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STATUTORY INSTRUMENTS

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**2005 No. 1967**

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

PART II

AUDITORS, ACCOUNTS, DIRECTORS' LIABILITIES AND INVESTIGATIONS

CHAPTER IV

INVESTIGATIONS

**Power to require documents and information**

**20.** For Article 440 of the 1986 Order (Department's power to require production of documents) substitute—

**“Power to require documents and information**

- 440.**—(1) The Department may act under paragraphs (2) and (3) in relation to a company.
- (2) The Department may give directions to the company requiring it—
- (a) to produce such documents (or documents of such description) as may be specified in the directions;
  - (b) to provide such information (or information of such description) as may be so specified.
- (3) The Department may authorise a person (an investigator) to require the company or any other person—
- (a) to produce such documents (or documents of such description) as the investigator may specify;
  - (b) to provide such information (or information of such description) as the investigator may specify.
- (4) A person on whom a requirement under paragraph (3) is imposed may require the investigator to produce evidence of his authority.
- (5) A requirement under paragraph (2) or (3) must be complied with at such time and place as may be specified in the directions or by the investigator (as the case may be).
- (6) The production of a document in pursuance of this Article does not affect any lien which a person has on the document.
- (7) The Department or the investigator (as the case may be) may take copies of or extracts from a document produced in pursuance of this Article.
- (8) A “document” includes information recorded in any form.

(9) In relation to information recorded otherwise than in legible form, the power to require production of it includes power to require the production of a copy of it in legible form or in a form from which it can readily be produced in visible and legible form.”.

#### **Protection in relation to certain disclosures**

21. After Article 441 of the 1986 Order (entry and search of premises) insert—

##### **“Protection in relation to certain disclosures: information provided to Department**

**441A.**—(1) A person who makes a relevant disclosure is not liable by reason only of that disclosure in any proceedings relating to a breach of an obligation of confidence.

(2) A relevant disclosure is a disclosure which satisfies each of the following conditions—

- (a) it is made to the Department otherwise than in compliance with a requirement under this Part;
- (b) it is of a kind that the person making the disclosure could be required to make in pursuance of this Part;
- (c) the person who makes the disclosure does so in good faith and in the reasonable belief that the disclosure is capable of assisting the Department for the purposes of the exercise of its functions under this Part;
- (d) the information disclosed is not more than is reasonably necessary for the purpose of assisting the Department for the purposes of the exercise of those functions;
- (e) the disclosure is not one falling within paragraph (3) or (4).

(3) A disclosure falls within this paragraph if the disclosure is prohibited by virtue of any statutory provision.

(4) A disclosure falls within this paragraph if—

- (a) it is made by a person carrying on the business of banking or by a lawyer, and
- (b) it involves the disclosure of information in respect of which he owes an obligation of confidence in that capacity.”.

#### **Power to enter and remain on premises**

22. After Article 446 of the 1986 Order (investigation of bodies incorporated outside Northern Ireland) insert—

##### **“Power to enter and remain on premises**

**446A.**—(1) An inspector or investigator may act under paragraph (2) in relation to a company if—

- (a) he is authorised to do so by the Department, and
- (b) he thinks that to do so will materially assist him in the exercise of his functions under this Part in relation to the company.

(2) An inspector or investigator may at all reasonable times—

- (a) require entry to relevant premises, and
- (b) remain there for such period as he thinks necessary for the purpose mentioned in paragraph (1)(b).

(3) Relevant premises are premises which the inspector or investigator believes are used (wholly or partly) for the purposes of the company's business.

(4) In exercising his powers under paragraph (2), an inspector or investigator may be accompanied by such other persons as he thinks appropriate.

(5) A person who intentionally obstructs a person lawfully acting under paragraph (2) or (4)—

- (a) is guilty of an offence, and
- (b) is liable on conviction to a fine.

(6) Articles 680, 680A and 680B apply to the offence under paragraph (5).

(7) An inspector is a person appointed under Article 424, 425 or 435.

(8) An investigator is a person authorised for the purposes of Article 440.

### **Power to enter and remain on premises: procedural**

**446B.**—(1) This Article applies for the purposes of Article 446A.

(2) The requirements of paragraph (3) must be complied with at the time an inspector or investigator seeks to enter relevant premises under Article 446A(2)(a).

(3) The requirements are—

- (a) the inspector or investigator must produce evidence of his identity and evidence of his appointment or authorisation (as the case may be);
- (b) any person accompanying the inspector or investigator must produce evidence of his identity.

(4) The inspector or investigator must, as soon as practicable after obtaining entry, give to an appropriate recipient a written statement containing such information as to—

- (a) the powers of the investigator or inspector (as the case may be) under Article 446A;
- (b) the rights and obligations of the company, occupier and the persons present on the premises,

as may be prescribed by regulations.

(5) If during the time the inspector or investigator is on the premises there is no person present who appears to him to be an appropriate recipient for the purposes of paragraph (4), the inspector or investigator must as soon as reasonably practicable send to the company—

- (a) a notice of the fact and time that the visit took place, and
- (b) the statement mentioned in paragraph (4).

(6) As soon as reasonably practicable after exercising his powers under Article 446A(2), the inspector or investigator must prepare a written record of the visit and—

- (a) if requested to do so by the company he must give it a copy of the record;
- (b) in a case where the company is not the sole occupier of the premises, if requested to do so by an occupier he must give the occupier a copy of the record.

(7) The written record must contain such information as may be prescribed by regulations.

(8) If the inspector or investigator thinks that the company is the sole occupier of the premises an appropriate recipient is a person who is present on the premises and who appears to the inspector or investigator to be—

- (a) an officer of the company, or

- (b) a person otherwise engaged in the business of the company if the inspector or investigator thinks that no officer of the company is present on the premises.
- (9) If the inspector or investigator thinks that the company is not the occupier or sole occupier of the premises an appropriate recipient is—
  - (a) a person who is an appropriate recipient for the purposes of paragraph (8), and (if different)
  - (b) a person who is present on the premises and who appears to the inspector or investigator to be an occupier of the premises or otherwise in charge of them.
- (10) Regulations under this Article shall be subject to negative resolution.”.

**Failure to comply with certain requirements**

**23.** After Article 446B of the 1986 Order (inserted by Article 22) insert—

**“Failure to comply with certain requirements**

**446C.**—(1) This Article applies if a person fails to comply with a requirement imposed by an inspector, the Department or an investigator in pursuance of either of the following provisions—

- (a) Article 440;
- (b) Article 446A.
- (2) The inspector, Department or investigator (as the case may be) may certify the fact in writing to the court.
- (3) If, after hearing—
  - (a) any witnesses who may be produced against or on behalf of the alleged offender;
  - (b) any statement which may be offered in defence,

the court is satisfied that the offender failed without reasonable excuse to comply with the requirement, it may deal with him as if he had been guilty of contempt of the court.”.