

*These notes refer to the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27) which received Royal Assent on 28 October 2004*

# COMPANIES (AUDIT, INVESTIGATIONS AND COMMUNITY ENTERPRISE) ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Auditors, Accounts, Directors' Liabilities and Investigations**

##### *Chapter 4: Investigations*

#### **Changes made by the Act**

##### *Section 24 - Failure to comply with certain requirements*

154. This section inserts a *new section 453C* into the Companies Act 1985. It provides the sanction for failing to comply with a requirement imposed by the Secretary of State or an investigator under *new section 447* or a requirement imposed by an inspector or an investigator under *new section 453A*.
155. *New section 453C* allows the Secretary of State, an inspector or an investigator (depending on who imposed the requirement in question) to take the matter to the civil court, certifying to the court that there has been non-compliance with a requirement. This procedure is therefore known as “certification”.
156. Under *new section 453C(1)*, certification proceedings can be brought:
  - for any non-compliance with a requirement to produce documents or information under *new section 447*; or
  - for any non-compliance with a requirement to allow an inspector or investigator to enter premises under *new section 453A*.
157. After hearing any witnesses and any statement offered in defence, the court decides whether there was non-compliance with a lawful requirement and, if there was, whether the person on whom the requirement was imposed had any reasonable excuse for failing to comply with it. If the court decides that the person had no reasonable excuse, it can deal with him or her as though the non-compliance were a contempt of court. This means that the court can, for example, punish non-compliance with imprisonment and/or a fine. But in appropriate cases, the certification procedure enables the court to give the alleged “offender” a precise indication of what he or she needs to do in order to comply and so escape punishment.