



Small Business, Enterprise and Employment Act 2015

2015 CHAPTER 26

PART 9

DIRECTORS' DISQUALIFICATION ETC

Determining unfitness

106 Determining unfitness and disqualifications: matters to be taken into account

- (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)—
 - (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) ”,

Changes to legislation: There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, Section 106. (See end of Document for details)

- (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.
- (8) The power to make an order under this section is exercisable by statutory instrument.

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- (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 1

Section 12C

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

- I1** [S. 106](#) in force at 26.5.2015 for specified purposes by [S.I. 2015/1329](#), [reg. 3\(c\)](#)
- I2** [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](#))

Changes to legislation:

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