



Companies Act 1985

1985 CHAPTER 6

PART IX

A COMPANY'S MANAGEMENT ; DIRECTORS AND SECRETARIES ; THEIR QUALIFICATIONS, DUTIES AND RESPONSIBILITIES

Disqualification

295 Disqualification orders: introductory

- (1) In the circumstances specified in sections 296 to 300, a court may make against a person a disqualification order, that is to say an order that he shall not, without leave of the court—
 - (a) be a director of a company, or
 - (b) be a liquidator of a company, or
 - (c) be a receiver or manager of a company's property, or
 - (d) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company,for a specified period beginning with the date of the order.
- (2) The maximum period to be so specified is—
 - (a) in the case of an order made under section 297 or made by a court of summary jurisdiction, 5 years, and
 - (b) in any other case, 15 years.
- (3) In this section and sections 296 to 300, "company" includes any company which may be wound up under Part XXI.
- (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.

- (5) In sections 296 to 299, any reference to provisions, or to a particular provision, of this Act or the Consequential Provisions Act includes the corresponding provision or provisions of the former Companies Acts.
- (6) Parts I and II of Schedule 12 have effect with regard to the procedure for obtaining a disqualification order, and to applications for leave under such an order; and Part III of that Schedule has effect—
 - (a) in connection with certain transitional cases arising under sections 93 and 94 of the 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, and
 - (b) to preserve orders made under section 28 of the Companies Act 1976 (repealed by the Act of 1981).
- (7) If a person acts in contravention of a disqualification order, he is in respect of each offence liable to imprisonment or a fine, or both.

296 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 or liquidation of a company, or with the receivership or management of a company's property.
- (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 for the same petty sessions area;
 and for purposes of this section the definition of " indictable offence " in Schedule 1 to the Interpretation Act 1978 applies in relation to Scotland as it does in relation to England and Wales.

297 Disqualification for persistent default under Companies Acts

- (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 this Act or the Consequential Provisions Act 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 treated under subsection (2) as being adjudged guilty of a default in relation to any such provision if—

Status: This is the original version (as it was originally enacted).

- (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—
 - (i) section 244 (order requiring delivery of company accounts), or
 - (ii) section 499 (enforcement of receiver's or manager's duty to make returns), or
 - (iii) section 636 (corresponding provision for liquidator in winding-up), or
 - (iv) section 713 (enforcement of company's duty to make returns),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.

298 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—
- (a) has been guilty of an offence for which he is liable (whether he has been convicted or not) under section 458 (fraudulent trading), or
 - (b) has otherwise been guilty, while an officer or liquidator of the company or receiver or manager of its property, of any fraud in relation to the company or of any breach of his duty as such officer, liquidator, receiver or manager.
- (2) In this section " the court" means the same as in section 297 ; and " officer " includes a shadow director.

299 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 this Act or the Consequential Provisions Act 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 for the same petty sessions 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 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 Interpretation Act 1978 applies for Scotland as for England and Wales, and

(b) " default order" means the same as in section 297(3)(b).

300 Disqualification by reference to association with insolvent companies

(1) The court may make a disqualification order against a person where, on an application under this section, it appears to it that he—

- (a) is or has been a director of a company which has at any time gone into liquidation (whether while he was a director or subsequently) and was insolvent at that time, and
- (b) is or has been a director of another such company which has gone into liquidation within 5 years of the date on which the first-mentioned company went into liquidation,

and that his conduct as director of any of those companies makes him unfit to be concerned in the management of a company.

(2) In the case of a person who is or has been a director of a company which has gone into liquidation as above-mentioned and is being wound up by the court, " the court" in subsection (1) means the court by which the company is being wound up; and in any other case it means the High Court or, in Scotland, the Court of Session.

(3) The Secretary of State may require the liquidator or former liquidator of a company—

- (a) to furnish him with such information with respect to the company's affairs, and
- (b) to produce and permit inspection of such books or documents of or relevant to the company,

as the Secretary of State may reasonably require for the purpose of determining whether to make an application under this section in respect of a person who is or has been a director of that company; and if a person makes default in complying with such a requirement, the court may, on the Secretary of State's application, make an order requiring that person to make good the default within such time as may be specified.

(4) For purposes of this section, a shadow director of a company is deemed a director of it; and a company goes into liquidation—

- (a) if it is wound up by the court, on the date of the winding up order, and
- (b) in any other case, on the date of the passing of the resolution for voluntary winding up.

301 Register of disqualification orders

(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 under any of sections 296 to 300, or
- (b) any action is taken by a court in consequence of which such an order is varied or ceases to be in force, or
- (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 ;

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 Companies Act 1976.

- (3) When an order 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.
- (4) The register shall be open to inspection on payment of such fee as may be specified by the Secretary of State in regulations.
- (5) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

302 Provision against undischarged bankrupt acting as director etc.

- (1) If any person being an undischarged bankrupt acts as director or liquidator of, or directly or indirectly takes part in or is concerned in the promotion, formation or management of, a company except with the leave of the court, he is liable to imprisonment or a fine, or both.
- (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 in bankruptcy; 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
- (4) In this section " company " includes an unregistered company and a company incorporated outside Great Britain which has an established place of business in Great Britain.