

*These notes refer to the Companies Act 2006 (c.46)
which received Royal Assent on 8 November 2006*

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 32: Company Investigations: Amendments

Changes brought in by the 2006 Act

Section 1035: Powers of Secretary of State to give directions to inspectors

1296. *Subsection (1)* inserts new sections 446A and 446B into the 1985 Act, which provide new powers for the Secretary of State to give directions to inspectors with which they are obliged to comply (new sections 446A(1) and 446B(5)).
1297. The power in new section 446A(2) is exercisable by the Secretary of State in relation to inspectors appointed under sections 431, 432(2) and 442(1). Directions under new section 446A(2) can either relate to the investigation itself or the inspectors' reports of the results of their investigations. Regarding the former, such directions can take two forms:
- a direction as to the subject matter of an investigation (whether by reference to a specified area of a company's operation, a specified transaction, a period of time or otherwise); or
 - a direction which requires an inspector to take or not to take a specified step in his investigation.
1298. As regards inspectors' reports the Secretary of State will have a power to secure that any report (new section 446A(3)):
- includes the inspector's views on a specified matter;
 - does not include any reference to a specified matter;
 - is made in a specified form or manner; or
 - is made by a specified date.
1299. New section 446A(4) enables directions by the Secretary of State to be capable of being given on an inspector's appointment. It also provides that directions may vary or revoke a direction previously given and may be given at the request of an inspector.
1300. New section 446A(5) confirms that the scope of the term "investigation" will include any investigation undertaken under section 433(1) into the affairs of the company's holding company or subsidiary (or a subsidiary of its holding company or a holding company of its subsidiary).
1301. New section 446B(1) will give the Secretary of State power to direct an inspector to take no further steps in an investigation, and the inspector shall comply with any direction given to him under this section (new section 446B(5)). However, if the appointment of inspectors is one that the Secretary of State is obliged to make

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(either because a court orders that a company's affairs ought to be so investigated or because the requisite number of its members has applied for an investigation into its ownership), such a direction can only be given if matters have come to light in the course of the investigation which suggest that a criminal offence has been committed and those matters have been referred to the appropriate prosecuting authority (new section 446B(2)).

1302. Under new section 446B(3), any direction given to the inspector under section 437(1) to produce an interim report, and any direction under new section 446A(3) in relation such a report, shall cease to have effect.
1303. If the Secretary of State directs an inspector to take no further steps in an investigation then the inspector shall not make a final report to him unless:
- the requisite number of a company's members has applied for an investigation into its ownership, matters have come to light in the course of the investigation which suggest that a criminal offence has been committed, those matters have been referred to the appropriate prosecuting authority and the Secretary of State directs the inspectors to make a final report; or
 - the inspector was appointed following a court order that a company's affairs ought to be investigated (new section 446B(4)).
1304. New section 446B(6) confirms that the scope of the term "investigation" will include any investigation undertaken under section 433(1) into the affairs of the company's holding company or subsidiary (or a subsidiary of its holding company or a holding company of its subsidiary).
1305. *Subsections (2) to (5)* concern consequential changes to other sections within the 1985 Act.