

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed). Cross Heading: Companies (Northern Ireland) Order 1986 (NI 6). (See end of Document for details)

SCHEDULES

SCHEDULE 2

MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO PART II

PART III

AMENDMENTS RELATING TO INVESTIGATIONS

Companies (Northern Ireland) Order 1986 (NI 6)

10. The 1986 Order has effect subject to the following amendments.

11. After Article 440 (Department's power to require production of documents) insert—

“Information provided: evidence

440A.—(1) A statement made by a person in compliance with a requirement under Article 440 may be used in evidence against him.

(2) But in criminal proceedings in which the person is charged with a relevant offence—

(a) no evidence relating to the statement may be adduced by or on behalf of the prosecution, and

(b) no question relating to it may be asked by or on behalf of the prosecution,

unless evidence relating to it is adduced or a question relating to it is asked in the proceedings by or on behalf of that person.

(3) A relevant offence is any offence other than the following—

(a) an offence under Article 444, or

(b) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (NI 19) (false statement made otherwise than on oath).”.

12. For Article 442 (provision for security of information obtained) substitute—

“Provision for security of information obtained

442.—(1) This Article applies to information (in whatever form) obtained—

(a) in pursuance of a requirement imposed under Article 440;

(b) by means of a relevant disclosure within the meaning of Article 441A(2);

(c) by an investigator in consequence of the exercise of his powers under Article 446A.

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- (2) Such information must not be disclosed unless the disclosure—
 - (a) is made to a person specified in Schedule 15C, or
 - (b) is of a description specified in Schedule 15D.
- (3) The Department may by order amend Schedules 15C and 15D.
- (4) An order under paragraph (3) must not—
 - (a) amend Schedule 15C by specifying a person unless the person exercises functions of a public nature (whether or not he exercises any other function);
 - (b) amend Schedule 15D by adding or modifying a description of disclosure unless the purpose for which the disclosure is permitted is likely to facilitate the exercise of a function of a public nature.
- (5) An order under paragraph (3) shall be subject to negative resolution.
- (6) A person who discloses any information in contravention of this Article—
 - (a) is guilty of an offence, and
 - (b) is liable on conviction to imprisonment or a fine or to both.
- (7) Articles 680, 680A and 680B apply to the offence under paragraph (6).
- (8) Any information which may by virtue of this Article be disclosed to a person specified in Schedule 15C may be disclosed to any officer or employee of the person.
- (9) This Article does not prohibit the disclosure of information if the information is or has been available to the public from any other source.
- (10) For the purposes of this Article, information obtained by an investigator in consequence of the exercise of his powers under Article 446A includes information obtained by a person accompanying the investigator in pursuance of paragraph (4) of that Article in consequence of that person's accompanying the investigator.
- (11) Nothing in this Article authorises the making of a disclosure in contravention of the Data Protection Act 1998 (c. 29).”.

13. For Article 444 (punishment for furnishing false information) substitute—

“Punishment for furnishing false information

- 444.**—(1) A person commits an offence if in purported compliance with a requirement under Article 440 to provide information—
 - (a) he provides information which he knows to be false in a material particular;
 - (b) he recklessly provides information which is false in a material particular.
- (2) A person guilty of an offence under this Article is liable on conviction to imprisonment or a fine or to both.
- (3) Articles 680, 680A and 680B apply to an offence under this Article.”.

14.—(1) Article 444A (disclosure of information by Department or inspector) is amended as follows.

(2) For paragraph (1) substitute—

- “(1) This Article applies to information obtained—
 - (a) under Articles 427 to 439;
 - (b) by an inspector in consequence of the exercise of his powers under Article 446A.”.

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(3) After paragraph (5) insert—

“(6) For the purposes of this Article, information obtained by an inspector in consequence of the exercise of his powers under Article 446A includes information obtained by a person accompanying the inspector in pursuance of paragraph (4) of that Article in consequence of that person's accompanying the inspector.

(7) The reference to an inspector in paragraph (2)(b) above includes a reference to a person accompanying an inspector in pursuance of Article 446A(4).”.

15. In Article 445 (privileged information)—

(a) for paragraph (1) substitute—

“(1) Nothing in Articles 424 to 439 compels the disclosure by any person to the Department or to an inspector appointed by it of information in respect of which in an action in the High Court a claim to legal professional privilege could be maintained.”

(b) for paragraphs (2) and (3) substitute—

“(2) Nothing in Articles 440 to 444—

(a) compels the production by any person of a document or the disclosure by any person of information in respect of which in an action in the High Court a claim to legal professional privilege could be maintained;

(b) authorises the taking of possession of any such document which is in the person's possession.

(3) The Department must not under Article 440 require, or authorise a person to require—

(a) the production by a person carrying on the business of banking of a document relating to the affairs of a customer of his, or

(b) the disclosure by him of information relating to those affairs,

unless one of the conditions in paragraph (4) is met.

(4) The conditions are—

(a) the Department thinks it is necessary to do so for the purpose of investigating the affairs of the person carrying on the business of banking;

(b) the customer is a person on whom a requirement has been imposed under Article 440;

(c) the customer is a person on whom a requirement to produce information or documents has been imposed by an investigator appointed by the Secretary of State in pursuance of section 171 or 173 of the Financial Services and Markets Act 2000 (c. 8) (powers of persons appointed under section 167 or as a result of section 168(2) to conduct an investigation).

(5) Despite paragraphs (1) and (2) a person who is a lawyer may be compelled to disclose the name and address of his client.”.

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16. ^{F1}

F1 Sch. 2 paras. 1-9, 16-18 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

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17. ^{F2}

F2 Sch. 2 paras. 1-9, 16-18 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

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18. ^{F3}

F3 Sch. 2 paras. 1-9, 16-18 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8(a)**, Sch. 2 Pt. 2 (with arts. 7, 12)

19. After Schedule 15B insert—

“SCHEDULE 15C

SPECIFIED PERSONS

1. The Secretary of State.
2. The Department.
3. The Treasury.
4. The Lord Advocate.
5. The Director of Public Prosecutions.
6. The Director of Public Prosecutions for Northern Ireland.
7. The Financial Services Authority.
8. A constable.
9. A procurator fiscal.
10. The Scottish Ministers.

SCHEDULE 15D

DISCLOSURES

1. A disclosure for the purpose of enabling or assisting a person authorised under Article 253C to exercise his functions.
2. A disclosure for the purpose of enabling or assisting an inspector appointed under Part XV to exercise his functions.
3. A disclosure for the purpose of enabling or assisting a person authorised under Article 440 of this Order or section 84 of the Companies Act 1989 (c. 40) to exercise his functions.
4. A disclosure for the purpose of enabling or assisting a person appointed under section 167 of the Financial Services and Markets Act 2000 (c. 8) (general investigations) to conduct an investigation to exercise his functions.

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5. A disclosure for the purpose of enabling or assisting a person appointed under section 168 of the Financial Services and Markets Act 2000 (c. 8) (investigations in particular cases) to conduct an investigation to exercise his functions.

6. A disclosure for the purpose of enabling or assisting a person appointed under section 169(1)(b) of the Financial Services and Markets Act 2000 (c. 8) (investigation in support of overseas regulator) to conduct an investigation to exercise his functions.

7. A disclosure for the purpose of enabling or assisting a person appointed under section 284 of the Financial Services and Markets Act 2000 (c. 8) (investigations into affairs of certain collective investment schemes) to conduct an investigation to exercise his functions.

8. A disclosure for the purpose of enabling or assisting a person appointed under regulations made under sections 1(1) and (2)(k) of the Open-Ended Investment Companies Act (Northern Ireland) 2002 (c. 13) (investigations into open-ended investment companies) to conduct an investigation to exercise his functions.

9. A disclosure for the purpose of enabling or assisting the Department, the Secretary of State or the Treasury to exercise any of their functions under any of the following—

- (a) this Order;
- (b) the insider dealing legislation;
- (c) the Insolvency (Northern Ireland) Order 1989 (NI 19);
- (d) the Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4);
- (e) Part 7 of the Companies Act 1989 (c. 40);
- (f) Part III of the 1990 Order;
- (g) Part II or V of the Companies (No. 2) (Northern Ireland) Order 1990 (NI 10);
- (h) the Financial Services and Markets Act 2000 (c. 8).

10. A disclosure for the purpose of enabling or assisting the Secretary of State to exercise any powers conferred on him by the statutory provisions relating to companies or insolvency.

11. A disclosure for the purpose of enabling or assisting a person appointed or authorised by the Secretary of State under the statutory provisions relating to companies or insolvency to exercise his functions.

12. A disclosure for the purpose of enabling or assisting the Pensions Regulator to exercise his functions under any of the following—

- (a) the Pension Schemes (Northern Ireland) Act 1993 (c. 49);
- (b) the Pensions (Northern Ireland) Order 1995 (NI 22);
- (c) the Pensions (Northern Ireland) Order 2005 (NI 1);
- (d) any statutory provision in force in Great Britain corresponding to any of the above.

13. A disclosure for the purpose of enabling or assisting the Bank of England to exercise its functions.

14. A disclosure for the purpose of enabling or assisting the body known as the Panel on Takeovers and Mergers to exercise its functions.

15. A disclosure for the purpose of enabling or assisting organs of the Society of Lloyd's (being organs constituted by or under the Lloyd's Act 1982) to exercise their functions under or by virtue of the Lloyd's Acts 1871 to 1982.

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16. A disclosure for the purpose of enabling or assisting the Office of Fair Trading to exercise its functions under any of the following—

- (a) the Fair Trading Act 1973 (c. 41);
- (b) the Consumer Credit Act 1974 (c. 39);
- (c) the Estate Agents Act 1979 (c. 38);
- (d) the Competition Act 1980 (c. 21);
- (e) the Competition Act 1998 (c. 41);
- (f) the Financial Services and Markets Act 2000 (c. 8);
- (g) the Enterprise Act 2002 (c. 40);
- (h) the Control of Misleading Advertisements Regulations 1988 (S.I. 1988/915);
- (i) the Unfair Terms in Consumer Contracts Regulations 1999 (S.I. 1999/2083).

17. A disclosure for the purpose of enabling or assisting the Competition Commission to exercise its functions under any of the following—

- (a) the Fair Trading Act 1973 (c. 41);
- (b) the Competition Act 1980 (c. 21);
- (c) the Competition Act 1998 (c. 41);
- (d) the Enterprise Act 2002 (c. 40).

18. A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings before the Competition Appeal Tribunal.

19. A disclosure for the purpose of enabling or assisting an enforcer under Part 8 of the Enterprise Act 2002 (c. 40) to exercise its functions under that Part.

20. A disclosure for the purpose of enabling or assisting the Attorney General for Northern Ireland to exercise his functions in connection with charities.

21. A disclosure for the purpose of enabling or assisting the National Lottery Commission to exercise its functions under sections 5 to 10 and 15 of the National Lottery etc. Act 1993 (c. 39).

22. A disclosure by the National Lottery Commission to the National Audit Office for the purpose of enabling or assisting the Comptroller and Auditor General to carry out an examination under Part 2 of the National Audit Act 1983 (c. 44) into the economy, effectiveness and efficiency with which the National Lottery Commission has used its resources in discharging its functions under sections 5 to 10 of the National Lottery etc. Act 1993 (c. 39).

23. A disclosure for the purpose of enabling or assisting a qualifying body under the Unfair Terms in Consumer Contracts Regulations 1999 (S.I. 1999/2083) to exercise its functions under those Regulations.

24. A disclosure for the purpose of enabling or assisting an enforcement authority under the Consumer Protection (Distance Selling) Regulations 2000 (S.I. 2000/2334) to exercise its functions under those Regulations.

25. A disclosure for the purpose of enabling or assisting the Financial Services Authority to exercise its functions under any of the following—

- (a) the legislation relating to friendly societies or to industrial and provident societies;
- (b) the Building Societies Act 1986 (c. 53);
- (c) Part 7 of the Companies Act 1989 (c. 40);

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(d) the Financial Services and Markets Act 2000 (c. 8).

26. A disclosure for the purpose of enabling or assisting the competent authority for the purposes of Part 6 of the Financial Services and Markets Act 2000 (c. 8) to exercise its functions under that Part.

27. A disclosure for the purpose of enabling or assisting a body corporate established in accordance with section 212(1) of the Financial Services and Markets Act 2000 (c. 8) (compensation scheme manager) to exercise its functions.

28.—(1) A disclosure for the purpose of enabling or assisting a recognised investment exchange or a recognised clearing house to exercise its functions as such.

(2) Recognised investment exchange and recognised clearing house have the same meaning as in section 285 of the Financial Services and Markets Act 2000 (c. 8).

29. A disclosure for the purpose of enabling or assisting a body designated under section 326(1) of the Financial Services and Markets Act 2000 (c. 8) (designated professional bodies) to exercise its functions in its capacity as a body designated under that section.

30. A disclosure with a view to the institution of, or otherwise for the purposes of, civil proceedings arising under or by virtue of the Financial Services and Markets Act 2000 (c. 8).

31. A disclosure for the purpose of enabling or assisting a body designated by order under Article 48 of the 1990 Order (delegation of functions of Department) to exercise its functions under Part III of that Order.

32. A disclosure for the purpose of enabling or assisting a recognised supervisory or qualifying body (within the meaning of Part II of the 1990 Order) to exercise its functions as such.

33. A disclosure for the purpose of enabling or assisting an official receiver (or, as the case may be, the Accountant in Bankruptcy in Scotland) to exercise his functions under the statutory provisions relating to insolvency.

34. A disclosure for the purpose of enabling or assisting a body which is for the time being a recognised professional body for the purposes of Article 350 of the Insolvency (Northern Ireland) Order 1989 (recognised professional bodies) to exercise its functions as such.

35.—(1) A disclosure for the purpose of enabling or assisting an overseas regulatory authority to exercise its regulatory functions.

(2) Overseas regulatory authority and regulatory functions have the same meaning as in section 82 of the Companies Act 1989 (c. 40).

36. A disclosure for the purpose of enabling or assisting the Regulator of Community Interest Companies for Northern Ireland to exercise functions under the Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005.

37. A disclosure with a view to the institution of, or otherwise for the purposes of, criminal proceedings.

38. A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings on an application under Article 9, 10 or 11 of the Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4).

39. A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings before the Financial Services and Markets Tribunal.

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40. A disclosure for the purposes of proceedings before the Financial Services Tribunal by virtue of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001 (S.I. 2001/3592).

41. A disclosure for the purpose of enabling or assisting a body appointed under section 14 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (supervision of periodic accounts and reports of issuers of listed securities) to exercise functions mentioned in subsection (2) of that section.

42. A disclosure with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by a solicitor, barrister, auditor, accountant, valuer or actuary of his professional duties.

43.—(1) A disclosure with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by a public servant of his duties.

(2) Public servant means an officer or employee of the Crown or of any public or other authority for the time being designated for the purposes of this paragraph by the Department by order.

(3) An order under sub-paragraph (2) shall be subject to negative resolution.

44. A disclosure for the purpose of the provision of a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained.

45. A disclosure in pursuance of any Community obligation.”.

20.—(1) Schedule 23 (punishment of offences) is amended as follows.

(2) For the entry for Article 442(2) substitute—

“442(6)	Wrongful disclosure of information to which Article 442 applies.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.”.
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(3) For the entry for Article 444 substitute—

“444	Providing false information in purported compliance with Article 440.	1. On indictment. 2. Summary.	2 years or a fine; or both. 6 months or the statutory maximum; or both.”.
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(4) After the entry for Article 444 insert—

“446A(5)	Intentionally obstructing a person lawfully acting under Article 446A(2) or (4).	1. On indictment. 2. Summary.	A fine. The statutory maximum.”.
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