

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Schedule 5: Communications by a company

Part 40: Company Directors: Foreign Disqualification Etc

1506. **Part 40** addresses a gap in the present law. Persons who have been disqualified from being a director, or from holding an equivalent position, or engaging in the management of a company in another State, are currently able to form a company in the UK, to appoint themselves a director of that company and then operate that company either in the UK or in the State where they have been disqualified. The provisions in this Part give the Secretary of State a power to close the gap by making regulations to disqualify from being a director of a UK company, persons who have been disqualified in another State.
1507. **Part 40** is the first Part which is outside the company law provisions of the Act. It does not, therefore, form part of the Companies Acts. This is due to the fact that the provisions in this Part are linked with those of the Company Directors' Disqualification Act 1986. That Act is not part of the Companies Acts because it has implications beyond companies to other bodies (such as NHS foundation trusts) and extends beyond persons covered by the Companies Acts to persons such as insolvency practitioners. The fact that Part 40 is not part of the Companies Acts has the consequence that the definitions in the earlier Parts of the Act do not apply – hence the need to define the term “the court” in section 1183. Similarly, the definitions for Part 40 are not listed in Schedule 8 to the Act.

Section 1182: Persons subject to foreign restrictions

1508. **Section 1182** defines what is meant by “a person being subject to foreign restrictions.” Only persons falling into this category may be disqualified by regulations made under this Part. This category is intended to include those who have been disqualified under (or otherwise fallen foul of) a foreign law equivalent to that in the Company Directors' Disqualification Act 1986.

Section 1183: Meaning of “the court” and “UK company”

1509. **Section 1183** sets out the meaning of “the court” and “UK company” for the purposes of this Part.

Section 1184: Disqualification of persons subject to foreign restrictions

1510. **Section 1184** provides a power for the Secretary of State to make regulations disqualifying a person subject to foreign restrictions from being the director of a UK company, acting as a receiver of a UK company's property, or, in any way, taking part in the promotion, formation or management of a UK company.
1511. The power is subject to affirmative resolution procedure.

Section 1185: Disqualification regulations: supplementary

1512. **Section 1185** states that the regulations under section 1184 may make different provision for different types of case, and sets out some examples. If the regulations provide for application to the court (either by the Secretary of State for a disqualification order under section 1184(2)(b), or by a disqualified person seeking relief under section 1184(5)), the section requires the regulations to specify the grounds on which an application to the court may be made. It also allows the regulations to set out matters to which the court should have regard when considering an application.

Section 1186: Offence of breach of disqualification

1513. **Section 1186** provides that regulations made under section 1184 may provide that a person disqualified under this Part who acts in breach of the disqualification commits an offence.

Section 1187: Personal liability for debts of company

1514. **Section 1187** provides for the Secretary of State to make regulations to the effect that a person disqualified under this part who acts as a director of a UK company, or is involved in the management of a UK company is personally responsible for all debts and liabilities of the company incurred during the time that he or she is subject to foreign restrictions.

Section 1188: Statements from persons subject to foreign restrictions

1515. **Section 1188** provides a power for the Secretary of State to make regulations providing that a person not disqualified under this Part but subject to foreign restrictions must send a statement to the registrar if he or she does anything that, if done by a person disqualified under this Part, would be a breach of the disqualification.

1516. The power is subject to affirmative resolution procedure.

Section 1189: Statements from persons disqualified

1517. **Section 1189** provides a power for the Secretary of State to make provisions by regulation that would require a disqualified director to provide an additional statement where he or she has received approval from the court to act in a capacity that would otherwise be in breach of the disqualification.

1518. The power is subject to affirmative resolution procedure.

Section 1190: Statements: whether to be made public

1519. **Section 1190** provides for regulations under sections 1188 and 1189 to state whether statements made under those regulations shall be on the public register, and the circumstances in which they may withheld from public inspection or removed from the register.

Section 1191: Offences

1520. **Section 1191** provides for regulations to apply criminal sanctions for a failure to comply with any requirements on statements under sections 1188 and 1189.