



# Companies Act 1989

## 1989 CHAPTER 40

### PART III

#### INVESTIGATIONS AND POWERS TO OBTAIN INFORMATION

##### *Powers exercisable to assist overseas regulatory authorities*

- 82** (1) The powers conferred by section 83 are exercisable by the Secretary of State for the purpose of assisting an overseas regulatory authority which has requested his assistance in connection with inquiries being carried out by it or on its behalf.
- (2) An “overseas regulatory authority” means an authority which in a country or territory outside the United Kingdom exercises—
- (a) any function corresponding to—
    - (i) a function under the Financial Services Act 1986 of a designated agency, transferee body or competent authority (within the meaning of that Act),
    - (ii) a function of the Secretary of State under the Insurance Companies Act 1982, the Companies Act 1985 or the Financial Services Act 1986, or
    - (iii) a function of the Bank of England under the Banking Act 1987, or
  - (b) any function in connection with the investigation of, or the enforcement of rules (whether or not having the force of law) relating to, conduct of the kind prohibited by the Company Securities (Insider Dealing) Act 1985, or
  - (c) any function prescribed for the purposes of this subsection by order of the Secretary of State, being a function which in the opinion of the Secretary of State relates to companies or financial services.

An order under paragraph (c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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- (3) The Secretary of State shall not exercise the powers conferred by section 83 unless he is satisfied that the assistance requested by the overseas regulatory authority is for the purposes of its regulatory functions.

An authority's "regulatory functions" means any functions falling within subsection (2) and any other functions relating to companies or financial services.

- (4) In deciding whether to exercise those powers the Secretary of State may take into account, in particular—
- (a) whether corresponding assistance would be given in that country or territory to an authority exercising regulatory functions in the United Kingdom;
  - (b) whether the inquiries relate to the possible breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
  - (c) the seriousness of the matter to which the inquiries relate, the importance to the inquiries of the information sought in the United Kingdom and whether the assistance could be obtained by other means;
  - (d) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (5) Before deciding whether to exercise those powers in a case where the overseas regulatory authority is a banking supervisor, the Secretary of State shall consult the Bank of England.

A "banking supervisor" means an overseas regulatory authority with respect to which the Bank of England has notified the Secretary of State, for the purposes of this subsection, that it exercises functions corresponding to those of the Bank under the Banking Act 1987.

- (6) The Secretary of State may decline to exercise those powers unless the overseas regulatory authority undertakes to make such contribution towards the costs of their exercise as the Secretary of State considers appropriate.
- (7) References in this section to financial services include, in particular, investment business, insurance and banking.

### **83 Power to require information, documents or other assistance**

- (1) The following powers may be exercised in accordance with section 82, if the Secretary of State considers there is good reason for their exercise.
- (2) The Secretary of State may require any person—
- (a) to attend before him at a specified time and place and answer questions or otherwise furnish information with respect to any matter relevant to the inquiries,
  - (b) to produce at a specified time and place any specified documents which appear to the Secretary of State to relate to any matter relevant to the inquiries, and
  - (c) otherwise to give him such assistance in connection with the inquiries as he is reasonably able to give.
- (3) The Secretary of State may examine a person on oath and may administer an oath accordingly.

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- (4) Where documents are produced the Secretary of State may take copies or extracts from them.
- (5) A person shall not under this section be required to disclose information or produce a document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session, except that a lawyer may be required to furnish the name and address of his client.
- (6) A statement by a person in compliance with a requirement imposed under this section may be used in evidence against him.
- (7) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.
- (8) 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.

#### **84 Exercise of powers by officer, &c**

- (1) The Secretary of State may authorise an officer of his or any other competent person to exercise on his behalf all or any of the powers conferred by section 83.
- (2) No such authority shall be granted except for the purpose of investigating—
  - (a) the affairs, or any aspects of the affairs, of a person specified in the authority, or
  - (b) a subject-matter so specified,being a person who, or subject-matter which, is the subject of the inquiries being carried out by or on behalf of the overseas regulatory authority.
- (3) No person shall be bound to comply with a requirement imposed by a person exercising powers by virtue of an authority granted under this section unless he has, if required, produced evidence of his authority.
- (4) 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) the imposing on him of a requirement with respect to such information or documents has been specifically authorised by the Secretary of State, or
  - (b) the person to whom the obligation of confidence is owed consents to the disclosure or production.

In this subsection “documents” has the same meaning as in section 83.

- (5) Where the Secretary of State authorises a person other than one of his officers to exercise any powers by virtue of this section, that person shall make a report to the Secretary of State in such manner as he may require on the exercise of those powers and the results of exercising them.

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## **85 Penalty for failure to comply with requirement, &c**

- (1) A person who without reasonable excuse fails to comply with a requirement imposed on him under section 83 commits an offence and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or both.
- (2) A person who in purported compliance with any such requirement furnishes information which he knows to be false or misleading in a material particular, or recklessly furnishes information which is false or misleading in a material particular, commits an offence and is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both.

## **86 Restrictions on disclosure of information**

- (1) This section applies to information relating to the business or other affairs of a person which—
  - (a) is supplied by an overseas regulatory authority in connection with a request for assistance, or
  - (b) is obtained by virtue of the powers conferred by section 83, whether or not any requirement to supply it is made under that section.
- (2) Except as permitted by section 87 below, such information shall not be disclosed for any purpose—
  - (a) by the primary recipient, or
  - (b) by any person obtaining the information directly or indirectly from him,without the consent of the person from whom the primary recipient obtained the information and, if different, the person to whom it relates.
- (3) The “primary recipient” means, as the case may be—
  - (a) the Secretary of State,
  - (b) any person authorised under section 84 to exercise powers on his behalf, and
  - (c) any officer or servant of any such person.
- (4) Information shall not be treated as information to which this section applies if it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section.
- (5) A person who contravenes this section commits an offence and is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum, or both.

## **87 Exceptions from restrictions on disclosure**

- (1) Information to which section 86 applies may be disclosed—
  - (a) to any person with a view to the institution of, or otherwise for the purposes of, relevant proceedings,

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- (b) for the purpose of enabling or assisting a relevant authority to discharge any relevant function (including functions in relation to proceedings),
  - (c) to the Treasury, if the disclosure is made in the interests of investors or in the public interest,
  - (d) if the information is or has been available to the public from other sources,
  - (e) in 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, or
  - (f) in pursuance of any Community obligation.
- (2) The relevant proceedings referred to in subsection (1)(a) are—
- (a) any criminal proceedings,
  - (b) civil proceedings arising under or by virtue of the Financial Services Act 1986 and proceedings before the Financial Services Tribunal, and
  - (c) disciplinary proceedings relating to—
    - (i) the exercise by a solicitor, auditor, accountant, valuer or actuary of his professional duties, or
    - (ii) the discharge by a public servant of his duties.
- (3) In subsection (2)(c)(ii) “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 provision by order of the Secretary of State.
- (4) The relevant authorities referred to in subsection (1)(b), and the relevant functions in relation to each such authority, are as follows—

<i>Authority</i>	<i>Functions</i>
The Secretary of State.	Functions under the enactments relating to companies, insurance companies or insolvency, or under the Financial Services Act 1986 or Part II, this Part or Part VII of this Act.
An inspector appointed under Part XIV of the Companies Act 1985 or section 94 or 177 of the Financial Services Act 1986.	Functions under that Part or that section.
A person authorised to exercise powers under section 44 of the Insurance Companies Act 1982, section 447 of the Companies Act 1985, section 106 of the Financial Services Act 1986 or section 84 of this Act.	Functions under that section.
An overseas regulatory authority.	Its regulatory functions (within the meaning of section 82 of this Act).
The Department of Economic Development in Northern Ireland or a person appointed or authorised by that Department.	Functions conferred on it or him by the enactments relating to companies or insolvency.

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<i>Authority</i>	<i>Functions</i>
A designated agency within the meaning of the Financial Services Act 1986.	Functions under that Act or Part VII of this Act.
A transferee body or the competent authority within the meaning of the Financial Services Act 1986.	Functions under that Act.
The body administering a scheme under section 54 of the Financial Services Act 1986.	Functions under the scheme.
A recognised self-regulating organisation, recognised professional body, recognised investment exchange, recognised clearing house or recognised self-regulating organisation for friendly societies (within the meaning of the Financial Services Act 1986).	Functions in its capacity as an organisation, body, exchange or clearing house recognised under that Act.
The Chief Registrar of friendly societies, the Registrar of Friendly Societies for Northern Ireland and the Assistant Registrar of Friendly Societies for Scotland.	Functions under the Financial Services Act 1986 or the enactments relating to friendly societies or building societies.
The Bank of England.	Functions under the Banking Act 1987 and any other functions.
The Deposit Protection Board.	Functions under the Banking Act 1987.
A body established by order under section 46 of this Act.	Functions under Part II of this Act.
A recognised supervisory or qualifying body within the meaning of Part II of this Act.	Functions as such a body.
The Industrial Assurance Commissioner and the Industrial Assurance Commissioner for Northern Ireland.	Functions under the enactments relating to industrial assurance.
The Insurance Brokers Registration Council.	Functions under the Insurance Brokers (Registration) Act 1977.
The Official Receiver or, in Northern Ireland, the Official Assignee for company liquidations or for bankruptcy.	Functions under the enactments relating to insolvency.
A recognised professional body (within the meaning of section 391 of the Insolvency Act 1986).	Functions in its capacity as such a body under the Insolvency Act 1986.
The Building Societies Commission.	Functions under the Building Societies Act 1986.
The Director General of Fair Trading.	Functions under the Financial Services Act 1986.

- (5) The Secretary of State may by order amend the Table in subsection (4) so as to—
- (a) add any public or other authority to the Table and specify the relevant functions of that authority,
  - (b) remove any authority from the Table, or
  - (c) add functions to, or remove functions from, those which are relevant functions in relation to an authority specified in the Table;
- and the order may impose conditions subject to which, or otherwise restrict the circumstances in which, disclosure is permitted.
- (6) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **88 Exercise of powers in relation to Northern Ireland**

- (1) The following provisions apply where it appears to the Secretary of State that a request for assistance by an overseas regulatory authority may involve the powers conferred by section 83 being exercised in Northern Ireland in relation to matters which are transferred matters within the meaning of the Northern Ireland Constitution Act 1973.
- (2) The Secretary of State shall before deciding whether to accede to the request consult the Department of Economic Development in Northern Ireland, and if he decides to accede to the request and it appears to him—
- (a) that the powers should be exercised in Northern Ireland, and
  - (b) that the purposes for which they should be so exercised relate wholly or primarily to transferred matters,
- he shall by instrument in writing authorise the Department to exercise in Northern Ireland his powers under section 83.
- (3) The following provisions have effect in relation to the exercise of powers by virtue of such an authority with the substitution for references to the Secretary of State of references to the Department of Economic Development in Northern Ireland—
- (a) section 84 (exercise of powers by officer, &c.),
  - (b) section 449 of the Companies Act 1985, section 53 or 54 of the Building Societies Act 1986, sections 179 and 180 of the Financial Services Act 1986, section 84 of the Banking Act 1987 and sections 86 and 87 above (restrictions on disclosure of information), and
  - (c) section 89 (authority for institution of criminal proceedings);
- and references to the Secretary of State in other enactments which proceed by reference to those provisions shall be construed accordingly as being or including references to the Department.
- (4) The Secretary of State may after consultation with the Department of Economic Development in Northern Ireland revoke an authority given to the Department under this section.
- (5) In that case nothing in the provisions referred to in subsection (3)(b) shall apply so as to prevent the Department from giving the Secretary of State any information obtained by virtue of the authority; and (without prejudice to their application in relation to disclosure by the Department) those provisions shall apply to the disclosure of such information by the Secretary of State as if it had been obtained by him in the first place.

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- (6) Nothing in this section affects the exercise by the Secretary of State of any powers in Northern Ireland—
- (a) in a case where at the time of acceding to the request it did not appear to him that the circumstances were such as to require him to authorise the Department of Economic Development in Northern Ireland to exercise those powers, or
  - (b) after the revocation by him of any such authority;
- and no objection shall be taken to anything done by or in relation to the Secretary of State or the Department on the ground that it should have been done by or in relation to the other.

## **89 Prosecutions**

Proceedings for an offence under section 85 or 86 shall not be instituted—

- (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
- (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

## **90 Offences by bodies corporate, partnerships and unincorporated associations**

- (1) Where an offence under section 85 or 86 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as to a director of a body corporate.
- (3) Where an offence under section 85 or 86 committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) Where an offence under section 85 or 86 committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or any member of its governing body, he as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

## **91 Jurisdiction and procedure in respect of offences**

- (1) Summary proceedings for an offence under section 85 may, without prejudice to any jurisdiction exercisable apart from this section, be taken against a body corporate or unincorporated association at any place at which it has a place of business and against an individual at any place where he is for the time being.
- (2) Proceedings for an offence alleged to have been committed under section 85 or 86 by an unincorporated association shall be brought in the name of the association (and not in that of any of its members), and for the purposes of any such proceedings any rules of court relating to the service of documents apply as in relation to a body corporate.



- (3) Section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980 (procedure on charge of offence against a corporation) apply in a case in which an unincorporated association is charged in England and Wales with an offence under section 85 or 86 as they apply in the case of a corporation.
- (4) In relation to proceedings on indictment in Scotland for an offence alleged to have been committed under section 85 or 86 by an unincorporated association, section 74 of the Criminal Procedure (Scotland) Act 1975 (proceedings on indictment against bodies corporate) applies as if the association were a body corporate.
- (5) Section 18 of the Criminal Justice Act (Northern Ireland) 1945 and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (procedure on charge of offence against a corporation) apply in a case in which an unincorporated association is charged in Northern Ireland with an offence under section 85 or 86 as they apply in the case of a corporation.
- (6) A fine imposed on an unincorporated association on its conviction of such an offence shall be paid out of the funds of the association.