

ANNEX 3 to Paper HSC/05/90

The contents of this annex has not been agreed by the relevant researchers and is meant only to be a very short precise to aid discussion. Summaries are by no means conclusive.

A Survey Of The Use And Effectiveness Of The Company Directors Disqualification Act 1986 As A Legal Sanction Against Directors Convicted Of Health And Safety Offences.

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Objective

The study looks at the use made of powers contained in the Company Directors Disqualification Act 1986, in relation to disqualification orders related to health and safety failures in the management of companies.

Scope of Company Directors Disqualification Act 1986

The Act applies to building societies, NHS Trusts and companies, which can be wound up under The Insolvency Act 2000, Part V (this is not just confined to companies registered under the Companies Act). The Act applies to any company where British Courts have jurisdiction and has no territorial restrictions in relation to directors nationality and residence.

Aim Of Act

To ensure directors pay attention to financial matters of a company and to deter and penalise irresponsible behaviours and malpractice of those who organise company affairs. The purpose of disqualification is directed at the protection of the public and not as punishment.

General Points

- 1) The main section of the Disqualification Act for health and safety purposes is Section 2. The court may make a disqualification order against a person where he is convicted of an indictable offence (whether on indictment or summarily) in connection with the promotion, formation, management liquidation or striking off of a company, with the receivership of a company's property or with his being an administrative receiver of a company.
- 2) Potential for disqualification of Directors under various HSWA sections including failure to comply with an Improvement Notice.
- 3) The maximum period for disqualification under Section 2 is 5 years, where the order is made by a court of summary jurisdiction, and 15 years in any other case.
- 4) Preliminary findings from research suggest that there have been around 10 or so disqualifications as a direct result of health and safety breaches since 1986; most of the disqualifications have occurred within the last ten years. For the period 1994 –2004, a total of 111 company directors had proceedings taken against them in

relation to various health and safety management matters, 86 were convicted and 11 jailed.

- 5) Where a sentencing order has been proposed in relation to health and safety breaches, at least on a number of occasions, it is the Courts who have initially brought disqualification for consideration.
- 6) The researcher states that the reasons why disqualification figures are small could be due to a low priority accord and lack of sufficient awareness in HSE\LAs.
- 7) The sanction of disqualification is used too infrequently to know if it has an influence on director behaviour.

Recommendations

- 1) HSE\LA - further policy development and strategic approach needed in relation to Directors Disqualification -
 - a) Improved procedures including improved supervision and monitoring of potential disqualification cases.
 - b) Promotion of sanctions within HSE\LA and with stakeholders.
 - c) Improved data capture including returns for cases where disqualification considered but not granted by the courts.
 - d) Annual review of policy.
- 2) Provided recommendations are implemented there is no need to seek alteration of the Company Directors Disqualification Act.
- 3) HSC\E need to actively engage boardroom and director conduct in relation to health and safety so as to provide a complementary disqualification tool that is aligned with any further guidance or ACOP.

