
STATUTORY INSTRUMENTS

2005 No. 1967

The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed)

PART II

AUDITORS, ACCOUNTS, DIRECTORS' LIABILITIES AND INVESTIGATIONS

CHAPTER I

AUDITORS

Recognised supervisory bodies

Additional requirements for recognition of supervisory bodies

3. ^{F1}

F1 Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

Arrangements to which additional requirements for recognition relate

4. ^{F2}

F2 Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

Delegation of functions of Department in relation to auditors

Delegation of functions by Department to new or existing body

5. ^{F3}

F3 Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

Circumstances in which the Department may delegate functions to existing body

6. ^{F4}

Status: Point in time view as at 06/04/2008.

Changes to legislation: There are currently no known outstanding effects for the The Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (repealed), PART II. (See end of Document for details)

F4 Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

Supplementary provisions about delegation orders

7. ^{F5}

F5 Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

Auditors' qualifications

Approval of overseas qualifications for auditors

8. ^{F6}

F6 Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

Services provided by auditors

Disclosure of services provided by auditors and related remuneration

9. ^{F7}

F7 Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

CHAPTER II

ACCOUNTS AND REPORTS

Auditing of accounts

Auditors' rights to information

10. ^{F8}

F8 Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

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

11. ^{F9}

F9 Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

Defective accounts

Persons authorised to apply to court in connection with defective accounts

12. ^{F10}

F10 Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

Power of person authorised to require documents, information and explanations

13. ^{F11}

F11 Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

Directors' reports

Power to specify bodies who may issue reporting standards

14. ^{F12}

F12 Arts. 3-14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 2 (with arts. 7, 12)

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) ”.

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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).

CHAPTER III

DIRECTORS' LIABILITIES

Relaxation of prohibition on provisions protecting directors etc. from liability

18.—(1) After Article 317 of the 1986 Order (directors to have regard to interests of employees) insert—

“Provisions protecting directors from liability

317A.—(1) This Article applies in relation to any liability attaching to a director of a company in connection with any negligence, default, breach of duty or breach of trust by him in relation to the company.

(2) Any provision which purports to exempt (to any extent) a director of a company from any liability within paragraph (1) is void.

(3) Subject to paragraphs (4) and (5), any provision by which a company directly or indirectly provides (to any extent) an indemnity for a director of—

- (a) the company, or
- (b) an associated company,

against any liability within paragraph (1) is void.

(4) Paragraph (3) does not apply to a qualifying third party indemnity provision within the meaning of Article 317B(1).

(5) Paragraph (3) does not prevent a company from purchasing and maintaining for a director of—

- (a) the company, or
- (b) an associated company,

insurance against any liability within paragraph (1).

(6) In this Article—

“associated company”, in relation to a company (“C”), means a company which is C's subsidiary, or C's holding company or a subsidiary of C's holding company;

“provision” means a provision of any nature, whether or not it is contained in a company's articles or in any contract with a company.

Qualifying third party indemnity provisions

317B.—(1) For the purposes of Article 317A(4) a provision is a qualifying third party indemnity provision if it is a provision such as is mentioned in Article 317A(3) in relation to which conditions A to C are satisfied.

(2) Condition A is that the provision does not provide any indemnity against any liability incurred by the director—

- (a) to the company, or
- (b) to any associated company.

(3) Condition B is that the provision does not provide any indemnity against any liability incurred by the director to pay—

- (a) a fine imposed in criminal proceedings, or
- (b) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising).

(4) Condition C is that the provision does not provide any indemnity against any liability incurred by the director—

- (a) in defending any criminal proceedings in which he is convicted, or
- (b) in defending any civil proceedings brought by the company, or an associated company, in which judgment is given against him, or
- (c) in connection with any application under any of the following provisions in which the court refuses to grant him relief, namely—

- (i) Article 154(3) or (4), or
- (ii) Article 675.

(5) In sub-paragraph (a), (b) or (c) of paragraph (4) the reference to any such conviction, judgment or refusal of relief is a reference to one that has become final.

(6) For the purposes of paragraph (5) a conviction, judgment or refusal of relief becomes final—

- (a) if not appealed against, at the end of the period for bringing an appeal, or
- (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.

(7) An appeal is disposed of—

- (a) if it is determined and the period for bringing any further appeal has ended, or
- (b) if it is abandoned or otherwise ceases to have effect.

(8) In this Article “associated company” and “provision” have the same meaning as in Article 317A.

Disclosure of qualifying third party indemnity provisions

317C.—(1) Paragraphs (2) and (3) impose disclosure requirements in relation to a directors' report under Article 242 in respect of a financial year.

(2) If —

- (a) at the time when the report is approved under Article 242A, any qualifying third party indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, or
- (b) at any time during the financial year, any such provision was in force for the benefit of one or more persons who were then directors of the company,

the report must state that any such provision is or (as the case may be) was so in force.

(3) If the company has made a qualifying third party indemnity provision and—

- (a) at the time when the report is approved under Article 242A, any qualifying third party indemnity provision made by the company is in force for the benefit of one or more directors of an associated company, or
- (b) at any time during the financial year, any such provision was in force for the benefit of one or more persons who were then directors of an associated company,

the report must state that any such provision is or (as the case may be) was so in force.

(4) Paragraph (5) applies where a company has made a qualifying third party indemnity provision for the benefit of a director of the company or of an associated company.

(5) Article 326 shall apply to—

- (a) the company, and
- (b) if the director is a director of an associated company, the associated company,

as if a copy of the provision, or (if it is not in writing) a memorandum setting out its terms, were included in the list of documents in Article 326(1).

(6) In this Article—

- “associated company” and “provision” have the same meaning as in Article 317A; and
- “qualifying third party indemnity provision” has the meaning given by Article 317B(1).”.

(2) In Article 318 of that Order (provisions exempting officers and auditors from liability), the following provisions cease to have effect—

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- (a) in paragraph (1), the words “any officer of the company or”, and
- (b) in paragraph (3)—
 - (i) the words “officer or” (in both places), and
 - (ii) the words from “Article 154(3)” to “nominee) or”;
 and in the heading, for “exempting officers and” substitute “protecting ”.

Commencement Information

II [Art. 18](#) wholly in operation at 6.4.2006, see [art. 1\(2\)](#) and [S.R. 2006/93](#) {art. 2}, Sch. (with transitional provision in art. 3)

Funding of director's expenditure on defending proceedings

19. ^{F13}

F13 [Art. 19](#) repealed (1.10.2007) by [Companies Act 2006](#) (c. 46), ss. 1295, 1300(2), [Sch. 16](#); S.I. 2007/2194, [art. 8](#), [Sch. 2 Pt. 2](#) (with [art. 12](#))

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

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- (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.”.

CHAPTER V

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

Minor and consequential amendments and repeals

- 24.—(1) Schedule 2 (minor and consequential amendments relating to this Part) has effect.
- (2) Schedule 3 (repeals relating to this Part) has effect.

Commencement Information

- I2** Art. 24 partly in operation; art. 24 not in operation at date of making, see art. 1(2); art. 24(2) in operation at 6.4.2006 by S.R. 2006/93 {art 2}, Sch.

Status:

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Changes to legislation:

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