

SCHEDULES

SCHEDULE 2

INSOLVENT PARTNERSHIPS, ENGLAND AND WALES

8.—(1) Schedule 8 is amended as follows.

(2) Before the substitute version of section 6 of the Company Directors Disqualification Act 1986⁽¹⁾ insert—

“Section 5A: Disqualification for certain convictions abroad

5A.—(1) If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order under this section should be made against a person, the Secretary of State may apply to the court for such an order.

(2) The court may, on an application under subsection (1), make a disqualification order against a person who has been convicted of a relevant foreign offence.

(3) A “relevant foreign offence” is an offence committed outside Great Britain in connection with the promotion, formation, management or liquidation of a partnership (or any similar procedure) which corresponds to an indictable offence under the law of England and Wales.

(4) Where it appears to the Secretary of State that, in the case of a person who has offered to give a disqualification undertaking—

- (a) the person has been convicted of a relevant foreign offence; and
- (b) it is expedient in the public interest that the Secretary of State should accept the undertaking (instead of applying, or proceeding with an application, for a disqualification order),

the Secretary of State may accept the undertaking.

(5) In this section—

“partnership” includes an overseas partnership;

“the court” means the High Court.

(6) The maximum period of disqualification under an order under this section is 15 years.”

(3) For the substitute version⁽²⁾ of sections 6 and 7 of the Company Directors Disqualification Act 1986 substitute—

“Section 6: Duty of court to disqualify unfit officers of certain partnerships

6.—(1) The court shall make a disqualification order against a person in any case where, on an application under this section, it is satisfied—

- (a) that he is or has been an officer of a partnership which has at any time become insolvent (whether while he was an officer or subsequently); and

⁽¹⁾ 1986 c. 46.

⁽²⁾ As amended by article 3(2) and (3) of [S.I. 2001/767](#), and article 11(2) and (3) of [S.I. 2005/1516](#). Section 7(3) was repealed by section 107(3) of Part 9 of the Small Business, Enterprise and Employment Act 2015.

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- (b) that his conduct as an officer of that partnership (either taken alone or taken together with his conduct as an officer of one or more other partnerships or overseas partnerships, or as a director of one or more companies or overseas companies) makes him unfit to be concerned in the management of a company.

(1A) In this section references to a person’s conduct as an officer of any partnership or overseas partnership, or as a director of any company or overseas company include, where that partnership or overseas partnership, or 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.

(2) For the purposes of this section—

(a) a partnership becomes insolvent if—

- (i) the court makes an order for it to be wound up as an unregistered company at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up; or
- (ii) the partnership enters administration; and

(b) a company becomes insolvent if—

- (i) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up;
- (ii) the company enters administration; or
- (iii) an administrative receiver of the company is appointed.

(2A) For the purposes of this section, an overseas company or partnership becomes insolvent if the company or partnership enters into insolvency proceedings of any description (including interim proceedings) in any jurisdiction.

(3) 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;
- (b) where paragraph (a) does not apply but an administrator has at any time been appointed in relation to the partnership in question, any court which has jurisdiction to wind it up.

(3A) 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 (3) 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.

(3B) Nothing in subsection (3) 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.

(3C) In this section and section 7, “director” includes a shadow director.

(4) Under this section the minimum period of disqualification is 2 years, and the maximum period is 15 years.

Section 7: Disqualification order or undertaking; applications and acceptance of undertakings

7.—(1) If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order under section 6 should be made against any person, an application for the making of such an order against that person may be made—

- (a) by the Secretary of State; or
- (b) if the Secretary of State so directs in the case of a person who is or has been an officer of a partnership which is being or has been wound up by the court as an unregistered company, by the official receiver.

(2) Except with the leave of the court, an application for the making under that section of a disqualification order against any person shall not be made after the end of the period of 3 years beginning with the day on which the partnership of which that person is or has been an officer became insolvent.

(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).

(4) The Secretary of State or the official receiver may require any person—

- (a) to furnish him with such information with respect to that person's or another person's conduct as an officer of a partnership, or as a director of a company which has at any time become insolvent (whether while the person was an officer or director or subsequently); and
- (b) to produce and permit inspection of such books, papers and other records as are considered by the Secretary of State or (as the case may be) the official receiver to be relevant to that person's or another person's conduct as such an officer or director,

as the Secretary of State or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function of his under this section.

(5) Subsections (1A) and (2) of section 6 apply for the purposes of this section as they apply for the purposes of that section.”

(4) After the substitute version of section 7 of the Company Directors Disqualification Act 1986(3) insert—

“Section 7A: Office-holder's report on conduct of officers of the partnership

7A.—(1) The office-holder in respect of a partnership which is insolvent must prepare a report (a “conduct report”) about the conduct of each person who was an officer of the partnership—

- (a) on the insolvency date; or
- (b) at any time during the period of 3 years ending with that date.

(2) For the purposes of this section a partnership is insolvent if—

- (a) the partnership is in liquidation and at the time it went into liquidation its assets were insufficient for the payment of its debts and other liabilities and the expenses of the winding up; or
- (b) the partnership enters administration,

(3) Section 7A(8) and (11) do not apply to partnerships.

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and subsection (1A) of section 6 applies for the purposes of this section as it applies for the purpose of that section.

(3) A conduct report must, in relation to each person, describe any conduct of the person which may assist the Secretary of State in deciding whether to exercise the power under section 7(1) or (2A) in relation to the person.

(4) The office-holder must send the conduct report to the Secretary of State before the end of—

- (a) the period of 3 months beginning with the insolvency date; or
- (b) such other longer period as the Secretary of State considers appropriate in the particular circumstances.

(5) If new information comes to the attention of an office-holder, the office-holder must send that information to the Secretary of State as soon as reasonably practicable.

(6) “New information” is information which an office-holder considers should have been included in a conduct report prepared in relation to the partnership, or would have been so included had it been available before the report was sent.

(7) If there is more than one office-holder in respect of a partnership at any particular time, subsection (1) applies only to the first of the office-holders to be appointed.

(9) The “office-holder” in respect of a partnership which is insolvent is—

- (a) in the case of a partnership being wound up by the court in England and Wales, the official receiver;
- (b) in the case of a partnership being wound up otherwise, the liquidator;
- (c) in the case of a partnership in administration, the administrator.

(10) The “insolvency date”—

- (a) in the case of a partnership being wound up by the court, means the date on which the court makes the winding-up order (see section 125 of the Insolvency Act 1986);
- (b) in the case of a partnership being wound up by way of a members’ voluntary winding up, means the date on which the liquidator forms the opinion that the partnership will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the declaration of solvency under section 89 of the Insolvency Act 1986;
- (c) in the case of a partnership being wound up by way of a creditors’ voluntary winding up where no such declaration under section 89 of that Act has been made, means the date of the passing of the resolution for voluntary winding up;
- (d) in the case of a company which has entered administration, means the date the company did so.

(12) In this section “court” has the same meaning as in section 6.”

(5) For the substitute version(4) of section 8 of the Company Directors Disqualification Act 1986 substitute—

“Section 8: Disqualification of officer on finding of unfitness

8.—(1) If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order should be made against a person who is or has been an officer of an insolvent partnership, he may apply to the court for such an order.

(4) As amended by article 3(4) of [S.I. 2001/767](#), and article 470 of Part 9 of [S.I. 2001/3649](#).

(2) The court may make a disqualification order against a person where, on an application under this section, it is satisfied that his conduct in relation to the partnership (either taken alone or taken together with his conduct as an officer of one or more other partnerships or overseas partnerships, or as a director of one or more companies or overseas companies) makes him unfit to be concerned in the management of a company.

(2A) Where it appears to the Secretary of State 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 (either taken alone or taken together with his conduct as an officer of one or more other partnerships or overseas partnerships, or as a director of one or more companies or overseas companies) 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.

(2B) Subsection (1A) of section 6 applies for the purposes of this section as it applies for the purposes of that section.

(3) In this section “the court” means the High Court.

(4) The maximum period of disqualification under this section is 15 years.”

(6) After the substitute version of section 8 of the Company Directors Disqualification Act 1986 insert—

“Section 8ZA: Persons instructing unfit officers

8ZA.—(1) The court may make a disqualification order against a person (“P”) if, on an application under section 8ZB, it is satisfied—

- (a) either—
 - (i) that a disqualification order under section 6 has been made against a person who is or has been an officer of a partnership; or
 - (ii) that the Secretary of State has accepted a disqualification undertaking from such a person under section 7(2A); and
- (b) that P exercised the requisite amount of influence over the person.

That person is referred to in this section as “the main transgressor”.

(2) For the purposes of this section, P exercised the requisite amount of influence over the main transgressor if any of the conduct—

- (a) for which the main transgressor is subject to the order made under section 6; or
- (b) in relation to which the undertaking was accepted from the main transgressor under section 7(2A),

was the result of the main transgressor acting in accordance with P’s directions or instructions.

(3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.

(4) Under this section the minimum period of disqualification is 2 years and the maximum period is 15 years.

(5) In this section and section 8ZB “the court” has the same meaning as in section 6; and subsection (3B) of section 6 applies in relation to proceedings mentioned in subsection (6) below as it applies in relation to proceedings mentioned in section 6(3B)(a) and (b).

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- (6) The proceedings are proceedings—
 - (a) for or in connection with a disqualification order under this section; or
 - (b) in connection with a disqualification undertaking accepted under section 8ZC.

Section 8ZB: Application for order under section 8ZA

8ZB.—(1) If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order should be made against a person under section 8ZA, the Secretary of State may—

- (a) make an application to the court for such an order; or
- (b) in a case where an application for an order under section 6 against the main transgressor has been made by the official receiver, direct the official receiver to make such an application.

(2) Except with the leave of the court, an application for a disqualification order under section 8ZA must not be made after the end of the period of 3 years beginning with the day on which the partnership in question became insolvent (within the meaning given by section 6(2)).

(3) Subsection (4) of section 7 applies for the purposes of this section as it applies for the purposes of that section.

Section 8ZC: Disqualification undertaking instead of an order under section 8ZA

8ZC.—(1) If it appears to the Secretary of State that it is expedient in the public interest to do so, the Secretary of State may accept a disqualification undertaking from a person (“P”) if—

- (a) any of the following is the case—
 - (i) a disqualification order under section 6 has been made against a person who is or has been an officer of a partnership;
 - (ii) the Secretary of State has accepted a disqualification undertaking from such a person under section 7(2A); or
 - (iii) it appears to the Secretary of State that such an undertaking could be accepted from such a person (if one were offered); and
- (b) it appears to the Secretary of State that P exercised the requisite amount of influence over the person.

That person is referred to in this section as “the main transgressor”.

(2) For the purposes of this section, P exercised the requisite amount of influence over the main transgressor if any of the conduct—

- (a) for which the main transgressor is subject to the disqualification order made under section 6;
- (b) in relation to which the disqualification undertaking was accepted from the main transgressor under section 7(2A); or
- (c) which led the Secretary of State to the conclusion set out in subsection (1)(a)(iii),

was the result of the main transgressor acting in accordance with P’s directions or instructions.

(3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.

(4) Subsection (4) of section 7 applies for the purposes of this section as it applies for the purposes of that section.

Section 8ZD: Order disqualifying person instructing unfit director; other cases

8ZD.—(1) The court may make a disqualification order against a person (“P”) if, on an application under this section, it is satisfied—

- (a) either—
 - (i) that a disqualification order under section 8 has been made against a person who is or has been an officer of a partnership; or
 - (ii) that the Secretary of State has accepted a disqualification undertaking from such a person under section 8(2A); and
- (b) that P exercised the requisite amount of influence over the person.

That person is referred to in this section as “the main transgressor”.

(2) The Secretary of State may make an application to the court for a disqualification order against P under this section if it appears to the Secretary of State that it is expedient in the public interest for such an order to be made.

(3) For the purposes of this section, P exercised the requisite amount of influence over the main transgressor if any of the conduct—

- (a) for which the main transgressor is subject to the order made under section 8; or
- (b) in relation to which the undertaking was accepted from the main transgressor under section 8(2A),

was the result of the main transgressor acting in accordance with P’s directions or instructions.

(4) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.

(5) Under this section the maximum period of disqualification is 15 years.

(6) In this section “the court” means the High Court.

Section 8ZE: Disqualification undertaking instead of an order under section 8ZD

8ZE.—(1) If it appears to the Secretary of State that it is expedient in the public interest to do so, the Secretary of State may accept a disqualification undertaking from a person (“P”) if—

- (a) any of the following is the case—
 - (i) a disqualification order under section 8 has been made against a person who is or has been an officer of a partnership;
 - (ii) the Secretary of State has accepted a disqualification undertaking from such a person under section 8(2A); or
 - (iii) it appears to the Secretary of State that such an undertaking could be accepted from such a person (if one were offered); and
- (b) it appears to the Secretary of State that P exercised the requisite amount of influence over the person.

That person is referred to in this section as “the main transgressor”.

(2) For the purposes of this section, P exercised the requisite amount of influence over the main transgressor if any of the conduct—

- (a) for which the main transgressor is subject to the disqualification order made under section 8;
- (b) in relation to which the disqualification undertaking was accepted from the main transgressor under section 8(2A); or
- (c) which led the Secretary of State to the conclusion set out in subsection (1)(a)(iii),

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was the result of the main transgressor acting in accordance with P’s directions or instructions.

(3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.”

(7) Omit the substitute version(5) of section 9 of the Company Directors Disqualification Act 1986.

(8) After the substitute version of section 8ZE of the Company Directors Disqualification Act 1986 (inserted by these Regulations)(6), insert—

“Section 12C: Determining unfitness etc.: matters to be taken into account

12C.—(1) This section applies where a court must determine—

- (a) whether a person’s conduct as an officer of a partnership (either taken alone or taken together with his conduct as an officer of one or more other partnerships or overseas partnerships, or 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 5A or 8;
- (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.

(3) This section also applies where the Secretary of State must determine—

- (a) whether a person’s conduct as an officer of a partnership (either taken alone or taken together with his conduct as an officer of one or more other partnerships or overseas partnerships, or 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 an officer of a partnership or overseas partnership, or 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.

(6) Subsection (1A) of section 6 applies for the purposes of this section as it applies for the purposes of that section.”

(9) After the substitute version of section 15 of the Company Directors Disqualification Act 1986, insert—

“Section 15A: Compensation orders and undertakings

15A.—(1) The court may make a compensation order against a person on the application of the Secretary of State if it is satisfied that the conditions mentioned in subsection (3) are met.

(2) If it appears to the Secretary of State that the conditions mentioned in subsection (3) are met in respect of a person who has offered to give the Secretary of State a compensation

(5) As amended by article 3(5) of S.I. 2001/767.

(6) Section 12C(2) and (5) do not apply to partnerships.

undertaking, the Secretary of State may accept the undertaking instead of applying, or proceeding with an application, for a compensation order.

(3) The conditions are that—

- (a) the person is subject to a disqualification order or disqualification undertaking under this Act; and
- (b) conduct for which the person is subject to the order or undertaking has caused loss to one or more creditors of an insolvent partnership of which the person has at any time been an officer.

(4) An “insolvent partnership” is a partnership that is or has been insolvent and a partnership becomes insolvent if the partnership goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(5) The Secretary of State may apply for a compensation order at any time before the end of the period of two years beginning with the date on which the disqualification order referred to in paragraph (a) of subsection (3) was made, or the disqualification undertaking referred to in that paragraph was accepted.

(6) In the case of a person subject to a disqualification order under section 8ZA or 8ZD, or a disqualification undertaking under section 8ZC or 8ZE, the reference in subsection (3)(b) to conduct is a reference to the conduct of the main transgressor in relation to which the person has exercised the requisite amount of influence.

(7) In this section and sections 15B and 15C “the court” means—

- (a) in a case where a disqualification order has been made, the court that made the order;
- (b) in any other case, the High Court.

Section 15B: Amounts payable under compensation orders and undertakings

15B.—(1) A compensation order is an order requiring the person against whom it is made to pay an amount specified in the order—

- (a) to the Secretary of State for the benefit of—
 - (i) a creditor or creditors specified in the order;
 - (ii) a class or classes of creditor so specified;
- (b) as a contribution to the assets of a partnership so specified.

(2) A compensation undertaking is an undertaking to pay an amount specified in the undertaking—

- (a) to the Secretary of State for the benefit of—
 - (i) a creditor or creditors specified in the undertaking;
 - (ii) a class or classes of creditor so specified;
- (b) as a contribution to the assets of a partnership so specified.

(3) When specifying an amount the court (in the case of an order) and the Secretary of State (in the case of an undertaking) must in particular have regard to—

- (a) the amount of the loss caused;
- (b) the nature of the conduct mentioned in section 15A(3)(b);
- (c) whether the person has made any other financial contribution in recompense for the conduct (whether under a statutory provision or otherwise).

(4) An amount payable by virtue of subsection (2) under a compensation undertaking is recoverable as if payable under a court order.

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(5) An amount payable under a compensation order or compensation undertaking is provable as a bankruptcy debt.”

(10) For the substitute version(7) of section 17 of the Company Directors Disqualification Act 1986, substitute—

“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.

(3) Where a person is subject to a disqualification undertaking accepted at any time under section 5A, 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.

(3ZA) Where a person is subject to a disqualification undertaking accepted at any time under section 8ZC, any application for leave for the purposes of section 1A(1)(a) must be made to any court to which, if the Secretary of State had applied for a disqualification order under section 8ZA at that time, that application could have been made.

(3ZB) Where a person is subject to a disqualification undertaking accepted at any time under section 8ZE, any application for leave for the purposes of section 1A(1)(a) must be made to the High Court.

(3A) Where a person is subject to a disqualification undertaking accepted at any time under section 9B any application for leave for the purposes of section 9B(4) must be made to the High Court.

(4) 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 sections 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.

(5) 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.”

(11) For the substitute version(8) of Schedule 1 to the Company Directors Disqualification Act 1986, 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 partnership or overseas partnership, or 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 partnership or overseas partnership, or company or overseas company, becoming insolvent.
3. The frequency of conduct of the person which falls within paragraph 1 or 2.

(7) As amended by article 3(6) of S.I. 2001/767. Section 17(2), (6) and (7) do not apply to partnerships.

(8) As amended by paragraph 11(2), (3), and (4) of Schedule 2 to S.I. 2017/540.

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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 as an officer of any partnership or overseas partnership or as a director of any company or overseas company.

Additional matters to be taken into account where person is or has been an officer of a partnership or a director

5. Any misfeasance or breach of any fiduciary or other duty by the person in relation to a partnership or overseas partnership or a company or overseas company.

6. Any material breach of any legislative or other obligation of the person which applies as a result of being—

- (a) an officer of a partnership or overseas partnership; or
- (b) a director of a company or overseas company.

7. The frequency of conduct of the person 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.”.