



# Companies Act 1989

## 1989 CHAPTER 40

### PART III

#### INVESTIGATIONS AND POWERS TO OBTAIN INFORMATION

##### *Amendments of the Companies Act 1985*

#### **55 Investigations by inspectors not leading to published report.**

In section 432 of the <sup>M1</sup>Companies Act 1985 (appointment of inspectors by Secretary of State), after subsection (2) (investigation of circumstances suggesting misconduct) insert—

“(2A) Inspectors may be appointed under subsection (2) on terms that any report they may make is not for publication; and in such a case, the provisions of section 437(3) (availability and publication of inspectors’ reports) do not apply.”.

#### **Marginal Citations**

**M1** 1985 c. 6.

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

- (1) Section 434 of the Companies Act 1985 (production of documents and evidence to inspectors) is amended as follows.
- (2) In subsection (1) (duty of officers to assist inspectors), for “books and documents” substitute “documents”.
- (3) For subsection (2)(power to require production of documents, attendance or other assistance) substitute—

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- “(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.”.
- (4) For subsection (3) (power to examine on oath) substitute—
- “(3) An inspector may for the purposes of the investigation examine any person on oath, and may administer an oath accordingly.”.
- (5) After subsection (5) insert—
- “(6) 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 the information in legible form.”.
- (6) In section 436 of the <sup>M2</sup>Companies Act 1985 (obstruction of inspectors treated as contempt of court), for subsections (1) and (2) substitute—
- “(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.”.

**Marginal Citations**

**M2** 1985 c. 6.

**57 Duty of inspectors to report.**

In section 437 of the Companies Act 1985 (inspectors’ reports), after subsection (1A) insert—

- “(1B) 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 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.
- (1C) Where an investigation is the subject of a direction under subsection (1B), the inspectors shall make a final report to the Secretary of State only where—

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- (a) they were appointed under section 432(1) (appointment in pursuance of an order of the court), or
- (b) the Secretary of State directs them to do so.”.

#### **58 Power to bring civil proceedings on the company’s behalf.**

In section 438 of the Companies Act 1985 (power to bring civil proceedings on the company’s behalf), for the opening words of subsection (1) down to “it appears to the Secretary of State” substitute “If from any report made or information obtained under this Part it appears to the Secretary of State”.

#### **59 Expenses of investigating a company’s affairs.**

(1) Section 439 of the Companies Act 1985 (expenses of investigating a company’s affairs) is amended as follows.

(2) For subsection (1) substitute—

“(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.”.

(3) In subsection (4) for “the inspectors’ report” substitute “ an inspectors’ report ”.

(4) For subsection (5) substitute—

“(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.”.

#### **60 Power of Secretary of State to present winding-up petition.**

(1) Section 440 of the <sup>M3</sup>Companies Act 1985 (power of Secretary of State to present winding-up petition) is repealed; but the following amendments have the effect of re-enacting that provision, with modifications.

(2) In section 124(4) of the <sup>M4</sup>Insolvency Act 1986 (application by Secretary of State for company to be wound up by the court), for paragraph (b) substitute—

“(b) in a case falling within section 124A below.”.

(3) After that section insert—

#### **“124A Petition for winding up on grounds of public interest.**

(1) Where it appears to the Secretary of State from—

- (a) any report made or information obtained under Part XIV of the Companies Act 1985 (company investigations, &c.),

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- (b) any report made under section 94 or 177 of the Financial Services Act 1986 or any information obtained under section 105 of that Act,
- (c) any information obtained under section 2 of the Criminal Justice Act 1987 or section 52 of the Criminal Justice (Scotland) Act 1987 (fraud investigations), or
- (d) any information obtained under section 83 of the Companies Act 1989 (powers exercisable for purpose of assisting overseas regulatory authorities),

that it is expedient in the public interest that a company should be wound up, he may present a petition for it to be wound up if the court thinks it just and equitable for it to be so.

- (2) This section does not apply if the company is already being wound up by the court.”.

#### Marginal Citations

**M3** 1985 c. 6.

**M4** 1986 c. 45.

## 61 Inspectors’ reports as evidence.

In section 441 of the Companies Act 1985 (inspectors’ reports to be evidence), in subsection (1) for “sections 431 or 432” substitute “ this Part ”.

## 62 Investigation of company ownership.

In section 442 of the Companies Act 1985 (power to investigate company ownership), for subsection (3) (investigation on application by members of company) substitute—

“(3) If an application for investigation under this section with respect to particular shares or debentures of a company is made to the Secretary of State by members of the company, and the number of applicants or the amount of shares held by them is not less than that required for an application for the appointment of inspectors under section 431(2)(a) or (b), then, subject to the following provisions, the Secretary of State shall appoint inspectors to conduct the investigation applied for.

(3A) The Secretary of State shall not appoint inspectors if he is satisfied that the application is vexatious; and where inspectors are appointed their terms of appointment shall exclude any matter in so far as the Secretary of State is satisfied that it is unreasonable for it to be investigated.

(3B) 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 which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3C) If on an application under subsection (3) it appears to the Secretary of State that the powers conferred by section 444 are sufficient for the purposes of

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investigating the matters which inspectors would be appointed to investigate, he may instead conduct the investigation under that section.”.

### 63 Secretary of State’s power to require production of documents.

F1 .....

#### Textual Amendments

F1 S. 63 repealed (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 64, 65, Sch. 8; S.I. 2004/3322, art. 2(2), Sch. 2 (subject to transitional provisions in arts. 4-13)

### 64 Entry and search of premises.

(1) For section 448 of the Companies Act 1985 (entry and search of premises) substitute—

#### “448 Entry and search of premises.

- (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, or by a person appointed or authorised to exercise powers under this Part, that there are reasonable grounds for believing that there are on any premises documents whose production has been required under this Part and which have not been produced in compliance with the requirement.
- (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 this Part—
  - (a) that there are reasonable grounds for believing that an offence has been committed for which the penalty on conviction on indictment is imprisonment for a term of not less than two years and that there are on any premises documents relating to whether the offence has been committed,
  - (b) that the Secretary of State, or the person so appointed or authorised, has power to require the production of the documents under this Part, and
  - (c) that there are reasonable grounds for believing that if production was so required the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed.
- (3) A warrant under this section shall authorise a constable, together with any other person named in it and any other constables—
  - (a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1) or (2), as the case may be, or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
  - (c) to take copies of any such documents; and

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- (d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.
- (4) If in the case of a warrant under subsection (2) the justice of the peace is satisfied on information on oath that there are reasonable grounds for believing that there are also on the premises other documents relevant to the investigation, the warrant shall also authorise the actions mentioned in subsection (3) to be taken in relation to such documents.
- (5) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.
- (6) Any documents of which possession is taken under this section may be retained—
- (a) for a period of three months; or
  - (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.
- (7) Any person who intentionally obstructs the exercise of any rights conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (3)(d) is guilty of an offence and liable to a fine.
- Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to this offence.
- (8) For the purposes of sections 449 and 451A (provision for security of information) documents obtained under this section shall be treated as if they had been obtained under the provision of this Part under which their production was or, as the case may be, could have been required.
- (9) 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.
- (10) In this section “document” includes information recorded in any form.”.
- (2) In Schedule 24 to the <sup>M5</sup>Companies Act 1985 (punishment of offences), in the entry relating to section 448(5)—
- (a) in the first column for “448(5)” substitute “448(7)”, and
  - (b) for the entry in the second column substitute—

“Obstructing the exercise of any rights conferred by a warrant or failing to comply with a requirement imposed under subsection (3)(d).”.

#### Marginal Citations

M5 1985 c. 6.

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*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part III. (See end of Document for details)*

## 65 Provision for security of information obtained.

F2 .....

### Textual Amendments

**F2** S. 65 repealed (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004](#) (c. 27), ss. 64, 65, [Sch. 8](#); S.I. 2004/3322, [art. 2\(2\)](#), Sch. 2 (subject to transitional provisions in arts. 4-13)

## 66 Punishment for destroying, mutilating, &c. company documents.

- (1) Section 450 of the <sup>M6</sup>Companies Act 1985 (punishment for destroying, mutilating, &c. company documents) is amended as follows.
- (2) In subsection (1) for the opening words down to “insurance company” substitute “An officer of a company, or of an insurance company”, for “body’s” substitute “company’s” and for “the body” substitute “the company”.
- (3) For subsection (4) substitute—
  - “(4) Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to an offence under this section.”.
- (4) After that subsection insert—
  - “(5) In this section “document” includes information recorded in any form.”.

### Marginal Citations

**M6** 1985 c. 6.

## 67 Punishment for furnishing false information.

F3 .....

### Textual Amendments

**F3** S. 67 repealed (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004](#) (c. 27), ss. 64, 65, [Sch. 8](#); S.I. 2004/3322, [art. 2\(2\)](#), Sch. 2 (with transitional provisions in arts. 4-13)

## 68 Disclosure of information by Secretary of State or inspector.

For section 451A of the Companies Act 1985 (disclosure of information by the Secretary of State) substitute—

### “451A Disclosure of information by Secretary of State or inspector.

- (1) This section applies to information obtained under sections 434 to 446.
- (2) The Secretary of State may, if he thinks fit—

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- (a) disclose any information to which this section applies to any person to whom, or for any purpose for which, disclosure is permitted under section 449, or
  - (b) authorise or require an inspector appointed under this Part to disclose such information to any such person or for any such purpose.
- (3) Information to which this section applies may also be disclosed by an inspector appointed under this Part to—
- (a) another inspector appointed under this Part or an inspector appointed under section 94 or 177 of the Financial Services Act 1986, or
  - (b) a person authorised to exercise powers under section 44 of the Insurance Companies Act 1982, section 447 of this Act, section 106 of the Financial Services Act 1986 or section 84 of the Companies Act 1989.
- (4) Any information which may by virtue of subsection (3) be disclosed to any person may be disclosed to any officer or servant of that person.
- (5) The Secretary of State may, if he thinks fit, disclose any information obtained under section 444 to—
- (a) the company whose ownership was the subject of the investigation,
  - (b) any member of the company,
  - (c) any person whose conduct was investigated in the course of the investigation,
  - (d) the auditors of the company, or
  - (e) any person whose financial interests appear to the Secretary of State to be affected by matters covered by the investigation.”.

**69 Protection of banking information.**

(1) Section 452 of the <sup>M7</sup>Companies Act 1985 (privileged information) is amended as follows.

(2) <sup>F4</sup> .....

(3) After that subsection insert—

“(1A) Nothing in section 434, 443 or 446 requires a person (except as mentioned in subsection (1B) below) to disclose information or produce documents 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 is the company or other body corporate under investigation,
- (b) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
- (c) the making of the requirement is authorised by the Secretary of State.

(1B) Subsection (1A) does not apply where the person owing the obligation of confidence is the company or other body corporate under investigation under section 431, 432 or 433.”.

(4) <sup>F4</sup> .....



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**Textual Amendments**

**F4** S. 69(2)(4) repealed (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), ss. 64, 65, [Sch. 8](#); S.I. 2004/3322, [art. 2\(2\)](#), Sch. 2 (with transitional provisions in [arts. 4-13](#))

**Marginal Citations**

**M7** 1985 c. 6.

**70 Investigation of overseas companies.**

In section 453 of the Companies Act 1985 (investigation of overseas companies), for subsection (1) substitute—

“(1) The provisions of this Part apply to bodies corporate incorporated outside Great Britain which are carrying on business in Great Britain, or have at any time carried on business there, as they apply to companies under this Act; but subject to the following exceptions, adaptations and modifications.

(1A) The following provisions do not apply to such bodies—

- (a) section 431 (investigation on application of company or its members),
- (b) section 438 (power to bring civil proceedings on the company’s behalf),
- (c) sections 442 to 445 (investigation of company ownership and power to obtain information as to those interested in shares, &c.), and
- (d) section 446 (investigation of share dealings).

(1B) The other provisions of this Part apply to such bodies subject to such adaptations and modifications as may be specified by regulations made by the Secretary of State.”.

**71 Investigation of unregistered companies.**

In Schedule 22 to the Companies Act 1985 (provisions applying to unregistered companies), for the entry relating to Part XIV substitute—

“Part XIV (except section 446)	Investigation of companies —”. and their affairs; requisition of documents.
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*Amendments of the Financial Services Act 1986*

<sup>F5</sup>**72** .....

**Textual Amendments**

**F5** Ss. 72-77 repealed (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 75(a)

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F6~~73~~ .....

.....  
**Textual Amendments**  
F6 Ss. 72-77 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(a)

F7~~74~~ .....

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**Textual Amendments**  
F7 Ss. 72-77 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(a)

F8~~75~~ .....

.....  
**Textual Amendments**  
F8 Ss. 72-77 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(a)

F9~~76~~ .....

.....  
**Textual Amendments**  
F9 Ss. 72-77 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(a)

*Amendments of other enactments*

F10~~77~~ .....

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**Textual Amendments**  
F10 Ss. 72-77 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(a)

F11~~78~~ .....

.....  
**Textual Amendments**  
F11 S. 78 repealed (2.4.2001) by 2000 c. 39, s. 15, Sch. 5; S.I. 2001/766, art. 2(c)(iii)

F12~~79~~ .....

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**Textual Amendments**

**F12** S. 79 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(b)

**80 Amendment of the Building Societies Act 1986.**

In section 53 of the <sup>M8</sup>Building Societies Act 1986 (confidentiality of information obtained by the Building Societies Commission), in subsection (7)(b) (functions of Secretary of State for purposes of which disclosure may be made) after subparagraph (ii) insert—

“, or

(iii) Part II, III or VII of the Companies Act 1989;”.

**Commencement Information**

**II** S. 80 wholly in force at 25.4.1991 see s. 215 and S.I. 1990/142 and 1991/878, art. 2, Sch.

**Marginal Citations**

**M8** 1986 c. 53.

<sup>F13</sup>**81** .....

**Textual Amendments**

**F13** S. 81 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(c)

*Powers exercisable to assist overseas regulatory authorities*

**82 Request for assistance by overseas regulatory authority.**

- (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—
  - [<sup>F14</sup>(a) any function corresponding to—
    - (i) any function of the Secretary of State under the Companies Act 1985;
    - (ii) any function of the Financial Services Authority under the Financial Services and Markets Act 2000;
    - (iii) any function exercised by the competent authority under Part VI of that Act <sup>F15</sup>. . . ;]
  - (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 [<sup>F16</sup>Part V of the Criminal Justice Act 1993 (insider dealing)], or

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- (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.

- (3) The Secretary of State shall not exercise the powers conferred by section 83 unless <sup>[F17]</sup>he and the Financial Services Authority are] 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 <sup>[F18]</sup>Financial Services Authority].

A "banking supervisor" means an overseas regulatory authority with respect to which the <sup>[F18]</sup>Financial Services Authority] has notified the Secretary of State, for the purposes of this subsection, that it exercises functions corresponding to those of the <sup>[F19]</sup>Authority][<sup>F20]</sup>in relation to authorised persons with permission under the Financial Services and Markets Act 2000 to accept deposits].

- <sup>[F21]</sup>(5A) In subsection (5), "authorised person" has the meaning given in the Financial Services and Markets Act 2000 and the references to deposits and their acceptance must be read with—

- (a) section 22 of that Act;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]

- (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.

#### Textual Amendments

**F14** S. 82(2)(a) substituted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 76\(2\)](#)

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- F15** Words in s. 82(2)(a)(iii) omitted (1.7.2005) by virtue of [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(3), [Sch. 3 para. 1](#)
- F16** Words in s. 82(2)(b) substituted (1.3.1994) by 1993 c. 36, s. 79(13), [Sch. 5 Pt. I para. 16](#); S.I. 1994/242, art. 2, [Sch.](#)
- F17** Words in s. 82(3) substituted (1.12.2001) by S.I. 2001/3649, [arts. 1, 76\(3\)](#)
- F18** Words in s. 82(5) substituted (1.6.1998) by 1998 c. 11, s. 23, [Sch. 5 Pt. IV](#) c. II para. 66(2)(b)(i); S.I. 1998/1120, [art. 2](#)
- F19** Word in s. 82(5) substituted (1.6.1998) by 1998 c. 11, s. 23, [Sch. 5 Pt. IV](#) c. II para. 66(2)(b)(ii); S.I. 1998/1120, [art. 2](#)
- F20** Words in the definition of “banking supervisor” in s. 82(5) substituted (1.12.2001) by S.I. 2001/3649, [arts. 1, 76\(4\)](#)
- F21** S. 82(5A) inserted (1.12.2001) by S.I. 2001/3649, [arts. 1, 76\(5\)](#)

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

- C1** S. 82(3): (7.6.1992) certain functions made exercisable concurrently by the Secretary of State and the Treasury by S.I. 1992/1315, [arts. 5, 8](#), [Sch. 3 para. 3](#) (with [art. 6](#)).

**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.
- (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.
- [<sup>F22</sup>(6A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—
- (a) no evidence relating to the statement 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.

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- (6B) Subsection (6A) applies to any offence other than—
- (a) an offence under section 85;
  - (b) an offence under section 2 or 5 of the <sup>M9</sup>Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath);
  - (c) an offence under section 44(1) or (2) of the <sup>M10</sup>Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath); or
  - (d) an offence under Article 7 or 10 of the <sup>M11</sup>Perjury (Northern Ireland) Order 1979 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).]
- (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.

#### Textual Amendments

**F22** S. 83(6A)(6B) inserted (14.4.2000 for E.W., N.I. and 1.1.2001 for S.) by 1999 c. 23, s. 59, **Sch. 3 para.21** (with s. 63(2), **Sch. 7 paras. 3(3), 5(2)**); S.I. 2000/1034, **arts. 2(a), 3(2)**; S.S.I. 2000/445, **art. 2**

#### Marginal Citations

**M9** 1911 c. 6.  
**M10** 1995 c. 39.  
**M11** S.I. 1979/1714 (N.I. 19).

## 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

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- (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.

## **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—

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- (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,
  - (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,
  - [<sup>F23</sup>(b) civil proceedings arising under or by virtue of the Financial Services and Markets Act 2000 and proceedings before the Financial Services and Markets Tribunal;]
  - (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.
  - [<sup>F24</sup>(d) proceedings before the Pensions Regulator Tribunal.]
- (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>
[ <sup>F25</sup> The Secretary of State	Functions under— (a) the enactments relating to companies or insolvency; (b) Part 2, this Part or Part 7 of this Act; (c) the Financial Services and Markets Act 2000.]
[ <sup>F26</sup> The Treasury.	Functions under— (a) this Part or Part 7 of this Act; (b) the Financial Services and Markets Act 2000.]



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[ <sup>F27</sup> An inspector appointed under Part 14 of the Companies Act 1985.	Functions under that Part.]
[ <sup>F28</sup> A person authorised to exercise powers under section 447 of the Companies Act 1985 or section 84 of this Act.	Functions under that section.]
[ <sup>F28</sup> A person appointed under— (a)section 167 of the Financial Services and Markets Act 2000 (general investigations), (b)section 168 of that Act (investigations in particular cases), (c)section 169(1)(b) of that Act (investigation in support of overseas regulator), (d)section 284 of that Act (investigations into affairs of certain collective investment schemes), or (e)regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),to conduct an investigation.	Functions in relation to the investigation.]
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.
F29	F29
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The Bank of England.	[ <sup>F30</sup> Any of its functions]
[ <sup>F31</sup> The Financial Services Authority.	Functions under the enactments relating to friendly societies, under the Building Societies Act 1986 and under the

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	Financial Services and Markets Act 2000.]
[ <sup>F32</sup> A body corporate established in accordance with section 212(1) of that Act.	Functions under the Financial Services Compensation Scheme, established in accordance with section 213 of that Act.
A recognised investment exchange or a recognised clearing house (as defined by section 285 of that Act).	Functions in its capacity as an exchange or clearing house recognised under that Act.
A body designated under section 326(1) of the Financial Services and Markets Act 2000.	Functions in its capacity as a body designated under that section.]
F29	F29
...	...
A body [ <sup>F33</sup> designated] 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.
F29	F29
...	...
F34	F34
...	...
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
F29	M12
...	Insolvency Act 1986.
	F29
	...
[ <sup>F35</sup> The Pensions Regulator	Functions conferred by or by virtue of—
	(a) the Pension Schemes Act 1993,
	(b) the Pensions Act 1995,
	(c) the Welfare Reform and Pensions Act 1999,
	(d) the Pensions Act 2004,
	or any enactment in force in Northern Ireland corresponding to an enactment mentioned in paragraphs (a) to (d) above.
The Board of the Pension Protection Fund	Functions conferred by or by virtue of Part 2 of the Pensions Act 2004 or any enactment in force in Northern Ireland corresponding to that Part.]

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[ <sup>F36</sup> The Office of Fair Trading]	Functions under the [ <sup>F37</sup> Financial Services and Markets Act 2000].
[ <sup>F38</sup> A person authorised by the Secretary of State under sections 245C of the Companies Act 1985.]	[ <sup>F38</sup> Functions relating to the securing of compliance by companies with the accounting requirements of that Act].]
[ <sup>F39</sup> The Director General of the National Lottery.	<sup>F39</sup> Functions under sections 5 to 10 inclusive and section 15 of the National Lottery etc. Act 1993.]
[ <sup>F40</sup> The Comptroller and Auditor General.	Functions under Part 2 of the National Audit Act 1983.]
[ <sup>F41</sup> The Scottish Ministers	Functions under the enactments relating to insolvency
The Accountant in Bankruptcy	Functions he has under the enactments relating to insolvency.]
[ <sup>F42</sup> The Regulator of Community Interest Companies.	Functions under the Companies (Audit, Investigations and Community Enterprise) Act 2004.]
[ <sup>F43</sup> The Gambling Commission	Functions under the Gambling Act 2005]

[<sup>F44</sup>Note: Article 3(4) of the Companies (Disclosure of Information) (Designated Authorities) (No. 2) Order 2002 restricts the circumstances in which disclosure for the purpose of enabling or assisting the Comptroller and Auditor General to discharge his relevant functions is permitted.]

- (5) The Secretary of State may by order amend the Table in subsection (4) so as to—
- add any public or other authority to the Table and specify the relevant functions of that authority,
  - remove any authority from the Table, or
  - 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.

#### Textual Amendments

- F23** S. 87(2)(b) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 77(2)
- F24** S. 87(2)(d) inserted (6.4.2005) by Pensions Act 2004 (c. 35), ss. 102(4), 322, Sch. 4 para. 20 (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7 (subject to art. 2(12))
- F25** S. 87(4): Entry in the Table substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 77(5)
- F26** S. 87(4): Entry in the Table substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 77(6)
- F27** S. 87(4): Entry in the Table substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 77(7)
- F28** S. 87(4): Entries in the Table substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 77(8)
- F29** S. 87(4): Entries in the Table repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 77(4)
- F30** S. 87(4) Table: words inserted (1.6.1998) by 1998 c. 11, s. 23, Sch. 5 Pt. IV c. II para. 66(3); S.I. 1998/1120, art. 2

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- F31** S. 87(4): Entry in the Table substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 77(9)**
- F32** S. 87(4): Entries in the Table inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 77(10)**
- F33** Word in s. 87(4) substituted (1.1.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 25, 65, **Sch. 2 para. 3(b)**; S.I. 2004/3322, **art. 2(1)**, Sch. 1
- F34** S. 87(4): Entry in the Table omitted (30.4.2001) by virtue of S.I. 2001/1283, **art. 3(4)**
- F35** S. 87(4) Table: entries substituted (6.4.2005) for entry relating to the Occupational Pensions Regulatory Authority by Pensions Act 2004 (c. 35), ss. 319(1), 322, **Sch. 12 para. 6**; S.I. 2005/275, **art. 2(7)**, Sch. Pt. 7 (subject to art. 2(12))
- F36** Words in the Table in s. 87(4) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(3); S.I. 2003/766, **art. 2, Sch.** (with transitional and transitory provision in art. 3)
- F37** Words in the Table in s. 87(4) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 77(11)**
- F38** S. 87(4) Table: entry inserted (16.8.1993) by S.I. 1993/1826, **art. 3**
- F39** S. 87(4) Table: entry inserted (10.3.1994) by S.I. 1994/340, **art. 3**
- F40** S. 87(4) Table: Entry inserted (14.8.2002) by S.I. 2002/1889, **art. 3(2)**
- F41** S. 87(4) Table: entries inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. 1 para. 96**
- F42** S. 87(4) Table: entry inserted (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 25, 65, **Sch. 2 para. 29**; S.I. 2004/3322, **art. 2(3)**, Sch. 3
- F43** S. 87(4) Table: entry inserted (1.10.2006) by The Companies (Disclosure of Information) (Designated Authorities) Order 2006 (S.I. 2006/1644), **art. 3**
- F44** S. 87(4): Table Note added (14.8.2002) by S.I. 2002/1889, **art. 3(3)**

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

- C2** S. 87 amended (*temp.* from 3.9.2001) by S.I. 2001/2966, **art. 7**  
S. 87 disclosure powers extended (14.12.2001) by 2001 c. 24, ss. 17, 127, **Sch. 4 Pt. 1 para. 28**
- C3** S. 87(1)(b) restricted (14.8.2002) by S.I. 2002/1889, **art. 3(4)**

#### Commencement Information

- I2** S. 87 wholly in force at 25.4.1991 see s. 215 and S.I. 1990/142 and 1991/878, art. 2, Sch.

#### Marginal Citations

- M12** 1986 c. 45.

## 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 <sup>M13</sup>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—
- that the powers should be exercised in Northern Ireland, and
  - 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—

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- (a) section 84 (exercise of powers by officer, &c.),
  - [<sup>F45</sup>(b) section 449 of the Companies Act 1985 and sections 86 and 87 above (restrictions on disclosure of information);]
  - (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.
  - (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.

#### Textual Amendments

**F45** S. 88(3)(b) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 78

#### Marginal Citations

**M13** 1973 c. 36.

## 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.

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- (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 <sup>M14</sup>Criminal Justice Act 1925 and Schedule 3 to the <sup>M15</sup>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, [<sup>F46</sup>section 70 of the <sup>M16</sup>Criminal Procedure (Scotland) Act 1995] (proceedings on indictment against bodies corporate) applies as if the association were a body corporate.
- (5) Section 18 of the <sup>M17</sup>Criminal Justice Act (Northern Ireland) 1945 and Schedule 4 to the <sup>M18</sup>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.

### Textual Amendments

**F46** Words in s. 91(4) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 74(3)**

### Marginal Citations

**M14** 1925 c. 86.

**M15** 1980 c. 43.

**M16** 1995 c. 46.

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**M17** 1945 c. 15 (N.I.).

**M18** S.I. 1981/1675 (N.I.26).

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**Changes to legislation:**

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