



# Companies Act 1948

1948 CHAPTER 38 11 and 12 Geo 6

## PART XIII

### GENERAL.

#### *Offences.*

#### **438 Penalty for false statements.**

If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of any of the provisions of this Act specified in the Fifteenth Schedule hereto, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanour, and shall be liable on conviction in Scotland on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and be liable on summary conviction in England or Scotland to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid:

Provided that—

- (a) the fine imposed on summary conviction shall not exceed one hundred pounds;
- (b) nothing in this section shall affect the provisions of the Perjury Act, 1911, or the False Oaths (Scotland) Act, 1933.

#### **439 Penalty for improper use of word “limited”.**

If any person or persons trade or carry on business under any name or title of which “limited”, or any contraction or imitation of that word, is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding five pounds for every day upon which that name or title has been used.

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**440 Provision with respect to default fines and meaning of “officer in default ”.**

- (1) Where by any enactment in this Act it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine not exceeding such amount as is specified in the said enactment, or, if the amount of the fine is not so specified, to a fine not exceeding five pounds.
- (2) For the purpose of any enactment in this Act which provides that an officer of a company who is in default shall be liable to a fine or penalty, the expression “officer who is in default ” means any officer of the company who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the enactment.

**441 Production and inspection of books where offence suspected.**

- (1) If on an application made—
  - (a) in England, to a judge of the High Court in chambers by the Director of Public Prosecutions, the Board of Trade or a chief officer of police; or
  - (b) in Scotland, to one of the Lords Commissioners of Justiciary by the Lord Advocate;there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made—
  - (i) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or
  - (ii) requiring the secretary of the company or such other officer thereof as may be named in the order to produce the said books or papers or any of them to a person named in the order at a place so named.
- (2) The foregoing subsection shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in paragraph (ii) thereof shall be made by virtue of this subsection.
- (3) The decision of a judge of the High Court or of any of the Lords Commissioners of Justiciary on an application under this section shall not be appealable.
- (4) In this section the expression “chief officer of police ” has (subject to the provisions of the Police Act, 1946 and the Police (Scotland) Act, 1946) the same meaning as in the Police Pensions Act, 1921.

**442 Provisions as to summary proceedings.**

- (1) All offences under this Act made punishable by any fine may be prosecuted under the Summary Jurisdiction Acts, and proceedings under those Acts in respect of any such offence may, notwithstanding anything to the contrary therein, be taken by the Director of Public Prosecutions or by the Board of Trade at any time within twelve months from the date on which evidence sufficient in the opinion of the Director or the Board, as the case may be, to justify the proceedings comes to his or their knowledge:

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Provided that proceedings shall not be so taken more than three years after the commission of the offence.

- (2) For the purposes of the foregoing subsection, a certificate of the Director of Public Prosecutions or the Board of Trade as to the date on which such evidence as aforesaid came to his or their knowledge shall be conclusive evidence thereof.
- (3) In the application of this section to Scotland, any reference to the Director of Public Prosecutions and the first reference to the Board of Trade shall be omitted, and for any reference to evidence sufficient to justify proceedings there shall be substituted a reference to evidence sufficient to justify a report to the Lord Advocate with a view to consideration of the question of proceedings.
- (4) Subsection (1) of this section, so far as it relates to the time within which proceedings may be taken, and subsections (2) and (3) thereof shall apply to proceedings in respect of offences under the Companies Act, 1929, or the Companies Act, 1947, that may be prosecuted under the Summary Jurisdiction Acts as it applies to proceedings in respect of the offences mentioned in the said subsection (1):

Provided that this subsection shall not have effect in relation to any proceedings if the time allowed under the said Acts apart from this section for taking them had already expired before the commencement of this Act.

#### **443 Proceedings on indictment in Scotland against bodies corporate.**

- (1) In any proceedings on indictment against a body corporate for an offence against this Act the indictment may be served by—
  - (a) delivery of a copy with notice to appear attached thereto at the registered office or, if there is no registered office, at the principal place of business of the body corporate; and
  - (b) delivery in Scotland of a copy of the indictment with notice to appear attached thereto to the secretary or any director or to any person in charge of any principal place of business of the body corporate.

Where a registered letter containing a copy of the indictment has been sent by post to the registered office or principal place of business of the body corporate, an acknowledgment or certificate of the delivery of the letter issued by the Postmaster General in pursuance of regulations under the Post Office Act, 1908, shall be sufficient evidence of the delivery of the letter at the registered office or place of business on the day specified in such acknowledgment or certificate.

- (2) In any such proceedings as aforesaid the body corporate may appear, and any plea or notice on behalf of the body may be tendered or given—
  - (a) in the High Court of Justiciary, by counsel or by a representative of the body corporate; and
  - (b) in the sheriff court, by counsel or by a solicitor or by a representative of the body corporate.
- (3) Where at the first diet in any such proceedings as aforesaid the body corporate does not appear or tender any plea in accordance with the provisions of the last foregoing subsection, it shall be deemed to have tendered a plea of not guilty.
- (4) Where at the second diet in any such proceedings as aforesaid the body corporate does not appear in accordance with the provisions of subsection (2) of this section,

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the court shall, on the motion of the prosecutor, if it is satisfied that the provisions of subsection (1) of this section have been complied with, proceed to hear and dispose of the case in the absence of the body corporate.

- (5) Where in any such proceedings as aforesaid a body corporate is sentenced to a fine, the fine may be recovered in like manner in all respects as if a copy of the sentence certified by the clerk of the court were an extract decree of the Court of Session for the payment of the amount of the fine by the body corporate to the King's and Lord Treasurer's Remembrancer.
- (6) Notwithstanding anything contained in sections twenty-eight or twenty-nine of the Criminal Procedure (Scotland) Act, 1887, it shall not be necessary for a plea tendered by counsel or by a solicitor in accordance with the provisions of subsection (2) of this section to be signed.
- (7) If on the application of the procurator fiscal, a sheriff is satisfied that there is reasonable ground for suspecting that an offence against this Act has been or is being committed by a body corporate, the sheriff shall have the like power to grant warrant for the citation of witnesses and the production of documents and articles as he would have if a petition charging an individual with the commission of the offence were presented to him.
- (8) In this section, the expression "representative" in relation to a body corporate against which such proceedings as aforesaid are brought, means an officer or servant of the body corporate duly appointed by it for the purpose of those proceedings. Such appointment need not be under the seal of the body corporate, and a statement in writing purporting to be signed by the managing director of, or by any person having or being one of the persons having the management of the affairs of, the body corporate to the effect that the person named in the statement has been appointed the representative of the body corporate for the purpose of the said proceedings shall be admissible without further proof as evidence that the person has been appointed.
- (9) The foregoing provisions of this section shall apply to offences against the Companies Act, 1929, or the Companies Act, 1947, as they apply to offences against this Act.
- (10) This section shall extend to Scotland only.

#### **444 Application of fines.**

The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Exchequer.

#### **445 Saving as to private prosecutors.**

Nothing in this Act relating to the institution of criminal proceedings by the Director of Public Prosecutions shall be taken to preclude any person from instituting or carrying on any such proceedings.

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**446 Saving for privileged communications.**

Where proceedings are instituted under this Act against any person by the Director of Public Prosecutions or by or on behalf of the Lord Advocate, nothing in this Act shall be taken to require any person who has acted as solicitor for the defendant to disclose any privileged communication made to him in that capacity.