

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.

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.
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.

Director disqualification: other amendments

Section 108: Unfit directors of insolvent companies: extension of period for applying for disqualification order

695. This section amends section 7 of the CDDA 1986 to increase the period of time within which the Secretary of State or official receiver on direction by the Secretary of State may apply to the court for disqualification of an unfit director of an insolvent company from two to three years from the date that company became insolvent.

Section 109: Directors: removal of restriction on application for disqualification order

696. This section amends section 8 of the CDDA 1986 to remove the restriction on the type of investigative material that may be used by the Secretary of State to decide whether or not to bring disqualification proceedings against the directors of a company in the public interest.
697. Currently only reports made by certain inspectors, and information or documents obtained under certain legislative powers may be used for this purpose. By removing this restriction, the Secretary of State may use any information to decide whether or not to bring disqualification proceedings against a director or shadow director of a company.

Compensation awards

Section 110: Compensation orders and undertakings

698. This section gives the court a new power to make a compensation order against a person, on the application of the Secretary of State, where the conduct for which that person has been disqualified has caused loss to one or more creditors of an insolvent company of which they have at any time been a director.
699. Subsection (2) of new section 15A of the CDDA 1986 allows the Secretary of State to accept a compensation undertaking from a director where the conditions for the making of a compensation order are met, instead of applying or proceeding with an application to court for a compensation order.
700. Subsection (5) of new section 15A requires an application for a compensation order to be made within two years of the date on which the person subject to the application was disqualified.
701. New section 15B of the CDDA 1986 requires any person against whom a compensation order has been made, or who has had a compensation undertaking accepted by the Secretary of State, to pay the amount specified in the order or undertaking to the person or persons specified.
702. Subsection (3) of new section 15B of the CDDA 1986 sets out the factors which the court or Secretary of State must have particular regard to when deciding on the amount of compensation to award or seek.
703. New section 15C of the CDDA 1986 allows a person who is subject to a compensation undertaking to apply to the court for an order removing or varying the terms of the compensation undertaking.

Consequential amendments and corresponding provision for Northern Ireland

Section 111: Sections 104 to 110: consequential and related amendments

704. This section and Schedule 7 make various amendments to the CDDA 1986 and other enactments consequential on or related to the amendments made by sections 104 to 110 of this Part.

Section 112: Provision for Northern Ireland corresponding to Sections 104 to 111

705. This section and Schedule 8 make amendments to the Company Directors Disqualification (Northern Ireland) Order 2002 and the Insolvency (Northern Ireland) Order 2005, which extend to Northern Ireland, that correspond to those that sections 104 to 111 make to the legislation that extends to Great Britain.

Bankruptcy: Scotland and Northern Ireland

Section 113: Disqualification as director: bankruptcy, etc. in Scotland and Northern Ireland

706. This section amends the CDDA 1986 to add to the list of people prohibited from acting as a director of a company in Great Britain all persons who are subject to bankruptcy restrictions in Scotland and Northern Ireland.

Section 114: Company Directors Disqualification (Northern Ireland) Order 2002: bankruptcy, etc. in England and Wales or Scotland

707. This section amends the Company Directors Disqualification (Northern Ireland) Order 2002 to add to the list of people prohibited from acting as a director of a company in Northern Ireland all persons who are subject to bankruptcy restrictions in Great Britain.

Section 115: Disqualification as insolvency practitioner: bankruptcy, etc. in Scotland or Northern Ireland

708. This section amends the Insolvency Act 1986 to extend the list of persons who are prohibited from acting as an insolvency practitioner in Great Britain to persons who are subject to bankruptcy and debt relief restrictions in Northern Ireland, bankruptcy restrictions orders in Scotland and debt relief restrictions orders in England and Wales.

Section 116: Disqualification as insolvency practitioner in Northern Ireland: bankruptcy, etc. in England and Wales or Scotland

709. This section amends the Insolvency (Northern Ireland) Order 1989 to extend the list of persons who are disqualified from acting as insolvency practitioners in Northern Ireland to persons who are subject to bankruptcy restrictions in Great Britain, debt relief orders in England and Wales and debt relief restriction orders in Northern Ireland and England and Wales.