

*These notes refer to the Small Business, Enterprise and Employment Act 2015 (c.26) which received Royal Assent on 26 March 2015*

# SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 9: DIRECTORS' DISQUALIFICATION ETC.**

##### **Determining unfitness**

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

686. This section amends the CDDA 1986 to broaden the matters to which the court must have regard when determining whether a person should be disqualified as a director.
687. Subsections (5) and (6) amend the CDDA 1986 to require a court to take into account a range of matters connected with a person's behaviour, as set out in the new Schedule 1 to the CDDA 1986, when considering whether a person is unfit to be a director of a company, whether to exercise a discretion to disqualify a person, and what a period of disqualification should be. A power is included to allow the modification of Schedule 1 of the Companies Directors Disqualification Act 1986 by order approved by a resolution of both Houses of Parliament.
688. Subsection (2) enables the court to take conduct in relation to overseas companies into account when considering a disqualification application in relation to the conduct of a director of an insolvent company.
689. Subsection (3) enables a person's conduct in relation to more than one company, including any overseas companies, to be taken into account by the court when deciding whether or not to make a disqualification order under section 8 of the CDDA 1986 and when deciding whether to accept a disqualification undertaking.

##### ***Section 107: Reports of office-holders on conduct of directors of insolvent companies***

690. This section inserts a new section 7A into the CDDA 1986 that simplifies the procedure whereby an office-holder (the official receiver, liquidator, administrator or administrative receiver) reports on the conduct of directors of insolvent companies.
691. Currently the CDDA 1986 (see section 7(3)) requires office holders to submit a report to the Secretary of State if it appears to them that the conduct of the director makes them unfit to be concerned in the management of a company.
692. The new section requires submission to the Secretary of State of a conduct report on every director of a company that become insolvent. The conduct report must describe any conduct which may assist the Secretary of State in deciding whether it is in the public interest to apply for the making of a disqualification order. The report must be submitted in all cases within 3 months of the insolvency date.

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693. New subsections (5) and (6) require an office-holder to send any new information that should have been included in a conduct report as soon as practically possible after it comes to the attention of the office-holder.
694. New subsections (7) and (8) remove the requirement for office-holders to submit a report where a report has already been submitted by an office-holder, either where the company has moved between insolvency procedures or where a new office-holder has been appointed in the same procedure.