
STATUTORY INSTRUMENTS

2005 No. 1967

The Companies (Audit, Investigations and
Community Enterprise) (Northern Ireland) Order 2005

PART II

AUDITORS, ACCOUNTS, DIRECTORS' LIABILITIES AND INVESTIGATIONS

CHAPTER II

ACCOUNTS AND REPORTS

Auditing of accounts

Auditors' rights to information

10. For Article 397A of the 1986 Order (rights to information) substitute—

"Rights to information

397A.—(1) An auditor of a company—

- (a) has a right of access at all times to the company's books, accounts and vouchers (in whatever form they are held), and
- (b) may require any of the persons mentioned in paragraph (2) to provide him with such information or explanations as he thinks necessary for the performance of his duties as auditor.

(2) Those persons are—

- (a) any officer or employee of the company;
- (b) any person holding or accountable for any of the company's books, accounts or vouchers;
- (c) any subsidiary undertaking of the company which is a body corporate incorporated in Northern Ireland;
- (d) any officer, employee or auditor of any such subsidiary undertaking or any person holding or accountable for any books, accounts or vouchers of any such subsidiary undertaking;
- (e) any person who fell within any of sub-paragraphs (a) to (d) at a time to which the information or explanations required by the auditor relates or relate.

(3) Where a parent company has a subsidiary undertaking which is not a body corporate incorporated in Northern Ireland, the auditor of the parent company may require it to obtain from any of the persons mentioned in paragraph (4) such information or explanations as he may reasonably require for the purposes of his duties as auditor.

- (4) Those persons are—
- (a) the undertaking;
 - (b) any officer, employee or auditor of the undertaking;
 - (c) any person holding or accountable for any of the undertaking's books, accounts or vouchers;
 - (d) any person who fell within sub-paragraph (b) or (c) at a time to which the information or explanations relates or relate.

(5) If so required, the parent company must take all such steps as are reasonably open to it to obtain the information or explanations from the person within paragraph (4) from whom the auditor has required the company to obtain the information or explanations.

(6) A statement made by a person in response to a requirement under paragraph (1)(b) or (3) may not be used in evidence against him in any criminal proceedings except proceedings for an offence under Article 397B.

(7) Nothing in this Article or Article 397B compels any person to disclose information in respect of which in an action in the High Court a claim to legal professional privilege could be maintained.

Offences relating to the provision of information to auditors

397B.—(1) If a person knowingly or recklessly makes to an auditor of a company a statement (oral or written) that—

- (a) conveys or purports to convey any information or explanations which the auditor requires, or is entitled to require, under Article 397A(1)(b), and
- (b) is misleading, false or deceptive in a material particular,

the person is guilty of an offence and liable to imprisonment or a fine, or both.

(2) A person who fails to comply with a requirement under Article 397A(1)(b) without delay is guilty of an offence and is liable to a fine.

(3) However, it is a defence for a person charged with an offence under paragraph (2) to prove that it was not reasonably practicable for him to provide the required information or explanations.

(4) If a company fails to comply with Article 397A(5), the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(5) Nothing in this Article affects any right of an auditor to apply for an injunction to enforce any of his rights under Article 397A.”.

Statement in directors' report as to disclosure of information to auditors

11.—(1) Part VIII of the 1986 Order (accounts and audit) is amended as follows.

(2) In Article 242 (duty to prepare directors' report), after paragraph (2) insert—

“(2A) If Article 242ZA applies to the report, it shall contain the statement required by paragraph (2) of that Article.”.

(3) After Article 242 insert—

“Statement as to disclosure of information to auditors

242ZA.—(1) This Article applies to a directors' report unless the directors have taken advantage of the exemption conferred by Article 257A(1) or 257AA(1).

(2) The report must contain a statement to the effect that, in the case of each of the persons who are directors at the time when the report is approved under Article 242A, the following applies—

- (a) so far as the director is aware, there is no relevant audit information of which the company's auditors are unaware, and
- (b) he has taken all the steps that he ought to have taken as a director in order to make himself aware of any relevant audit information and to establish that the company's auditors are aware of that information.

(3) In paragraph (2) "relevant audit information" means information needed by the company's auditors in connection with preparing their report.

(4) For the purposes of paragraph (2) a director has taken all the steps that he ought to have taken as a director in order to do the things mentioned in sub-paragraph (b) of that paragraph if he has—

- (a) made such enquiries of his fellow directors and of the company's auditors for that purpose, and
- (b) taken such other steps (if any) for that purpose,

as were required by his duty as a director of the company to exercise due care, skill and diligence.

(5) In determining for the purposes of paragraph (2) the extent of that duty in the case of a particular director, the following considerations (in particular) are relevant—

- (a) the knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by the director in relation to the company, and
- (b) (so far as they exceed what may reasonably be so expected) the knowledge, skill and experience that the director in fact has.

(6) Where a directors' report containing the statement required by paragraph (2) is approved under Article 242A but the statement is false, every director of the company who—

- (a) knew that the statement was false, or was reckless as to whether it was false, and
- (b) failed to take reasonable steps to prevent the report from being approved,

is guilty of an offence and liable to imprisonment or a fine, or both."

Defective accounts

Persons authorised to apply to court in connection with defective accounts

12.—(1) Article 253C of the 1986 Order (other persons authorised to apply to court) is amended as follows.

(2) After paragraph (1) insert—

“(1A) But where the order giving authorisation is to contain any requirements or other provisions specified under paragraph (4A), the Department may not authorise a person unless, in addition, it appears to the Department that the person would, if authorised, exercise his functions as an authorised person in accordance with any such requirements or provisions.”

(3) After paragraph (4) insert—

“(4A) An order under paragraph (4) may contain such requirements or other provisions relating to the exercise of functions by the authorised person as appear to the Department to be appropriate.

(4B) If the authorised person is an unincorporated association, any relevant proceedings may be brought by or against that association in the name of any body corporate whose constitution provides for the establishment of the association.

(4C) For the purposes of paragraph (4B) “relevant proceedings” means proceedings brought in, or in connection with, the exercise of any function by the association as an authorised person.”

Power of person authorised to require documents, information and explanations

13.—(1) After Article 253E of the 1986 Order (restrictions on use and further disclosure of information disclosed under Article 253D) insert—

“Power of authorised persons to require documents, information and explanations

253F.—(1) This Article applies where it appears to a person who is authorised under Article 253C that there is, or may be, a question whether the annual accounts of a company comply with the requirements of this Order.

(2) The authorised person may require any of the persons mentioned in paragraph (3) to produce any document, or to provide him with any information or explanations, that he may reasonably require for the purpose of—

- (a) discovering whether there are grounds for an application to the court under Article 253B; or
- (b) determining whether or not to make such an application.

(3) Those persons are—

- (a) the company;
- (b) any officer, employee, or auditor of the company;
- (c) any persons who fell within sub-paragraph (b) at a time to which the document or information required by the authorised person relates.

(4) If a person fails to comply with a requirement under paragraph (2), the authorised person may apply to the court for an order under paragraph (5).

(5) If on such an application the court decides that the person has failed to comply with the requirement under paragraph (2), it may order the person to take such steps as it directs for securing that the documents are produced or the information or explanations are provided.

(6) A statement made by a person in response to a requirement under paragraph (2) or an order under paragraph (5) may not be used in evidence against him in any criminal proceedings.

(7) Nothing in this Article compels any person to disclose documents or information in respect of which in an action in the High Court a claim to legal professional privilege could be maintained.

(8) In this Article “document” includes information recorded in any form.

Restrictions on further disclosure of information obtained under Article 253F

253G.—(1) This Article applies to information (in whatever form) which—

- (a) has been obtained in pursuance of a requirement or order under Article 253F, and
- (b) relates to the private affairs of an individual or to any particular business.

- (2) No such information may, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.
- (3) Paragraph (2) does not apply to any disclosure of information which—
- (a) is made for the purpose of facilitating the carrying out by a person authorised under Article 253C of his functions under Article 253B;
 - (b) is made to a person specified in Part I of Schedule 7B;
 - (c) is of a description specified in Part II of that Schedule; or
 - (d) is made in accordance with Part III of that Schedule.
- (4) The Department may by order amend Schedule 7B.
- (5) An order under paragraph (4) must not—
- (a) amend Part I of Schedule 7B by specifying a person unless the person exercises functions of a public nature (whether or not he exercises any other function);
 - (b) amend Part II of Schedule 7B 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;
 - (c) amend Part III of Schedule 7B so as to have the effect of permitting disclosures to be made to a body other than one that exercises functions of a public nature in a country or territory outside the United Kingdom.
- (6) An order under paragraph (4) shall be subject to negative resolution.
- (7) 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 both.
- (8) However, it is a defence for a person charged with an offence under paragraph (7) to prove—
- (a) that he did not know, and had no reason to suspect, that the information had been disclosed under Article 253F; or
 - (b) that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (9) Articles 680, 680A and 680B apply to offences under this Article.
- (10) This Article does not prohibit the disclosure of information if the information is or has been available to the public from any other source.
- (11) Nothing in this Article authorises the making of a disclosure in contravention of the Data Protection Act 1998 (c. 29).”.
- (2) Schedule 1 (which inserts Schedule 7B in the 1986 Order) has effect.

Directors' reports

Power to specify bodies who may issue reporting standards

14. In Article 265 of the 1986 Order (power of Department to alter accounting requirements), after paragraph (4) insert—

“(4A) Regulations under this Article may also make provision—

- (a) for the issuing, by such body or bodies as may be specified, of standards in relation to matters to be contained in reports which are required by this Part to be prepared by the directors of a company;
 - (b) for directors of a company who have complied with any such standard, or any of its provisions, in relation to any such report, to be presumed (unless the contrary is proved) to have complied with any requirements of this Part relating to the contents of the report to which the standard or provision relates.
- (4B) In paragraph (4A) “specified” means specified in an order made by the Department; and such an order—
- (a) shall be made subject to negative resolution;
 - (b) may contain such transitional provisions as the Department thinks fit.”.

Application of provisions inserted by Article 13 to certain bodies

15.—(1) Section 15 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) (application of certain provisions to bodies appointed under section 14 of that Act) is amended as follows.

- (2) In subsection (1) at the end add “and
 - (d) Articles 253F and 253G of and Schedule 7B to the 1986 Order.”.
- (3) After subsection (5) insert—
 - “(5A) Articles 253F and 253G of and Schedule 7B to the 1986 Order apply in relation to prescribed bodies and their functions as they apply in relation to persons authorised under Article 253C of that Order and the functions of such persons mentioned in Article 253F(2), Article 253G(3)(a) of and paragraph 16 of Schedule 7B to that Order.
 - (5B) But Article 253F so applies as if—
 - (a) paragraph (1) of that Article provided that the Article applies where it appears to a prescribed body that there is, or may be, a question whether any relevant accounts or reports produced by an issuer of listed securities comply with any accounting requirements imposed by listing rules; and
 - (b) the references in Article 253F(3)(a) and (b) to “the company” were references to that issuer.”.
- (4) In subsection (6) after “subsection (5)” insert “and subsection (5B)”.

Bodies concerned with accounting standards etc.

Grants to bodies concerned with accounting standards etc.

16.—(1) The Department may make grants to any body carrying on activities concerned with any of the matters set out in paragraph (2).

- (2) The matters are—
 - (a) issuing accounting standards;
 - (b) issuing standards in respect of matters to be contained in reports required to be produced by auditors or company directors;
 - (c) investigating departures from standards within sub-paragraph (a) or (b) or from the accounting requirements of the 1986 Order or any requirements of directly applicable Community legislation relating to company accounts;
 - (d) taking steps to secure compliance with such standards or requirements;

- (e) keeping under review periodic accounts and reports that are produced by issuers of listed securities and are required to comply with any accounting requirements imposed by listing rules;
 - (f) establishing, maintaining or carrying out arrangements within paragraph 17, 18, 19(1) or 20(1) of Schedule 11 to the 1990 Order;
 - (g) exercising functions of the Department under Part III of that Order;
 - (h) carrying out investigations into public interest cases arising in connection with the performance of accountancy functions by members of professional accountancy bodies;
 - (i) holding disciplinary hearings relating to members of such bodies following the conclusion of such investigations;
 - (j) deciding whether (and, if so, what) disciplinary action should be taken against members of such bodies to whom such hearings related;
 - (k) supervising the exercise by such bodies of regulatory functions in relation to their members;
 - (l) overseeing or directing any of the matters mentioned above.
- (3) A grant may be made to a body within paragraph (1) in respect of any of its activities.
- (4) For the purposes of this Article—
- (a) a body is to be regarded as carrying on any subsidiary activities of the body; and
 - (b) a body’s “subsidiary activities” are activities carried on by any of its subsidiaries or by any body established under its constitution or under the constitution of such a subsidiary.
- (5) In this Article—
- “accountancy functions” means functions performed as an accountant, whether in the capacity of auditor or otherwise;
- “company” means a company within the meaning of the 1986 Order;
- “issuer”, “listing rules” and “security” have the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation of Part 6);
- “professional accountancy body” means—
- (a) a supervisory body which is recognised for the purposes of Part III of the 1990 Order, or
 - (b) a qualifying body, as defined by Article 35 of that Order, which enforces rules as to the performance of accountancy functions by its members,
- and references to the members of professional accountancy bodies include persons who, although not members of such bodies, are subject to their rules in performing accountancy functions;
- “public interest cases” means matters which raise or appear to raise important issues affecting the public interest;
- “regulatory functions”, in relation to professional accountancy bodies, means any of the following functions—
- (a) investigatory or disciplinary functions exercised by such bodies in relation to the performance by their members of accountancy functions,
 - (b) the setting by such bodies of standards in relation to the performance by their members of accountancy functions, and
 - (c) the determining by such bodies of requirements in relation to the education and training of their members;
- “subsidiary” has the meaning given by Article 4 of the 1986 Order.

(6) Omit Article 264(3) of the 1986 Order (grants to bodies concerned with issuing accounting standards etc.) which is superseded by this Article.

Exemption from liability

17.—(1) Where a grant has been paid by the Department to a body under Article 16, this Article prevents any liability in damages arising in respect of certain acts or omissions occurring during the period of 12 months beginning with the date on which the grant was paid.

(2) In this Article—

“Article 16(2) activities” means activities concerned with any of the matters set out in Article 16(2);

“the exemption period” means the period of 12 months mentioned in paragraph (1);

“a relevant body” means the body mentioned in that paragraph or a body carrying on any subsidiary activities of that body (within the meaning of Article 16).

(3) Neither a relevant body, nor any person who is (or is acting as) a member, officer or member of staff of a relevant body, is to be liable in damages for anything done, or omitted to be done, during the exemption period for the purposes of or in connection with—

- (a) the carrying on of any Article 16(2) activities of the body, or
- (b) the purported carrying on of any such activities.

(4) Paragraph (3) does not apply—

- (a) if the act or omission is shown to have been in bad faith; or
- (b) so as to prevent an award of damages in respect of the act or omission on the grounds that it was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42) (acts of public authorities incompatible with Convention rights).