STATUTORY INSTRUMENTS

1986 No. 612

COMPANIES

The Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1986

Made - - - -	*25th March* 1986
Laid before Parliament	*7th April* 1986
Coming into Force	*28th April* 1986

The Lord Chancellor, in the exercise of his powers under section 106 of the Insolvency Act 1985 (**a**), with the concurrence of the Secretary of State, and after consulting the committee existing for that purpose under section 226 of the Insolvency Act 1985, hereby makes the following Rules:—

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1986 and shall come into force on 28th April 1986.

(2) In these Rules, "the Companies Act" means the Companies Act 1985 (**b**), "the Insolvency Act" means the Insolvency Act 1985, and "Registrar" has the same meaning as in the Companies (Winding-up) Rules 1949 (**c**).

(3) These Rules apply with respect to an application for a disqualification order against any person ("the respondent"), where made—

(a) by the Secretary of State or the official receiver under section 12(3) of the Insolvency Act (on the grounds of the person's association with insolvent companies), or

(b) by the Secretary of State under section 13 of that Act (alleged expedient in the public interest, following report of inspectors under section 437 of the Companies Act, or information or documents obtained under section 447 or 448 of that Act).

Form of application

2. An application to which these Rules apply shall be made—

(a) in the High Court, by originating summons (Form 10 in Appendix A to the Rules of the Supreme Court (**d**), with such adaptation as may be appropriate), and

(b) in a county court, by originating application, such an application being nevertheless referred to in these Rules as a summons;

and the Rules of the Supreme Court 1965 or (as the case may be) the County

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(**a**) 1985 c.65.
(**b**) 1985 c.6.
(**c**) S.I. 1949/330; the relevant amending instruments are S.I. 1971/2073 and 1983/1645.
(**d**) S.I. 1965/1776; the relevant amending instruments are S.I. 1979/1716, 1980/2000 and 1982/1111.

Court Rules 1981 (a) apply accordingly, except where these Rules make provision to inconsistent effect.

The case against the respondent

3.—(1) There shall, at the time when the summons is issued, be filed evidence in support of the application for a disqualification order; and copies of the evidence shall be served with the summons on the respondent.

(2) The evidence shall be by one or more affidavits, except where the applicant is the official receiver, in which case it may be in the form of a written report (with or without affidavits by other persons) which shall be treated as if it had been verified by affidavit by him.

(3) There shall in the affidavits or (as the case may be) the official receiver's report be included a statement of the matters by reference to which the respondent is alleged to be unfit to be concerned in the management of a company.

Endorsement on summons

4. There shall on the summons be endorsed information to the respondent as follows—

(a) that, in accordance with the relevant enactments, the court has power to impose disqualifications as follows—

(i) where the application is under section 12 of the Insolvency Act, for a period of not less than 2, and up to 15, years; and

(ii) where the application is under section 13 of the Act, for a period up to 15 years;

(b) that the application for a disqualification order may, in accordance with these Rules, be heard and determined summarily, without further or other notice to the respondent, and that, if it is so heard and determined, the court may impose disqualification for a period up to 5 years; and

(c) that if at the hearing of the application the court, on the evidence then before it, is minded to impose, in the respondent's case, disqualification for any period longer than 5 years, it will not make a disqualification order on that occasion but will adjourn the application to be heard (with further evidence, if any) at a later date to be notified.

Service and acknowledgement

5.—(1) The summons shall be served on the respondent by sending it by first class post to his last-known address; and the date of service shall, unless the contrary is shown, be deemed to be the 7th day next following that on which the summons was posted.

(2) Where any process or order of the court or other document is required under proceedings subject to these Rules to be served on any person who is not in England and Wales, the court may order service on him of that process or order or other document to be effected within such time and in such manner as it thinks fit, and may also require such proof of service as it thinks fit.

(3) The summons served on the respondent shall be accompanied by a form of acknowledgement of service, to be returned by him to the court within 14 days from the date of service, and for this purpose the practice and

(a) S.I. 1981/1687.

procedure of the High Court relating to acknowledgements of service shall apply to an application for an order under these Rules both in the High Court and, with such modifications as are required, in the County Court, save that any reference to Form 15 in Appendix A to the Rules of the Supreme Court 1965 shall relate to the form as modified by these Rules.

(4) The form of acknowledgement of service shall state that the respondent should indicate—

(a) whether he contests the application on the grounds that, in the case of any particular company—

(i) he was not a director or shadow director of the company at a time when conduct of his, or of other persons, in relation to that company is in question, or

(ii) his conduct as director or shadow director of that company was not as alleged in support of the application for a disqualification order,

(b) whether, in the case of any conduct of his, he disputes the allegation that it makes him unfit to be concerned in the management of a company, and

(c) whether he, while not resisting the application for a disqualification order, intends to adduce mitigating factors with a view to justifying only a short period of disqualification.

Evidence

6.—(1) The respondent may, within 28 days from the date of service of the summons, file affidavit evidence in opposition to the application and shall forthwith serve upon the applicant a copy of such evidence.

(2) The applicant may within 14 days from receiving the copy of the respondent's evidence file further evidence in reply and shall forthwith serve a copy of that evidence upon the respondent.

The hearing of the application

7.—(1) The date fixed for the hearing of the application shall be not less than 8 weeks from the date of issue of the summons.

(2) The hearing shall in the first instance be before the Registrar in open court.

(3) The Registrar shall either determine the case summarily, or adjourn it for further consideration (by himself or another registrar or, if he thinks it is a fit case for the judge, by him).

(4) If he determines the case summarily, he may make a disqualification order against the respondent, whether or not the latter appears, and whether or not he has completed and returned the acknowledgement of service of the summons, or filed evidence under Rule 6.

However, the Registrar shall not then impose a period of disqualification longer than 5 years.

(5) The Registrar shall adjourn the case for further consideration if—

(a) he forms the provisional opinion that a disqualification order ought to be made, and that a period of disqualification longer than 5 years is appropriate, or

(b) he is of opinion that questions of law or fact arise which are not suitable for summary determination.

(6) Where the case is adjourned as above, the Registrar shall specify whether the adjourned hearing is to be before a registrar or the judge and give directions as to the following matters—

(a) the manner in which, and the time within which, notice of the adjournment and the reasons for it is to be given to the respondent,

(b) the filing and exchange of evidence by the applicant or the respondent,

(c) such other matters as the Registrar thinks necessary or expedient with a view to an expeditious disposal of the application, and

(d) the time and place of the adjourned hearing.

Commencement of disqualification order

8. Unless the court otherwise orders, a disqualification order takes effect at the beginning of the 21st day after the day on which the order is made.

Setting aside of disqualification order

9. Any disqualification order made in the absence of the respondent may be set aside or varied by the court on such terms as it thinks just.

Dated 21st March 1986.

Hailsham of St Marylebone, C.

I concur

Michael Howard,
Parliamentary Under-Secretary of State, Department of Trade and Industry.

Dated 25th March 1986.

EXPLANATORY NOTE

(*This Note does not form part of the Rules.*)

These Rules set out a special code of procedure for application by the Secretary of State or the official receiver for the disqualification of directors by the court under sections 12 and 13 of the Insolvency Act 1985 in England and Wales.

They provide that the application is to be by way of the originating summons procedure where it is made in the High Court and by way of originating application where made in the County Court. In both cases these procedures are made subject to the particular provisions set out in these Rules for the purposes of section 12 and section 13 applications, and which will be common to the procedure in both types of court.

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