



# Companies Act 1985

## 1985 CHAPTER 6

### PART XIV

#### INVESTIGATION OF COMPANIES AND THEIR AFFAIRS; REQUISITION OF DOCUMENTS

##### *Appointment and functions of inspectors*

#### **431 Investigation of a company on its own application or that of its members.**

- (1) The Secretary of State may appoint one or more competent inspectors to investigate the affairs of a company and to [<sup>F1</sup>report the result of their investigations to him] .
- (2) The appointment may be made—
  - (a) in the case of a company having a share capital, on the application either of not less than 200 members or of members holding not less than one-tenth of the shares issued, [<sup>F2</sup>(excluding any shares held as treasury shares)]
  - (b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members, and
  - (c) in any case, on application of the company.
- (3) The application shall be supported by such evidence as the Secretary of State may require for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.
- (4) 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 subject to annulment in pursuance of a resolution of either House of Parliament.

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*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1985, Cross Heading: Appointment and functions of inspectors. (See end of Document for details)*

#### Textual Amendments

- F1** Words in s. 431(1) substituted (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), **ss. 1035(2)**, 1300; [S.I. 2007/2194](#), **art. 2(1)(k)** (with [art. 12](#), [Sch. 3 para. 48](#))
- F2** Words in s. 431(2)(a) inserted (1.12.2003) by [The Companies \(Acquisition of Own Shares\)\(Treasury Shares\) Regulations 2003 \(S.I. 2003/1116\)](#), reg. 4, {[Sch. para. 28](#)}

#### Modifications etc. (not altering text)

- C1** S. 431 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [reg. 4](#), **Sch. 2 Pt. I**

### 432 Other company investigations.

- (1) The Secretary of State shall appoint one or more competent inspectors to investigate the affairs of a company and [<sup>F3</sup>report the result of their investigations to him], if the court by order declares that its affairs out to be so investigated.
- (2) The Secretary of State may make such an appointment if it appears to him that there are circumstances suggesting—
- (a) that the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to some part of its members, or
  - (b) that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose, or
  - (c) that persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members, or
  - (d) that the company's members have not been given all the information with respect to its affairs which they might reasonably expect.

[<sup>F4</sup>(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.]

- (3) Subsections (1) and (2) are without prejudice to the powers of the Secretary of State under section 431; and the power conferred by subsection (2) is exercisable with respect to a body corporate notwithstanding that it is in course of being voluntarily wound up.
- (4) The reference in subsection (2)(a) to a company's members includes any person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

#### Textual Amendments

- F3** Words in s. 432(1) substituted (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), **ss. 1035(3)**, 1300; [S.I. 2007/2194](#), **art. 2(1)(k)** (with [art. 12](#), [Sch. 3 para. 48](#))
- F4** S. 432(2A) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 55**, 213(2)

#### Modifications etc. (not altering text)

- C2** S. 432 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [reg. 4](#), **Sch. 2 Pt. I**

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**C3** S. 432(1)(2) extended (with modifications) by [S.I. 1989/638, regs. 18, 21, Sch. 4 para. 5](#)

### **433 Inspectors' powers during investigation.**

- (1) If inspectors appointed under section 431 or 432 to investigate the affairs of a company think it necessary for the purposes of their investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, they have power to do so; and they shall report on the affairs of the other body corporate so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned above.

<sup>F5</sup>(2) .....

#### **Textual Amendments**

**F5** S. 433(2) repealed by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), ss. 182, 212(3), [Sch. 13 para. 7](#), [Sch. 17 Pt. I](#)

#### **Modifications etc. (not altering text)**

**C4** S. 433 applied (with modifications) (6.4.2001) by [S.I. 2001/1090, reg. 4, Sch. 2 Pt. I](#)

### **434 Production of documents and evidence to inspectors.**

- (1) When inspectors are appointed under section 431 or 432, it is the duty of all officers and agents of the company, and of all officers and agents of any other body corporate whose affairs are investigated under section 433(1)—

- (a) to produce to the inspectors all [<sup>F6</sup>documents] of or relating to the company or, as the case may be, the other body corporate which are in their custody or power,
- (b) to attend before the inspectors when required to do so, and
- (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.

[<sup>F7</sup>(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,
- (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.]

[<sup>F8</sup>(3) An inspector may for the purposes of the investigation examine any person on oath, and may administer an oath accordingly.]

- (4) In this section a reference to officers or to agents includes past, as well as present, officers or agents (as the case may be); and "agents", in relation to a company or other body corporate, includes its bankers and solicitors and persons employed by it

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as auditors, whether these persons are or are not officers of the company or other body corporate.

- (5) An answer given by a person to a question put to him in exercise of powers conferred by this section (whether as it has effect in relation to an investigation under any of sections 431 to 433, or as applied by any other section in this Part) may be used in evidence against him.

[<sup>F9</sup>(5A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—

- (a) no evidence relating to the answer may be adduced, 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.

(5B) Subsection (5A) applies to any offence other than—

- (a) an offence under section 2 or 5 of the Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath); or
- (b) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath)[<sup>F10</sup>; or
- (c) an offence under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).]]

[<sup>F11</sup>(6) In this section “document” includes information recorded in any form.

- (7) The power under this section to require production of a document includes power, in the case of a document not in hard copy form, to require the production of a copy of the document—

- (a) in hard copy form, or
- (b) in a form from which a hard copy can be readily obtained.

- (8) An inspector may take copies of or extracts from a document produced in pursuance of this section.]

#### Textual Amendments

- F6** Words in s. 434(1)(a) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 56(2)**, 213(2)
- F7** S. 434(2) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 56(3)**, 213(2)
- F8** S. 434(3) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 56(4)**, 213(2)
- F9** S. 434(5A)(5B) inserted (14.4.2000 for E.W.N.I. and 1.1.2001 for S.) by 1999 c. 23, ss. 59, 68(3), **Sch. 3 para. 5** (with [Sch. 7 para. 5\(2\)](#)); S.I. 2000/1034, **art. 2(a)**; S.S.I. 2000/445, **art. 2**
- F10** S. 434(5B)(c) and preceding word inserted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 57(2)**
- F11** S. 434(6)-(8) substituted for s. 434(6) (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), **ss. 1038(1)**, 1300; S.I. 2007/2194, **art. 2(1)(k)** (with [art. 12, Sch. 3 para. 48](#))

#### Modifications etc. (not altering text)

- C5** S. 434 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 6**
- C6** S. 434 applied (with modifications) by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), **s. 94(3)(7)**

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- S. 434 applied (with modifications) (6.1.1997) by S.I. 1996/2827, **reg. 22(3)(4)**
- C7** S. 434 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **reg. 4, Sch. 2 Pt. I**
- C8** S. 434(4) amended (E.W.)(01.01.1992) by S.I. 1991/2684, **arts. 2(1), 4, 5, Sch. 1.**

<sup>F12</sup>**435** .....

**Textual Amendments**

- F12** S. 435 repealed by **Companies Act 1989 (c. 40, SIF 27)**, **ss. 212, 213(2), Sch. 24**

**436 Obstruction of inspectors treated as contempt of court.**

[<sup>F13</sup>(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.]

- (3) The court may thereupon enquire into the case; and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, the court may punish the offender in like manner as if he had been guilty of contempt of the court.

**Textual Amendments**

- F13** S. 436(1) substituted for subsections (1)(2) by **Companies Act 1989 (c. 40, SIF 27)**, **ss. 56(6), 213(2)**

**Modifications etc. (not altering text)**

- C9** S. 436 applied (with modifications) by **Financial Services Act 1986 (c. 60, SIF 69)**, **s. 94(3)(7)**  
S. 436 applied (with modifications) (6.1.1997) by S.I. 1996/2827, **reg. 22(3)(4)**
- C10** S. 436 extended (with modifications) by S.I. 1989/638, **regs. 18, 21, Sch. 4 para. 7**
- C11** S. 436 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **reg. 4, Sch. 2 Pt. I**

**437 Inspectors' reports.**

- (1) The inspectors may, and if so directed by the Secretary of State shall, make interim reports to the Secretary of State, and on the conclusion of their investigation shall make a final report to him.

<sup>F14</sup> . . .

[<sup>F15</sup>(1A) Any persons who have been appointed under section 431 or 432 may at any time and, if the Secretary of State directs them to do so, shall inform him of any matters coming to their knowledge as a result of their investigations.]

(1B) <sup>F16</sup> .....

(1C) <sup>F16</sup> .....

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- (2) If the inspectors were appointed under section 432 in pursuance of an order of the court, the Secretary of State shall furnish a copy of any report of theirs to the court.
- [<sup>F17</sup>(2A) If the company is registered under the Companies Act 2006 in Northern Ireland, the Secretary of State must send a copy of any interim or final report by the inspectors to the Department of Enterprise, Trade and Investment in Northern Ireland.]
- (3) In any case the Secretary of State may, if he thinks fit—
- (a) forward a copy of any report made by the inspectors to the company's registered office,
  - (b) furnish a copy on request and on payment of the prescribed fee to—
    - (i) any member of the company or other body corporate which is the subject of the report,
    - (ii) any person whose conduct is referred to in the report,
    - (iii) the auditors of that company or body corporate,
    - (iv) the applicants for the investigation,
    - (v) any other person whose financial interests appear to the Secretary of State to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate, or otherwise, and
  - (c) cause any such report to be printed and published.

#### Textual Amendments

- F14** Words in s. 437(1) repealed (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1035(4)(a), 1295, 1300, [Sch. 16](#); [S.I. 2007/2194](#), arts. 2(1)(k), [8](#), Sch. 2 Pt. 1 (with art. 12, Sch. 3 para. 48)
- F15** S. 437(1A) inserted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 182, [Sch. 13 para. 7](#)
- F16** S. 437(1B)(1C) repealed (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1035(4)(b), 1295, 1300, [Sch. 16](#); [S.I. 2007/2194](#), arts. 2(1)(k), [8](#), Sch. 2 Pt. 1 (with art. 12, Sch. 3 para. 48)
- F17** S. 437(2A) inserted (1.10.2009) after s. 437(2) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), [Sch. 1 para. 57\(3\)](#)

#### Modifications etc. (not altering text)

- C12** S. 437 extended (with modifications) by [S.I. 1989/638](#), [regs. 18, 21](#)
- C13** S. 437 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, [Sch. 2 Pt. I](#)

## 438 Power to bring civil proceedings on company's behalf.

<sup>F18</sup> .....

#### Textual Amendments

- F18** S. 438 repealed (6.4.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1176(1), 1295, 1300, [Sch. 16](#) (with s. 1176(4)); [S.I. 2006/3428](#), [arts. 4\(1\)\(b\)](#), 7(c), Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by [S.I. 2007/3495](#), art. 11, Sch. 5))

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### 439 Expenses of investigating a company's affairs.

[<sup>F19</sup>(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.]

(2) A person who is convicted on a prosecution instituted as a result of the investigation <sup>F20</sup> . . . may in the same proceedings be ordered to pay those expenses to such extent as may be specified in the order.

(3) <sup>F21</sup> . . . . .

(4) A body corporate dealt with by [<sup>F22</sup>an inspectors' report], where the inspectors were appointed otherwise than of the Secretary of State's own motion, is liable except where it was the applicant for the investigation, and except so far as the Secretary of State otherwise directs.

[<sup>F23</sup>(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.]

(6) The report of inspectors appointed otherwise than of the Secretary of State's own motion may, if they think fit, and shall if the Secretary of State so directs, include a recommendation as to the directions (if any) which they think appropriate, in the light of their investigation, to be given under subsection (4) or (5) of this section.

(7) <sup>F24</sup> . . . . .

(8) Any liability to repay the Secretary of State imposed by [<sup>F25</sup>subsection (2)] above is (subject to satisfaction of his right to repayment) a liability also to indemnify all persons against liability under subsections (4) and (5) <sup>F26</sup> . . . .

(9) A person liable under any one of those subsections is entitled to contribution from any other person liable under the same subsection, according to the amount of their respective liabilities under it.

(10) Expenses to be defrayed by the Secretary of State under this section shall, so far as not recovered under it, be paid out of money provided by Parliament.

#### Textual Amendments

**F19** S. 439(1) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 59(2)**, 213(2)

**F20** Words in s. 439(2) repealed (6.4.2007) by [Companies Act 2006 \(c. 46\)](#), **ss. 1176(2)(a)**, 1295, 1300, **Sch. 16** (with s. 1176(4)); S.I. 2006/3428, **arts. 4(1)(b)**, 7(c), Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**F21** S. 439(3) repealed (6.4.2007) by [Companies Act 2006 \(c. 46\)](#), **ss. 1176(2)(b)**, 1295, 1300, **Sch. 16** (with s. 1176(4)); S.I. 2006/3428, **art. 4(1)(b)**, 7(c), Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**F22** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 59(3)**, 213(2)

**F23** S. 439(5) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 59(4)**, 213(2)

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- F24** S. 439(7) repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1176(2)(b), 1295, 1300, **Sch. 16** (with s. 1176(4)); S.I. 2006/3428, **art. 4(1)(b)**, 7(c), Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))
- F25** Words in s. 439(8) substituted (6.4.2007) by Companies Act 2006 (c. 46), **ss. 1176(2)(c)(i)**, 1300 (with s. 1176(4)); S.I. 2006/3428, **art. 4(1)(b)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))
- F26** Words in s. 439(8) repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1176(2)(c)(ii), 1295, 1300, **Sch. 16** (with s. 1176(4)); S.I. 2006/3428, **art. 4(1)(b)**, 7(c), Sch. 4 Pt. 1 (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5))

**Modifications etc. (not altering text)**

- C14** S. 439 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 8**
- C15** S. 439 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**

**F27 440 Power of Secretary of State to present winding-up petition.**

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**Textual Amendments**

- F27** S. 440 repealed and superseded by Companies Act 1989 (c. 40, SIF 27), ss. 60, 212, 213(2), **Sch. 24** and amended by 1995 c. 40, s. 5, **Sch. 4 para. 56**

**441 Inspectors' report to be evidence.**

- (1) A copy of any report of inspectors appointed under [<sup>F28</sup>this Part], certified by the Secretary of State to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report [<sup>F29</sup>and, in proceedings on an application under [<sup>F30</sup>section 8 of the Company Directors Disqualification Act 1986][<sup>F31</sup>or Article 11 of the Company Directors Disqualification (Northern Ireland) Order 2002], as evidence of any fact stated therein].
- (2) A document purporting to be such a certificate as is mentioned above shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

**Textual Amendments**

- F28** Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 61**, 213(2)
- F29** Words inserted by Insolvency Act 1985 (c. 65, SIF 27), s. 109, **Sch. 6 para. 3**
- F30** Words substituted by Insolvency Act 1986 (c. 45, SIF 66), s. 439(1), **Sch. 13 Pt. I**
- F31** Words in s. 441(1) inserted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 57(4)**

**Modifications etc. (not altering text)**

- C16** S. 441 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 9**
- C17** S. 441 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, **Sch. 2 Pt. I**



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