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STATUTORY INSTRUMENTS

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**1990 No. 1504**

**The Companies (No. 2) (Northern Ireland) Order 1990**

**PART II**

**INVESTIGATIONS AND POWERS TO OBTAIN INFORMATION**

*Amendments of the Companies Order*

**Investigations by inspectors not leading to published report**

**3.** In Article 425 of the Companies Order (appointment of inspectors by Department), after paragraph (2) (investigation of circumstances suggesting misconduct) insert—

“(2A) Inspectors may be appointed under paragraph (2) on terms that any report they may make is not for publication; and in such a case, the provisions of Article 430(3) (availability and publication of inspectors' reports) do not apply.”.

**Production of documents and evidence to inspectors**

**4.—(1)** Article 427 of the Companies Order (production of documents and evidence to inspectors) is amended as follows.

(2) In paragraph (1) (duty of officers to assist inspectors), for “books and documents” substitute “documents”.

(3) For paragraph (2) (power to require production of documents, attendance or other assistance) substitute—

“(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 paragraph (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 paragraph (5) insert—

“(6) In this Article “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 Article 429 of the Companies Order (obstruction of inspectors treated as contempt of court), for paragraphs (1) and (2) substitute—

“(1) If any person—

- (a) fails to comply with Article 427(1)(a) or (c),
- (b) refuses to comply with a requirement under Article 427(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.”.

### **Duty of inspectors to report**

5. In Article 430 of the Companies Order (inspectors' reports), after paragraph (1A) insert—

“(1B) If it appears to the Department 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, it 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 paragraph (1B), the inspectors shall make a final report to the Department only where—

- (a) they were appointed under Article 425(1) (appointment in pursuance of an order of the court), or
- (b) the Department directs them to do so.”.

### **Power to bring civil proceedings on the company's behalf**

6. In Article 431 of the Companies Order (power to bring civil proceedings on the company's behalf), for the opening words of paragraph (1) down to “it appears to the Department” substitute “If from any report made or information obtained under this Part it appears to the Department”.

### **Expenses of investigating a company's affairs**

7.—(1) Article 432 of the Companies Order (expenses of investigating a company's affairs) is amended as follows.

(2) For paragraph (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 Department but it may recover those expenses from the persons liable in accordance with this Article.

There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Department may determine in respect of general staff costs and overheads.”.

(3) In paragraph (4) for “the inspectors' report” substitute “an inspectors' report”.

(4) For paragraph (5) substitute—

“(5) Where inspectors were appointed—

- (a) under Article 424, or
- (b) on an application under Article 435(3),

the applicant or applicants for the investigation is or are liable to such extent (if any) as the Department may direct.”.

### **Power of Department to present winding-up petition**

8.—(1) Article 433 of the Companies Order (power of Department to present winding-up petition) is repealed; but the following amendments have the effect of re-enacting that provision, with modifications.

(2) In Article 104(5) of the Insolvency Order (application by Department for company to be wound up by the court), for sub-paragraph (b) substitute—

“(b) in a case falling within Article 104A.”.

(3) After that Article insert—

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

**104A.**—(1) Where it appears to the Department from—

- (a) any report made or information obtained under Part XV of the Companies Order (company investigations, &c.),
- (b) any report made under Article 16A of the Insider Dealing Order,
- (c) any report made under section 94 of the Financial Services Act 1986 or any information obtained under section 105 of that Act,
- (d) 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
- (e) 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, it 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 Article does not apply if the company is already being wound up by the court.”.

### **Inspectors' reports as evidence**

9. In Article 434 of the Companies Order (inspectors' reports to be evidence), in paragraph (1) for “Article 424 or 425” substitute “this Part”.

### **Investigation of company ownership**

10. In Article 435 of the Companies Order (power to investigate company ownership), for paragraph (3) (investigation on application by members of company) substitute—

“(3) If an application for investigation under this Article with respect to particular shares or debentures of a company is made to the Department 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 Article 424(2)(a) or (b), then, subject to the following provisions, the Department shall appoint inspectors to conduct the investigation applied for.

(3A) The Department shall not appoint inspectors if it 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 Department is satisfied that it is unreasonable for it to be investigated.

(3B) The Department may, before appointing inspectors, require the applicant or applicants to give security, to an amount not exceeding £5,000, or such other sum as it may by order subject to negative resolution specify, for payment of the costs of the investigation.

(3C) If on an application under paragraph (3) it appears to the Department that the powers conferred by Article 437 are sufficient for the purposes of investigating the matters which

inspectors would be appointed to investigate, it may instead conduct the investigation under that Article.”.

### **Department’s power to require production of documents**

**11.**—(1) Article 440 of the Companies Order (power of Department to require production of documents) is amended as follows.

(2) Omit paragraph (1) (bodies in relation to which powers exercisable), and—

- (a) in paragraphs (2) and (3) for “any such body” substitute “a company”,
- (b) in paragraphs (4) and (5) for “any body” and “a body” substitute “a company”, and
- (c) in paragraphs (5) and (6) for “the body” substitute “the company”.

(3) For “books or papers”, wherever occurring, substitute “documents”.

(4) In paragraph (3) (power to authorise officer to require production of documents) after “an officer of the Department” insert “or any other competent person” and for “the officer” substitute “he”.

(5) In paragraph (4) (power to require production of documents in possession of third party) after “an officer of the Department” and after “the officer” (twice) insert “or other person”.

(6) In paragraph (6), for the second sentence substitute—

“Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to this offence.”.

(7) After paragraph (8) insert—

“(9) In this Article “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.”.

(8) In Schedule 23 to the Companies Order (punishment of offences), in the entry relating to Article 440(6), for “books and papers” substitute “documents”.

### **Entry and search of premises**

**12.**—(1) For Article 441 of the Companies Order (entry and search of premises) substitute—

#### **“Entry and search of premises**

**441.**—(1) A justice of the peace may issue a warrant under this Article if satisfied by complaint on oath made by or on behalf of the Department, 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 Article if satisfied by complaint on oath made by or on behalf of the Department, 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 Department, 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 Article shall authorise a constable, together with any other person named in it and any other constables—

- (a) to enter the premises specified in the complaint, 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 paragraph (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
- (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 paragraph (2) the justice of the peace is satisfied by complaint 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 paragraph (3) to be taken in relation to such documents.

(5) A warrant under this Article 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 Article 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 Article or fails without reasonable excuse to comply with any requirement imposed in accordance with paragraph (3)(d) is guilty of an offence and liable to a fine.

Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to this offence.

(8) For the purposes of Articles 442 and 444A (provision for security of information) documents obtained under this Article 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 this Article “document” includes information recorded in any form.”.

(2) In Schedule 23 to the Companies Order (punishment of offences), in the entry relating to Article 441(5)—

- (a) in the first column for “441(5)” substitute “441(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 paragraph (3)(d).”.

### **Provision for security of information obtained**

**13.—**(1) Article 442 of the Companies Order (provision for security of information obtained) is amended as follows.

- (2) In paragraph (1) (purposes for which disclosure permitted)—
- (a) in the opening words for “body” (twice) substitute “company”;
  - (b) for sub-paragraph (c) substitute—
    - “(c) for the purposes of enabling or assisting any inspector appointed under this Part, Article 16A of the Insider Dealing Order or section 94 of the Financial Services Act 1986, to discharge his functions;”;
  - (c) after that sub-paragraph insert—
    - “(cc) for the purpose of enabling or assisting any person authorised to exercise powers under section 44 of the Insurance Companies Act 1982, Article 440 of this Order, section 106 of the Financial Services Act 1986 or section 84 of the Companies Act 1989 to discharge his functions;”;
  - (d) in sub-paragraph (d) after “Insider Dealing Order” insert “Part III of the Companies (Northern Ireland) Order 1990, Part II or V of the Companies (No. 2) (Northern Ireland) Order 1990”;
  - (e) omit sub-paragraph (e);
  - (f) in sub-paragraph (h) for “(n) or (p)” substitute “or (n)”;
  - (g) after that sub-paragraph insert—
    - “(hh) for the purpose of enabling or assisting a body established by order under Article 48 of the Companies (Northern Ireland) Order 1990 to discharge its functions under Part III of that Order, or of enabling or assisting a recognised supervisory or qualifying body within the meaning of that Part to discharge its functions as such;”;
  - (h) after sub-paragraph (l) insert—
    - “(ll) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the discharge by a public servant of his duties;”;
  - (i) for sub-paragraph (m) substitute—
    - “(m) for the purpose of enabling or assisting an overseas regulatory authority to exercise its regulatory functions.”.
- (3) For paragraph (1A) substitute—
- “(1A) In paragraph (1)—
    - (a) in sub-paragraph (ll) “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 sub-paragraph by the Department by order;
    - (b) in sub-paragraph (m) “overseas regulatory authority” and “regulatory functions” have the same meaning as in section 82 of the Companies Act 1989.”.
- (4) In paragraph (1B) (disclosure to designated public authorities) for “designated for the purposes of this Article” substitute “designated for the purposes of this paragraph”.
- (5) In paragraph (2), for the second sentence substitute—
- “Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to this offence.”.
- (6) For paragraph (3) substitute—
- “(3) For the purposes of this Article each of the following is a competent authority—
    - (a) the Department,

- (b) an inspector appointed under this Part or Article 16A of the Insider Dealing Order or section 94 of the Financial Services Act 1986,
- (c) any person authorised to exercise powers under section 44 of the Insurance Companies Act 1982, Article 440 of this Order, section 106 of the Financial Services Act 1986 or section 84 of the Companies Act 1989,
- (d) the Secretary of State,
- (e) the Treasury,
- (f) the Bank of England,
- (g) the Lord Advocate,
- (h) the Director of Public Prosecutions for Northern Ireland and the Director of Public Prosecutions in England and Wales,
- (i) any designated agency or transferee body within the meaning of the Financial Services Act 1986, and any body administering a scheme under section 54 of or paragraph 18 of Schedule 11 to that Act (schemes for compensation of investors),
- (j) the Registrar of Friendly Societies and the Chief Registrar of friendly societies in Great Britain,
- (k) the Industrial Assurance Commissioner for Northern Ireland and the Industrial Assurance Commissioner in Great Britain,
- (l) any constable,
- (m) any procurator fiscal.

(3A) Any information which may by virtue of this Article be disclosed to a competent authority may be disclosed to any officer or servant of the authority.”.

(7) In paragraph (4) (orders) for “paragraph (1B)” substitute “paragraph (1A)(a) or (1B)”.

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

**14.**—(1) Article 443 of the Companies Order (punishment for destroying, mutilating, &c. company documents) is amended as follows.

(2) In paragraph (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 paragraph (4) substitute—

“(4) Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to an offence under this Article.”.

(4) After that paragraph insert—

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

#### **Punishment for furnishing false information**

**15.** In Article 444 of the Companies Order (punishment for furnishing false information), for the second sentence substitute—

“Articles 680 (restriction on prosecutions), 680A (liability of individuals for corporate default) and 680B (criminal proceedings against unincorporated bodies) apply to this offence.”.

**Disclosure of information by Department or inspector**

16. For Article 444A of the Companies Order (disclosure of information by the Department) substitute—

**“Disclosure of information by Department or inspector**

**444A.**—(1) This Article applies to information obtained under Articles 427 to 439.

(2) The Department may, if it thinks fit—

- (a) disclose any information to which this Article applies to any person to whom, or for any purpose for which, disclosure is permitted under Article 442, 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 Article 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 Article 16A of the Insider Dealing Order or section 94 of the Financial Services Act 1986, or
- (b) a person authorised to exercise powers under section 44 of the Insurance Companies Act 1982, Article 440 of this Order, section 106 of the Financial Services Act 1986 or section 84 of the Companies Act 1989.

(4) Any information which may by virtue of paragraph (3) be disclosed to any person may be disclosed to any officer or servant of that person.

(5) The Department may, if it thinks fit, disclose any information obtained under Article 437 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 Department to be affected by matters covered by the investigation.”.

**Protection of banking information**

17.—(1) Article 445 of the Companies Order (privileged information) is amended as follows.

(2) In paragraph (1), omit sub-paragraph (b) (disclosure by bankers of information relating to their customers).

(3) After that paragraph insert—

“(1A) Nothing in Article 427, 436 or 439 requires a person (except as mentioned in paragraph (1B)) 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 Department.



(1B) Paragraph (1A) does not apply where the person owing the obligation of confidence is the company or other body corporate under investigation under Article 424, 425 or 426.”.

(4) In paragraph (3) after “officer of the Department” insert “or other person”.

### **Investigation of bodies incorporated outside Northern Ireland**

**18.** For Article 446 of the Companies Order (investigation of bodies incorporated outside Northern Ireland) substitute—

#### **“Investigation of bodies incorporated outside Northern Ireland**

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

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

- (a) Article 424 (investigation on application of company or its members),
- (b) Article 431 (power to bring civil proceedings on the company’s behalf),
- (c) Articles 435 to 438 (investigation of company ownership and power to obtain information as to those interested in shares, &c.), and
- (d) Article 439 (investigation of share dealings).

(3) The other provisions of this Part apply to such bodies subject to such adaptations and modifications as may be prescribed.”.

### **Investigation of unregistered companies**

**19.** In Schedule 21 to the Companies Order (provisions applying to unregistered companies), for the entry relating to Part XV substitute—

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“Part XV (except Article 439) Investigation of companies —”.  
and their affairs; requisition of  
documents.

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### **Offences committed by bodies corporate or unincorporated bodies**

**20.**—(1) After Article 680 of the Companies Order insert the following Articles—

#### **“Offences by bodies corporate**

**680A.**—(1) For the purposes of offences under any of Articles 218, 224(3), 401B(1) or 440 to 444, section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(2) In paragraph (1) and in section 20(2) of the Interpretation Act (Northern Ireland) 1954 as it applies by virtue of paragraph (1) “(irector” includes a shadow director.

### **Criminal proceedings against unincorporated bodies**

**680B.**—(1) Proceedings for an offence alleged to have been committed under any of Articles 397A(3), 401B(1) or 440 to 444 by an unincorporated body shall be brought in the name of that body (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 if that body were a corporation.

(2) A fine imposed on an unincorporated body on its conviction of such an offence shall be paid out of the funds of that body.

(3) Section 18 of the Criminal Justice Act (Northern Ireland) 1945 and Article 166 of and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (procedure on charge of offence against a corporation) apply in a case in which an unincorporated body is charged with such an offence as they apply in the case of a corporation.

(4) Where such an offence 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.

(5) Where such an offence committed by an unincorporated body (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 body or any member of its governing body, he as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly.”

(2) In Article 218(6) of the Companies Order for “applies” substitute “and Article 680A (liability of individual for corporate default) apply”.

(3) In Article 224(3) of the Companies Order at the end add—

“Article 680A (liability of individual for corporate default) applies to offences under this paragraph.”