

SECTION 259 OF THE COMPANIES ACT 1931

Showing amendments made with effect from 18 June 2009 as a result of the [Company Officers \(Disqualification\) Act 2009](#)

259 Responsibility of directors for fraudulent trading

1. If in the course of the winding up of a company it appears that any business of the company has been carried out with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the official receiver or the liquidator, or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any of the directors, whether past or present, of the company who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

2. Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such director under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the director, company or person, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

For the purposes of this subsection the expression 'assignee' includes any person to whom or in whose favour, by the directions of the director, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

3. Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1) of this section, every director of the company who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable on conviction on information to imprisonment for a term not exceeding one year.

4. **(This subsection repealed and replaced by the provisions of the [Company Officers \(Disqualification\) Act 2009](#) with effect from 18 June 2009)**

~~The court may, in the case of any person in respect of whom a declaration has been made under subsection (1) of this section, or who has been convicted of an offence under subsection (3) of this section, order that that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned in~~

~~or take part in the management of a company for such period, not exceeding five years, from the date of the declaration or of the conviction, as the case may be, as may be specified in the order, and if any person acts in contravention of an order made under this subsection he shall, in respect of each offence, be liable on conviction on information to imprisonment for a term not exceeding two years or on summary conviction to imprisonment for a term not exceeding six months or to a~~

~~on information, a fine;~~

~~b. on summary trial, a fine not exceeding £5,000;~~

~~or to both such imprisonment and fine.~~

~~In this subsection the expression 'the court' in relation to the making of an order, means the court by which the declaration was made or the court before which the person was convicted, as the case may be, and in relation to the granting of leave means any court having jurisdiction to wind up the company.~~

5. For the purposes of this section, the expression 'director' shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

6. The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection (1) of this section is made in the case of a winding up the declaration shall be deemed to be a final judgment within the meaning of the Bankruptcy Acts.

7. **(This subsection modified, as indicated ¹, by the [Company Officers \(Disqualification\) Act 2009](#) with effect from 18 June 2009)** It shall be the duty of the official receiver or of the liquidator to appear on the hearing of an application ¹for leave under subsection (4) of this section, and on the hearing of an application under that subsection or under subsection (1) of this section the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.