



Companies Act 1989

1989 CHAPTER 40

PART III

INVESTIGATIONS AND POWERS TO OBTAIN INFORMATION

Amendments of the Financial Services Act 1986

72 Investigations into collective investment schemes

(1) Section 94 of the Financial Services Act 1986 (investigations into collective investment schemes) is amended as follows.

(2) For subsection (7) (privilege on grounds of banker's duty of confidentiality) substitute—

“(7) Nothing in this section requires a person (except as mentioned in subsection (7A) below) to disclose any information or produce any document 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 consents to the disclosure or production, or
- (b) the making of the requirement was authorised by the Secretary of State.

(7A) Subsection (7) does not apply where the person owing the obligation of confidence or the person to whom it is owed is—

- (a) the manager, operator or trustee of the scheme under investigation, or
- (b) a manager, operator or trustee whose own affairs are under investigation.”.

(3) After subsection (8) (duty of inspectors to report) insert—

“(8A) 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

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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.

(8B) Where an investigation is the subject of a direction under subsection (8A), the inspectors shall make a final report to the Secretary of State only where the Secretary of State directs them to do so.”.

(4) After subsection (9) add—

“(10) A person who is convicted on a prosecution instituted as a result of an investigation under this section may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

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.”.

73 Investigations into affairs of persons carrying on investment business

(1) Section 105 of the Financial Services Act 1986 (investigation into affairs of person carrying on investment business) is amended as follows.

(2) Omit subsection (7) (privilege on grounds of banker’s duty of confidentiality).

(3) In subsection (9) (interpretation), in the definition of “documents”, for “references to its production include references to producing” substitute “the power to require its production includes power to require the production of”.

(4) After subsection (10) add—

“(11) A person who is convicted on a prosecution instituted as a result of an investigation under this section may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

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.”.

(5) In section 106 of the Financial Services Act 1986 (exercise of investigation powers by officer, &c.), after subsection (2) insert—

“(2A) A person shall not by virtue of an authority under this section be required to disclose any information or produce any documents in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

- (a) he is the person under investigation or a related company,
- (b) the person to whom the obligation of confidence is owed is the person under investigation or a related company,
- (c) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
- (d) the imposing on him of a requirement with respect to such information or documents has been specifically authorised by the Secretary of State.

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In this subsection “documents”, “person under investigation” and “related company” have the same meaning as in section 105.”.

74 Investigations into insider dealing

(1) Section 177 of the Financial Services Act 1986 (investigations into insider dealing) is amended as follows.

(2) After subsection (2) (power to limit period or scope of investigation) insert—

“(2A) At any time during the investigation the Secretary of State may vary the appointment by limiting or extending the period during which the inspector is to continue his investigation or by confining the investigation to particular matters.”.

(3) After subsection (5) (duty of inspectors to report) insert—

“(5A) If the Secretary of State thinks fit, he may direct the inspector to take no further steps in the investigation or to take only such further steps as are specified in the direction; and where an investigation is the subject of such a direction, the inspectors shall make a final report to the Secretary of State only where the Secretary of State directs them to do so.”.

(4) For subsection (8) (privilege on grounds of banker’s duty of confidentiality) substitute —

“(8) A person shall not under this section be required to disclose any information or produce any document 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 consents to the disclosure or production, or
- (b) the making of the requirement was authorised by the Secretary of State.”.

(5) In subsection (10) (definition of “documents”) for “references to its production include references to producing” substitute “the power to require its production includes power to require the production of”.

(6) After subsection (10) add—

“(11) A person who is convicted on a prosecution instituted as a result of an investigation under this section may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

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.”.

75 Restrictions on disclosure of information

(1) In section 179(3) of the Financial Services Act 1986 (persons who are “primary recipients” for purposes of provisions restricting disclosure of information)—

- (a) omit the word “and” preceding paragraph (i);

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- (b) in that paragraph, after “any such person” insert “as is mentioned in paragraphs (a) to (h) above”;
 - (c) after that paragraph insert—
 - “(j) any constable or other person named in a warrant issued under this Act.”.
- (2) Section 180 of the Financial Services Act 1986 (exceptions from restrictions on disclosure) is amended as follows.
- (3) In subsection (1) (purposes for which disclosure permitted)—
- (a) in paragraph (c), after “insolvency” insert “or by Part II, III or VII of the Companies Act 1989”;
 - (b) for paragraph (e) substitute—
 - “(e) for the purpose—
 - (i) of enabling or assisting a designated agency to discharge its functions under this Act or Part VII of the Companies Act 1989,
 - (ii) of enabling or assisting a transferee body or the competent authority to discharge its functions under this Act, or
 - (iii) of enabling or assisting the body administering a scheme under section 54 above to discharge its functions under the scheme;”;
 - (c) after paragraph (h) 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;”;
 - (d) after paragraph (o) insert—
 - “(oo) 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;”;
 - (e) in paragraph (p), after “under” insert “section 44 of the Insurance Companies Act 1982, section 447 of the Companies Act 1985,” and after “above” insert “or section 84 of the Companies Act 1989”;
 - (f) after paragraph (q) insert—
 - “(qq) for the purpose of enabling or assisting an overseas regulatory authority to exercise its regulatory functions;”.
- (4) After that subsection insert—
- “(1A) In subsection (1)—
 - (a) in paragraph (oo) “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 order of the Secretary of State; and
 - (b) in paragraph (qq) “overseas regulatory authority” and “regulatory functions” have the same meaning as in section 82 of the Companies Act 1989.”.

- (5) In subsection (3) (disclosure to designated public authorities) for “designated for the purposes of this section” substitute “designated for the purposes of this subsection”.
- (6) Omit subsection (6) (disclosure to certain overseas authorities).
- (7) In subsection (9) (orders) for “subsection (3) or (8)” substitute “subsection (1A)(a), (3) or (8).”

76 Entry and search of premises

- (1) Section 199 of the Financial Services Act 1986 (powers of entry) is amended as follows.
- (2) For subsections (1) and (2) substitute—
 - “(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 that there are reasonable grounds for believing that an offence has been committed—
 - (a) under section 4, 47, 57, 130, 133 or 171(2) or (3) above, or
 - (b) section 1, 2, 4 or 5 of the Company Securities (Insider Dealing) Act 1985,and that there are on any premises documents relevant to the question whether that offence has been committed.
 - (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 section 94, 106 or 177 above, that there are reasonable grounds for believing that there are on any premises documents whose production has been required under section 94, 105 or 177 above and which have not been produced in compliance with the requirement.”.
- (3) In subsection (3)(b) for “subsection (1)(a) or (b)” substitute “subsection (1)”.
- (4) In subsection (5) (period for which documents may be retained), for paragraph (b) substitute—
 - “(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.”.
- (5) In subsection (6) (offences) after “Any person who” insert “intentionally”.
- (6) In subsection (7) for “subsection (1)(a) above” substitute “subsection (1) above”.
- (7) For subsection (8) substitute—
 - “(8) 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.”.
- (8) In subsection (9) (definition of “documents”), omit the words from “and, in relation” to the end.