

2001 No. 767

INSOLVENCY, ENGLAND AND WALES

The Insolvent Partnerships (Amendment) Order 2001

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| <i>Made</i> - - - - | <i>1st March 2001</i> |
| <i>Laid before Parliament</i> | <i>7th March 2001</i> |
| <i>Coming into force</i> | <i>2nd April 2001</i> |

The Lord Chancellor, in exercise of the powers conferred upon him by section 420(1) and (2) of the Insolvency Act 1986(a) and section 21(2) of the Company Directors Disqualification Act 1986(b), and of all other powers enabling him in that behalf, with the concurrence of the Secretary of State, hereby makes the following Order:—

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Insolvent Partnerships (Amendment) Order 2001 and shall come into force on 2nd April 2001.

(2) In this Order, “the 1994 Order” means the Insolvent Partnerships Order 1994(c).

Amendments to article 16 of the Insolvent Partnerships Order 1994

2.—(1) Article 16 of the 1994 Order (Application of Company Directors Disqualification Act 1986) is amended as follows.

(2) In article 16 of the 1994 Order, for “sections 6 to 10, 15” there is substituted “sections 1, 1A, 6 to 10, 13 to 15, 17(d)”.

Amendments to Schedule 8 to the Insolvent Partnerships Order 1994

3.—(1) Schedule 8 to the 1994 Order (Schedule 8: modified provisions of the Company Directors Disqualification Act 1986) is amended as follows.

(2) For section 6(4) of the Company Directors Disqualification Act 1986, as modified and set out in Schedule 8 to the 1994 Order, there is substituted—

“(4) In this section and section 7(2), “the court” means—

(a) where the partnership in question is being or has been wound up as an unregistered company by the court, that court,

(a) 1986 c. 45.

(b) 1986 c. 46; section 21(2) was amended by the Insolvency Act 2000 (c. 39), Schedule 4, paragraph 14(1) and (2). The amendments to section 21(2) made by the Companies Act 1989 (c. 40) are not relevant for the purposes of this Order.

(c) S.I. 1994/2421, to which there is an amendment not relevant to this Order.

(d) Sections 1A and 8A were inserted into the Company Directors Disqualification Act 1986 by the Insolvency Act 2000 and sections 1, 6, 7, 8, 9, 13, 14, 15 and 17 of the Company Directors Disqualification Act 1986 were amended by the same Act. Section 8 of the Company Directors Disqualification Act 1986 was amended by section 198 of the Financial Services Act 1986, section 55(b) of the Criminal Justice (Scotland) Act 1987 (c. 41) the words of which amendment were substituted by paragraph 62 of Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), section 145(b) of the Criminal Justice Act 1988 (c. 33) and section 79 of the Companies Act 1989.

(b) where the preceding paragraph does not apply but an administration order has at any time been made in relation to the partnership in question, any court which has jurisdiction to wind it up.

(4A) Section 117 of the Insolvency Act 1986 (High Court and county court jurisdiction), as modified and set out in Schedule 5 to the 1994 Order, shall apply for the purposes of subsection (4) as if in a case within paragraph (b) of that subsection the references to the presentation of the petition for winding up in sections 117(3) and 117(4) of the Insolvency Act 1986, as modified and set out in that Schedule, were references to the making of the administration order.

(4B) Nothing in subsection (4) invalidates any proceedings by reason of their being taken in the wrong court; and proceedings—

(a) for or in connection with a disqualification order under this section, or

(b) in connection with a disqualification undertaking accepted under section 7,

may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.

(4C) In this section and section 7, “director” includes a shadow director.”

(3) In section 7 of the Company Directors Disqualification Act 1986, as modified and set out in Schedule 8 to the 1994 Order (Applications to court under section 6; reporting provisions)—

(a) in subsection (1)(b), after “being” there is inserted “or has been”,

(b) after subsection (2) there is inserted—

“(2A) If it appears to the Secretary of State that the conditions mentioned in section 6(1) are satisfied as respects any person who has offered to give him a disqualification undertaking, he may accept the undertaking if it appears to him that it is expedient in the public interest that he should do so (instead of applying, or proceeding with an application, for a disqualification order).”

(c) for the heading to section 7 there is substituted “Section 7: Disqualification order or undertaking; and reporting provisions”.

(4) In section 8 of the Company Directors Disqualification Act 1986, as modified and set out in Schedule 8 to the 1994 Order (Disqualification after investigation), after subsection (2) there is inserted—

“(2A) Where it appears to the Secretary of State from such report, information or documents that, in the case of a person who has offered to give him a disqualification undertaking—

(a) the conduct of the person in relation to an insolvent partnership of which the person is or has been an officer makes him unfit to be concerned in the management of a company, and

(b) it is expedient in the public interest that he should accept the undertaking (instead of applying, or proceeding with an application, for a disqualification order),

he may accept the undertaking.”

(5) In section 9 of the Company Directors Disqualification Act 1986, as modified and set out in Schedule 8 to the 1994 Order (Matters for determining unfitness of officers of partnerships),

(a) in subsection (1) “or shadow director” is omitted,

(b) after subsection (1) there is inserted—

“(1A) In determining whether he may accept a disqualification undertaking from any person the Secretary of State shall, as respects the person’s conduct as an officer of any partnership or a director of any company concerned, have regard in particular—

(a) to the matters mentioned in Part I of Schedule 1 to this Act, and

(b) where the partnership or the company (as the case may be) has become insolvent, to the matters mentioned in Part II of that Schedule;

and references in that Schedule to the officer and the partnership or, as the case may be, to the director and the company are to be read accordingly.”

- (c) at the end of subsection (2) there is inserted “and in this section and that Schedule “director” includes a shadow director”.
- (6) After section 9, as modified and set out in Schedule 8 to the 1994 Order, there is inserted—

“Section 13: Criminal penalties

13. If a person acts in contravention of a disqualification order or disqualification undertaking he is liable—

- (a) on conviction on indictment, to imprisonment for not more than 2 years or a fine or both; and
- (b) on summary conviction, to imprisonment for not more than 6 months or a fine not exceeding the statutory maximum, or both.

Section 14: Offences by body corporate

14.—(1) Where a body corporate is guilty of an offence of acting in contravention of a disqualification order or disqualification undertaking and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Section 15: Personal liability for company’s debts where person acts while disqualified

15.—(1) A person is personally responsible for all the relevant debts of a company if at any time—

- (a) in contravention of a disqualification order or disqualification undertaking he is involved in the management of the company, or
- (b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given without the leave of the court by a person whom he knows at that time to be the subject of a disqualification order or disqualification undertaking or a disqualification order under Part II of the Companies (Northern Ireland) Order 1989 or to be an undischarged bankrupt.

(2) Where a person is personally responsible under this section for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this section or otherwise, is so liable.

(3) For the purposes of this section the relevant debts of a company are—

- (a) in relation to a person who is personally responsible under paragraph (a) of subsection (1), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company, and
- (b) in relation to a person who is personally responsible under paragraph (b) of that subsection, such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that paragraph.

(4) For the purposes of this section, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.

(5) For the purposes of this section a person who, as a person involved in the management of a company, has at any time acted on instructions given without the leave of the court by a person whom he knew at that time to be the subject of a disqualification order or disqualification undertaking or a disqualification order under Part II of the Companies (Northern Ireland) Order 1989 or to be an undischarged bankrupt is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

Section 17: Application for leave under an order or undertaking

17.—(1) Where a person is subject to a disqualification order made by a court having jurisdiction to wind up partnerships, any application for leave for the purposes of section 1(1)(a) shall be made to that court.

(2) Where a person is subject to a disqualification undertaking accepted at any time under section 7 or 8, any application for leave for the purposes of section 1A(1)(a) shall be made to any court to which, if the Secretary of State had applied for a disqualification order under the section in question at that time, his application could have been made.

(3) But where a person is subject to two or more disqualification orders or undertakings (or to one or more disqualification orders and to one or more disqualification undertakings), any application for leave for the purposes of section 1(1)(a) or 1A(1)(a) shall be made to any court to which any such application relating to the latest order to be made, or undertaking to be accepted, could be made.

(4) On the hearing of an application for leave for the purposes of section 1(1)(a) or 1A(1)(a), the Secretary of State shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.”

22nd February 2001

Irvine of Lairg, C.

I concur, on behalf of the Secretary of State

1st March 2001

Kim Howells,
Parliamentary Under-Secretary of State for
Consumers and Corporate Affairs,
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Insolvent Partnerships Order 1994 (S.I. 1994/2421) (the “1994 Order”). It provides that sections 1, 1A, 13, 14 and 17, in addition to those sections of the Company Directors Disqualification Act 1986 (c. 46) (the “CDDA”) already applied, are applied to insolvent partnerships, with modifications, where appropriate, as set out in Schedule 8 of the Insolvent Partnerships Order 1994, by virtue of the amendment of article 16 of, and Schedule 8 to, the 1994 Order.

Article 2 amends article 16 of the 1994 Order. The amendment applies sections 1, 1A, 13, 14 and 17 of the CDDA to insolvent partnerships. Section 1A of the CDDA (together with the amendments to sections 6, 7, and 8 of the CDDA) provides for the new disqualification undertaking provisions introduced by the Insolvency Act 2000 (c. 39). These provisions allow the Secretary of State to accept a disqualification undertaking from a person who is or has been an officer of a partnership where an insolvent partnership is wound up as an unregistered company.

Article 3 amends Schedule 8 to the 1994 Order. Article 3(2) provides for an amended definition of the court to which an application for a disqualification order is to be made. Article 3(3) inserts section 7(2A) of the CDDA which allows the Secretary of State to accept a disqualification undertaking if the conditions mentioned in section 6(1) of the CDDA are satisfied and makes minor amendments to section 7 of the CDDA, as applied by the 1994 Order. Article 3(4) inserts section 8(2A) of the CDDA (as modified) which allows the Secretary of State to accept disqualification undertakings under section 8 of the CDDA. Article 3(5) inserts section 9(1A) of the CDDA (as modified) which provides that the Secretary of State in determining whether he may accept a disqualification undertaking must have regard to the matters in Schedule 1 to the CDDA and makes minor amendments to section 9 of the CDDA, as applied by the 1994 Order. Article 3(6) modifies sections 13, 14, 15 and 17 of the CDDA in their application to insolvent partnerships.

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