

Effects of a Disqualification Order



CUSTOMER SERVICE EXCELLENCE



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A court has made a disqualification order against you or you have given a disqualification undertaking to the Secretary of State, which has been accepted. These are very serious matters. You could go to prison if you contravene the order or undertaking.

The order or undertaking will be registered at Companies House, which monitors new directorships and provides details of disqualified directors on request.

This leaflet gives you some idea of what the order or undertaking means. It does not give a complete list of everything you must and must not do, nor does it give you legal advice.

To understand exactly how the order or undertaking affects you, you should always get your own independent professional advice.

What am I not allowed to do?

While the order or undertaking is in force, it stops you acting as if you were a director. So you cannot avoid the order or undertaking by simply changing your job description.

The order or undertaking also means that you must not get other people to manage a company under your instructions. If you do, those people may also be prosecuted for assisting you in contravening the order or undertaking.

The order or undertaking does not stop you having a job with a company, but unless you have court permission it does stop you:

- being a director of a company;
- acting as a receiver of a company's property;
- being concerned in or taking part in the promotion, formation or management of a company;

and you must not act as an insolvency practitioner.

What does 'company' mean?

You must not do any of the prohibited acts listed under the previous heading in relation to a company formed in England; Wales, Scotland or Northern Ireland. This includes unregistered companies.

You must not do any of the prohibited acts in relation to a foreign company if:

- it is registered here; or
- it has sufficient connection here (for example, if it carries on business or has assets here) even if it is not registered here.

You must not do any of the prohibited acts in relation to a building society, an incorporated friendly society or an NHS Foundation Trust.

Sole trader or partnership

The order or undertaking does not stop you carrying on business as a sole trader or in partnership with others. But if the order or undertaking was made after 6 April 2001, you must not be a member of or be concerned or take part in promoting, forming or managing a limited liability partnership unless you have court permission.

Promoting or forming a company

The order or undertaking prevents you taking part in the promotion or formation of a company.

A promoter is anyone who undertakes to take part in forming a company or, for example, someone who takes part in raising capital for the company before it is formed.

Formation describes mainly the legal acts necessary to bring a company into existence. You must not be involved in any of the stages of incorporating a company.

Management

The order or undertaking prevents you taking part or being concerned in the management of a company. 'Management of a company' is not confined to management of the internal affairs of that company. A manager may be someone in a position equivalent to that of a director (without having been appointed as such) or below director level.

Being concerned in the management of the company may include such activities as:

- undertaking tasks in relation to the company's business, for example ordering, paying or negotiating with suppliers or customers, renting or buying business premises, hiring or firing employees, dealing with the company bank account;
- acting as a management consultant;
- acting in a governing role within the company;
- taking executive decisions as to the company's affairs or making it seem that you are in a position to take such decisions.

This list is not meant to be complete. Many other acts may, depending on the circumstances, amount to taking part or being concerned in the management of a company.

Company secretary

The order or undertaking does not stop you acting as a company secretary. Whether you are called 'company secretary' is not relevant. What

matters is the nature of the duties you will be carrying out. In some circumstances, acting as a company secretary may also be regarded as acting in the management of a company.

Shareholder

You may act as a shareholder but you may wish to consider taking legal advice if you choose to issue directions or instructions to the director(s) of the company as a shareholder.

Other restrictions

Many other restrictions are placed on disqualified people by laws and regulations, so you should consult relevant legislation or get your own professional advice to find out the full extent of the restrictions.

Charities

The order or undertaking prevents you being a trustee without permission. In the case of an incorporated charity, permission is required from the court. In the case of an unincorporated charity, permission is required from the Charity Commissioners.

Schools

Several prohibitions exist in relation to school governance. The order or undertaking may prevent you acting as a school governor, as a temporary governor or as a member of a foundation body. You may also be prohibited from acting as a member of a 'school company'.

Pension trustees

The order or undertaking prevents you acting as a trustee of an occupational pension scheme without leave from the Occupational Pensions Regulatory Authority.

Police

Several disqualifications apply in relation to the police service. For example, the order or undertaking prevents you being a member of a police authority.

Registered social landlord

The order or undertaking may prevent you from being a director, trustee or committee member of a registered social landlord (often called a housing association).

Health boards and social care bodies

The order or undertaking may prevent you being a member of the Council for the Regulation of Health Care Professionals and various other health commissions and social care bodies.

Solicitors, barristers, accountants and other professionals

The order or undertaking may affect your membership of your professional body and require you to report the fact of your disqualification to that body, so you should contact that body for assistance.

What happens if I contravene the order or undertaking?

You are then committing a criminal offence and you could go to prison for up to 2 years and face a fine as well as the possibility of being disqualified for a further period.

The Insolvency Service operates a 24-hour telephone hotline to enable the public to report contraventions of these orders and undertakings.

If you contravene the order or undertaking, you could also become personally liable for any debts

of the company that are incurred while you are contravening the order or undertaking. If you give instructions to others in contravention of the order or undertaking, they too could become personally liable for the company's debts.

If the order has been made against, or the undertaking given by, a corporate director, and that corporation contravenes the order or undertaking, then its officers or managers can be punished as if the order or undertaking applied to them personally.

Other Action

The order or undertaking does not affect the right of the Secretary of State, or any other prosecuting authority, to take criminal proceedings in respect of any conduct carried out by or on behalf of the company which may amount to an offence. Nor does it affect the right of the liquidator or creditors to take civil proceedings against the directors in respect of any losses sustained as a result of any misconduct by the directors.

Permission to act

A person who is subject to an order or undertaking may apply to the court under section 17 of the Company Directors Disqualification Act 1986 for permission to act as a director or to act in the promotion, formation or management of a company. If you wish to make such an application, you should get your own independent professional advice.

Where can I get more information?

Whether or not you have contravened a disqualification order or undertaking depends on the facts of the case. Therefore, if you feel concerned or unsure of your position, you should take your own independent professional advice. The Insolvency Service enquiry line can give only

general advice about the law and does not advise on specific cases.

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