

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: DIRECTORS' DISQUALIFICATION ETC.

New grounds for disqualification

Section 104: Convictions abroad

680. This section introduces a new ground for bringing disqualification proceedings under the Company Directors Disqualification Act 1986 ("CDDA 1986"). It allows the Secretary of State to apply to the court for the disqualification as a director of a person who has been convicted of certain offences overseas.
681. Subsection (3) of the new section specifies those types of offence, conviction of which may be used as the basis for bringing disqualification proceedings on this ground. The relevant offences are those serious offences in connection with the promotion, formation or management of a company overseas.
682. Subsection (4) of the new section enables the Secretary of State to accept a disqualification undertaking from a person instead of applying or proceeding with an application for a disqualification order on this ground.

Section 105: Persons instructing unfit director

683. This section inserts new sections into the CDDA 1986 to introduce a new ground for disqualification for persons who are not directors but who exert requisite influence over a director.
684. This applies where a director has been disqualified, or has given a disqualification undertaking for conduct under sections 6 (directors of insolvent companies) or 8 (disqualification of director on finding of unfitness) of the CDDA 1986. If any of the conduct for which the director was disqualified was caused because the director followed the instruction or direction of someone else, the person giving that direction or instruction may also be disqualified. Applications to court for disqualification orders on these grounds are subject to a public interest test.
685. The Secretary of State will also be able to accept a disqualification undertaking instead of making an application to court.