



# Small Business, Enterprise and Employment Act 2015

## 2015 CHAPTER 26

### PART 7

#### COMPANIES: TRANSPARENCY

##### *Shadow directors*

#### **89 Application of directors' general duties to shadow directors**

- (1) In section 170 of the Companies Act 2006 (scope and nature of general duties of directors) for subsection (5) substitute—

“(5) The general duties apply to a shadow director of a company where and to the extent that they are capable of so applying.”

- (2) The Secretary of State may by regulations make provision about the application of the general duties of directors to shadow directors.

- (3) The regulations may, in particular, make provision—

- (a) for prescribed general duties of directors to apply to shadow directors with such adaptations as may be prescribed;
- (b) for prescribed general duties of directors not to apply to shadow directors.

- (4) In this section—

“director” and “shadow director” have the same meanings as in the Companies Act 2006;

“general duties of directors” means the duties specified in sections 171 to 177 of that Act;

“prescribed” means prescribed in regulations.

- (5) Regulations under this section are subject to affirmative resolution procedure.

**90 Shadow directors: definition**

- (1) In section 251 of the Insolvency Act 1986 (expressions used generally), in the definition of “shadow director”, for the words from “(but” to the end substitute “, but so that a person is not deemed a shadow director by reason only that the directors act—
- (a) on advice given by that person in a professional capacity;
  - (b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under an enactment (within the meaning given by section 1293 of the Companies Act 2006);
  - (c) in accordance with guidance or advice given by that person in that person’s capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)”.
- (2) In section 22(5) of the Company Directors Disqualification Act 1986 (definition of “shadow director”) for the words from “(but” to the end substitute “, but so that a person is not deemed a shadow director by reason only that the directors act—
- (a) on advice given by that person in a professional capacity;
  - (b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under an enactment;
  - (c) in accordance with guidance or advice given by that person in that person’s capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)”.
- (3) In section 251(2) of the Companies Act 2006 (definition of “shadow director”) for the words “on advice given by him in a professional capacity” substitute “—
- (a) on advice given by that person in a professional capacity;
  - (b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under an enactment;
  - (c) in accordance with guidance or advice given by that person in that person’s capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)”.
- (4) In section 1293 of the Companies Act 2006 (meaning of “enactment”) after paragraph (a) insert—
- “(aa) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,”.

**91 Shadow directors: provision for Northern Ireland**

- (1) In Article 5(1) of the Insolvency (Northern Ireland) Order 1989 ([S.I. 1989/2405 \(N.I. 19\)](#)) (interpretation), in the definition of “shadow director”, for the words from “(but” to the end substitute “, but so that a person is not deemed a shadow director by reason only that the directors act—
- (a) on advice given by that person in a professional capacity;
  - (b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under a statutory provision;
  - (c) in accordance with guidance or advice given by that person in that person’s capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)”.

- (2) In Article 2(2) of the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)) (interpretation), in the definition of “shadow director”, for the words from “(but” to the end substitute “, but so that a person is not deemed a shadow director by reason only that the directors act—
- (a) on advice given by that person in a professional capacity;
  - (b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under a statutory provision;
  - (c) in accordance with guidance or advice given by that person in that person’s capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)”.