific provision for how he should do so or how courts should manage such proceedings. The purpose of the Rules is to make provision in England and Wales for the procedure for bringing applications for the making of compensation orders against, and for the variation or revocation of compensation undertaking by, disqualified directors.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales only.
- 5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The introduction of powers relating to compensation undertakings and orders was one of a series of measures in part 9 of SBEEA concerning directors' disqualification. The new powers are intended to increase the likelihood of creditors of an insolvent company who have suffered from misconduct (for which a director has been disqualified) being compensated.
- 7.2 Directors who have fallen short of acceptable standards should be held financially accountable to creditors where their actions have caused loss. Making a disqualified director financially accountable to those who have suffered loss from the conduct for which the director has been disqualified is intended to increase trust in our corporate regime and help deter such behaviour.
- 7.3 The primary legislation for compensation orders states that the Secretary of State's application for compensation in England and Wales must be made either in the court that made the disqualification order against the director or in the High Court. This statutory instrument sets out rules for managing compensation proceedings in court that are modelled on the existing rules for disqualification proceedings (S.I. 1987/2023 (as amended)). The intention is to minimise the amount of time interested parties will need to familiarise themselves with the process of managing compensation proceedings and to ensure continuity between two linked legal regimes.

Consolidation

- 7.4 None.

8. Consultation outcome

- 8.1 Between 15 July and 16 September 2013 the Department of Business, Innovation & Skills carried out a consultation entitled Transparency and Trust centre on proposals to enhance transparency of UK company ownership and increase trust in UK business. Included in the consultation were proposals for securing better compensation for creditors in cases involving misconduct by directors.
- 8.2 The previous Government's response to the consultation was published in April 2014. The consultation showed that around two thirds of respondents broadly supported the proposal to give the court the power to make compensatory awards against directors it has disqualified. Most respondents agreed it would help make directors more accountable for their actions.
- 8.3 There has been no further consultation with regard to the Rules.

9. Guidance

- 9.1 The Insolvency Service will continue to consult with stakeholders, in particular legal practitioners and members of the judiciary on the effectiveness of these rules and whether further guidance is needed.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The compensation regime introduced by SBEEA and these Rules will be subject to internal review by April 2020 and the legislation may be amended accordingly.

13. Contact

- 13.1 Pabitar Powar at the Insolvency Service (Telephone: 020 7596 6152 or email: pabitar.powar@insolvency.gsi.gov.uk) can answer any queries regarding the instrument.