



# Companies Act 1989

## 1989 CHAPTER 40

### PART III

#### INVESTIGATIONS AND POWERS TO OBTAIN INFORMATION

##### *Amendments of the Companies Act 1985*

#### **55 Investigations by inspectors not leading to published report**

In section 432 of the Companies Act 1985 (appointment of inspectors by Secretary of State), after subsection (2) (investigation of circumstances suggesting misconduct) insert—

“(2A) Inspectors may be appointed under subsection (2) on terms that any report they may make is not for publication; and in such a case, the provisions of section 437(3) (availability and publication of inspectors' reports) do not apply.”.

#### **56 Production of documents and evidence to inspectors**

(1) Section 434 of the Companies Act 1985 (production of documents and evidence to inspectors) is amended as follows.

(2) In subsection (1) (duty of officers to assist inspectors), for “books and documents” substitute “documents”.

(3) For subsection (2) (power to require production of documents, attendance or other assistance) substitute—

“(2) If the inspectors consider that an officer or agent of the company or other body corporate, or any other person, is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require him—

(a) to produce to them any documents in his custody or power relating to that matter,

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- (b) to attend before them, and
  - (c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give;
- and it is that person's duty to comply with the requirement."

(4) For subsection (3) (power to examine on oath) substitute—

"(3) An inspector may for the purposes of the investigation examine any person on oath, and may administer an oath accordingly."

(5) After subsection (5) insert—

"(6) In this section "documents" includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form."

(6) In section 436 of the Companies Act 1985 (obstruction of inspectors treated as contempt of court), for subsections (1) and (2) substitute—

"(1) If any person—

- (a) fails to comply with section 434(1)(a) or (c),
- (b) refuses to comply with a requirement under section 434(1)(b) or (2), or
- (c) refuses to answer any question put to him by the inspectors for the purposes of the investigation,

the inspectors may certify that fact in writing to the court."

## **57 Duty of inspectors to report**

In section 437 of the Companies Act 1985 (inspectors' reports), after subsection (1A) insert—

"(1B) If it appears to the Secretary of State that matters have come to light in the course of the inspectors' investigation which suggest that a criminal offence has been committed, and those matters have been referred to the appropriate prosecuting authority, he may direct the inspectors to take no further steps in the investigation or to take only such further steps as are specified in the direction.

(1C) Where an investigation is the subject of a direction under subsection (1B), the inspectors shall make a final report to the Secretary of State only where—

- (a) they were appointed under section 432(1) (appointment in pursuance of an order of the court), or
- (b) the Secretary of State directs them to do so."

## **58 Power to bring civil proceedings on the company's behalf**

In section 438 of the Companies Act 1985 (power to bring civil proceedings on the company's behalf), for the opening words of subsection (1) down to "it appears to the Secretary of State" substitute "If from any report made or information obtained under this Part it appears to the Secretary of State"

## **59 Expenses of investigating a company's affairs**

- (1) Section 439 of the Companies Act 1985 (expenses of investigating a company's affairs) is amended as follows.
- (2) For subsection (1) substitute—
  - “(1) The expenses of an investigation under any of the powers conferred by this Part shall be defrayed in the first instance by the Secretary of State, but he may recover those expenses from the persons liable in accordance with this section.  
  
There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Secretary of State may determine in respect of general staff costs and overheads.”.
- (3) In subsection (4) for “the inspectors' report” substitute “an inspectors' report”.
- (4) For subsection (5) substitute—
  - “(5) Where inspectors were appointed—
    - (a) under section 431, or
    - (b) on an application under section 442(3),the applicant or applicants for the investigation is or are liable to such extent (if any) as the Secretary of State may direct.”.

## **60 Power of Secretary of State to present winding-up petition**

- (1) Section 440 of the Companies Act 1985 (power of Secretary of State to present winding-up petition) is repealed; but the following amendments have the effect of re-enacting that provision, with modifications.
- (2) In section 124(4) of the Insolvency Act 1986 (application by Secretary of State for company to be wound up by the court), for paragraph (b) substitute—
  - “(b) in a case falling within section 124A below.”.
- (3) After that section insert—

### **“124A Petition for winding up on grounds of public interest**

- (1) Where it appears to the Secretary of State from—
  - (a) any report made or information obtained under Part XIV of the Companies Act 1985 (company investigations, &c.),
  - (b) any report made under section 94 or 177 of the Financial Services Act 1986 or any information obtained under section 105 of that Act,
  - (c) any information obtained under section 2 of the Criminal Justice Act 1987 or section 52 of the Criminal Justice (Scotland) Act 1987 (fraud investigations), or
  - (d) any information obtained under section 83 of the Companies Act 1989 (powers exercisable for purpose of assisting overseas regulatory authorities),

that it is expedient in the public interest that a company should be wound up, he may present a petition for it to be wound up if the court thinks it just and equitable for it to be so.

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(2) This section does not apply if the company is already being wound up by the court.”.

## **61 Inspectors' reports as evidence**

In section 441 of the Companies Act 1985 (inspectors' reports to be evidence), in subsection (1) for “sections 431 or 432” substitute “this Part”.

## **62 Investigation of company ownership**

In section 442 of the Companies Act 1985 (power to investigate company ownership), for subsection (3) (investigation on application by members of company) substitute—

“(3) If an application for investigation under this section with respect to particular shares or debentures of a company is made to the Secretary of State by members of the company, and the number of applicants or the amount of shares held by them is not less than that required for an application for the appointment of inspectors under section 431(2)(a) or (b), then, subject to the following provisions, the Secretary of State shall appoint inspectors to conduct the investigation applied for.

(3A) The Secretary of State shall not appoint inspectors if he is satisfied that the application is vexatious; and where inspectors are appointed their terms of appointment shall exclude any matter in so far as the Secretary of State is satisfied that it is unreasonable for it to be investigated.

(3B) The Secretary of State may, before appointing inspectors, require the applicant or applicants to give security, to an amount not exceeding £5,000, or such other sum as he may by order specify, for payment of the costs of the investigation.

An order under this subsection shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3C) If on an application under subsection (3) it appears to the Secretary of State that the powers conferred by section 444 are sufficient for the purposes of investigating the matters which inspectors would be appointed to investigate, he may instead conduct the investigation under that section.”.

## **63 Secretary of State's power to require production of documents**

(1) Section 447 of the Companies Act 1985 (power of Secretary of State to require production of documents) is amended as follows.

(2) Omit subsection (1) (bodies in relation to which powers exercisable), and—

- (a) in subsections (2) and (3) for “any such body” substitute “a company”,
- (b) in subsections (4) and (5) for “any body” and “a body” substitute “a company”, and
- (c) in subsections (5) and (6) for “the body” substitute “the company”.

(3) For “books or papers”, wherever occurring, substitute “documents”.

(4) In subsection (3) (power to authorise officer to require production of documents) after “an officer of his” insert “or any other competent person”, after “the officer” in the

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first place where it occurs insert “or other person” and for “the officer” in the second place where it occurs substitute “he (the officer or other person)”.

- (5) In subsection (4) (power to require production of documents in possession of third party) after “an officer of his” and after “the officer” (twice) insert “or other person”.
- (6) In subsection (6), for the second sentence substitute—

“Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to this offence.”.
- (7) After subsection (8) insert—

“(9) In this section “documents” includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of it in legible form.”.
- (8) In Schedule 24 to the Companies Act 1985 (punishment of offences), in the entry relating to section 447(6), for “books and papers” substitute “documents”.

## **64 Entry and search of premises**

- (1) For section 448 of the Companies Act 1985 (entry and search of premises) substitute—

### **“448 Entry and search of premises**

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, or by a person appointed or authorised to exercise powers under this Part, that there are reasonable grounds for believing that there are on any premises documents whose production has been required under this Part and which have not been produced in compliance with the requirement.
- (2) A justice of the peace may also issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, or by a person appointed or authorised to exercise powers under this Part—
  - (a) that there are reasonable grounds for believing that an offence has been committed for which the penalty on conviction on indictment is imprisonment for a term of not less than two years and that there are on any premises documents relating to whether the offence has been committed,
  - (b) that the Secretary of State, or the person so appointed or authorised, has power to require the production of the documents under this Part, and
  - (c) that there are reasonable grounds for believing that if production was so required the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed.
- (3) A warrant under this section shall authorise a constable, together with any other person named in it and any other constables—
  - (a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;

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- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1) or (2), as the case may be, or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
  - (c) to take copies of any such documents; and
  - (d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.
- (4) If in the case of a warrant under subsection (2) the justice of the peace is satisfied on information on oath that there are reasonable grounds for believing that there are also on the premises other documents relevant to the investigation, the warrant shall also authorise the actions mentioned in subsection (3) to be taken in relation to such documents.
- (5) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.
- (6) Any documents of which possession is taken under this section may be retained—
- (a) for a period of three months; or
  - (b) if within that period proceedings to which the documents are relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.
- (7) Any person who intentionally obstructs the exercise of any rights conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (3)(d) is guilty of an offence and liable to a fine.
- Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to this offence.
- (8) For the purposes of sections 449 and 451A (provision for security of information) documents obtained under this section shall be treated as if they had been obtained under the provision of this Part under which their production was or, as the case may be, could have been required.
- (9) In the application of this section to Scotland for the references to a justice of the peace substitute references to a justice of the peace or a sheriff, and for the references to information on oath substitute references to evidence on oath.
- (10) In this section “document” includes information recorded in any form.”.
- (2) In Schedule 24 to the Companies Act 1985 (punishment of offences), in the entry relating to section 448(5)—
- (a) in the first column for “448(5)” substitute “448(7)”, and
  - (b) for the entry in the second column substitute—

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“Obstructing the exercise of any rights conferred by a warrant or failing to comply with a requirement imposed under subsection (3)(d).”.

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## 65 Provision for security of information obtained

- (1) Section 449 of the Companies Act 1985 (provision for security of information obtained) is amended as follows.
- (2) In subsection (1) (purposes for which disclosure permitted)—
  - (a) in the opening words for “body” (twice) substitute “company”;
  - (b) for paragraph (c) substitute—
    - “(c) for the purposes of enabling or assisting any inspector appointed under this Part, or under section 94 or 177 of the Financial Services Act 1986, to discharge his functions;”;
  - (c) after that paragraph insert —
    - “(cc) for the purpose of enabling or assisting any person authorised to exercise powers under section 44 of the Insurance Companies Act 1982, section 447 of this Act, section 106 of the Financial Services Act 1986 or section 84 of the Companies Act 1989 to discharge his functions;”;
  - (d) in paragraph (d) for “or the Financial Services Act 1986” substitute “, the Financial Services Act 1986 or Part II, III or VII of the Companies Act 1989,”;
  - (e) omit paragraph (e);
  - (f) in paragraph (h) for “(n) or (p)” substitute “or (n)”;
  - (g) after that paragraph insert—
    - “(hh) for the purpose of enabling or assisting a body established by order under section 46 of the Companies Act 1989 to discharge its functions under Part II of that Act, or of enabling or assisting a recognised supervisory or qualifying body within the meaning of that Part to discharge its functions as such;”;
  - (h) after paragraph (l) insert—
    - “(ll) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the discharge by a public servant of his duties;”;
  - (i) for paragraph (m) substitute—
    - “(m) for the purpose of enabling or assisting an overseas regulatory authority to exercise its regulatory functions.”.
- (3) For subsection (1A) substitute—

“(1A) In subsection (1)—

  - (a) in paragraph (ll) “public servant” means an officer or servant of the Crown or of any public or other authority for the time being designated for the purposes of that paragraph by the Secretary of State by order made by statutory instrument; and
  - (b) in paragraph (m) “overseas regulatory authority” and “regulatory functions” have the same meaning as in section 82 of the Companies Act 1989.”.
- (4) In subsection (1B) (disclosure to designated public authorities) for “designated for the purposes of this section” substitute “designated for the purposes of this subsection”.
- (5) In subsection (2), for the second sentence substitute—

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“Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to this offence.”.

(6) For subsection (3) substitute—

“(3) For the purposes of this section each of the following is a competent authority—

- (a) the Secretary of State,
- (b) an inspector appointed under this Part or under section 94 or 177 of the Financial Services Act 1986,
- (c) any person authorised to exercise powers under section 44 of the Insurance Companies Act 1982, section 447 of this Act, section 106 of the Financial Services Act 1986 or section 84 of the Companies Act 1989,
- (d) the Department of Economic Development in Northern Ireland,
- (e) the Treasury,
- (f) the Bank of England,
- (g) the Lord Advocate,
- (h) the Director of Public Prosecutions, and the Director of Public Prosecutions for Northern Ireland,
- (i) any designated agency or transferee body within the meaning of the Financial Services Act 1986, and any body administering a scheme under section 54 of or paragraph 18 of Schedule 11 to that Act (schemes for compensation of investors),
- (j) the Chief Registrar of friendly societies and the Registrar of Friendly Societies for Northern Ireland,
- (k) the Industrial Assurance Commissioner and the Industrial Assurance Commissioner for Northern Ireland,
- (l) any constable,
- (m) any procurator fiscal.

(3A) Any information which may by virtue of this section be disclosed to a competent authority may be disclosed to any officer or servant of the authority.”.

(7) In subsection (4) (orders) for “subsection (1B)” substitute “subsection (1A)(a) or (1B)”.

## **66 Punishment for destroying, mutilating, &c. company documents**

(1) Section 450 of the Companies Act 1985 (punishment for destroying, mutilating, &c. company documents) is amended as follows.

(2) In subsection (1) for the opening words down to “insurance company” substitute “An officer of a company, or of an insurance company”, for “body’s” substitute “company’s” and for “the body” substitute “the company”.

(3) For subsection (4) substitute—



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“(4) Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to an offence under this section.”.

(4) After that subsection insert—

“(5) In this section “document” includes information recorded in any form.”.

## **67 Punishment for furnishing false information**

In section 451 of the Companies Act 1985 (punishment for furnishing false information), for the second sentence substitute—

“Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to this offence.”.

## **68 Disclosure of information by Secretary of State or inspector**

For section 451A of the Companies Act 1985 (disclosure of information by the Secretary of State) substitute—

### **“451A Disclosure of information by Secretary of State or inspector**

- (1) This section applies to information obtained under sections 434 to 446.
- (2) The Secretary of State may, if he thinks fit—
  - (a) disclose any information to which this section applies to any person to whom, or for any purpose for which, disclosure is permitted under section 449, or
  - (b) authorise or require an inspector appointed under this Part to disclose such information to any such person or for any such purpose.
- (3) Information to which this section applies may also be disclosed by an inspector appointed under this Part to—
  - (a) another inspector appointed under this Part or an inspector appointed under section 94 or 177 of the Financial Services Act 1986, or
  - (b) a person authorised to exercise powers under section 44 of the Insurance Companies Act 1982, section 447 of this Act, section 106 of the Financial Services Act 1986 or section 84 of the Companies Act 1989.
- (4) Any information which may by virtue of subsection (3) be disclosed to any person may be disclosed to any officer or servant of that person.
- (5) The Secretary of State may, if he thinks fit, disclose any information obtained under section 444 to—
  - (a) the company whose ownership was the subject of the investigation,
  - (b) any member of the company,
  - (c) any person whose conduct was investigated in the course of the investigation,
  - (d) the auditors of the company, or

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- (e) any person whose financial interests appear to the Secretary of State to be affected by matters covered by the investigation.”.

## **69 Protection of banking information**

- (1) Section 452 of the Companies Act 1985 (privileged information) is amended as follows.
- (2) In subsection (1), omit paragraph (b) (disclosure by bankers of information relating to their customers).
- (3) After that subsection insert—
  - “(1A) Nothing in section 434, 443 or 446 requires a person (except as mentioned in subsection (1B) below) to disclose information or produce documents in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—
    - (a) the person to whom the obligation of confidence is owed is the company or other body corporate under investigation,
    - (b) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
    - (c) the making of the requirement is authorised by the Secretary of State.
  - (1B) Subsection (1A) does not apply where the person owing the obligation of confidence is the company or other body corporate under investigation under section 431, 432 or 433.”.
- (4) In subsection (3) after “officer of his” insert “or other person”.

## **70 Investigation of overseas companies**

In section 453 of the Companies Act 1985 (investigation of overseas companies), for subsection (1) substitute—

- “(1) The provisions of this Part apply to bodies corporate incorporated outside Great Britain which are carrying on business in Great Britain, or have at any time carried on business there, as they apply to companies under this Act; but subject to the following exceptions, adaptations and modifications.
- (1A) The following provisions do not apply to such bodies—
  - (a) section 431 (investigation on application of company or its members),
  - (b) section 438 (power to bring civil proceedings on the company’s behalf),
  - (c) sections 442 to 445 (investigation of company ownership and power to obtain information as to those interested in shares, &c.), and
  - (d) section 446 (investigation of share dealings).
- (1B) The other provisions of this Part apply to such bodies subject to such adaptations and modifications as may be specified by regulations made by the Secretary of State.”.

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## **71 Investigation of unregistered companies**

In Schedule 22 to the Companies Act 1985 (provisions applying to unregistered companies), for the entry relating to Part XIV substitute—

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“Part XIV (except section 446)	Investigation of companies —” and their affairs; requisition of documents.
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