



# Companies Act 1985

## 1985 CHAPTER 6

### PART XIV

#### INVESTIGATION OF COMPANIES AND THEIR AFFAIRS; REQUISITION OF DOCUMENTS

##### *Appointment and functions of inspectors*

#### **431 Investigation of a company on its own application or that of its members.**

- (1) The Secretary of State may appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as he may direct.
- (2) The appointment may be made—
  - (a) in the case of a company having a share capital, on the application either of not less than 200 members or of members holding not less than one-tenth of the shares issued,
  - (b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members, and
  - (c) in any case, on application of the company.
- (3) The application shall be supported by such evidence as the Secretary of State may require for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.
- (4) 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 subject to annulment in pursuance of a resolution of either House of Parliament.

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

C1 S. 431 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**432 Other company investigations.**

- (1) The Secretary of State shall appoint one or more competent inspectors to investigate the affairs of a company and report on them in such manner as he directs, if the court by order declares that its affairs out to be so investigated.
- (2) The Secretary of State may make such an appointment if it appears to him that there are circumstances suggesting—
  - (a) that the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to some part of its members, or
  - (b) that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose, or
  - (c) that persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members, or
  - (d) that the company's members have not been given all the information with respect to its affairs which they might reasonably expect.

[<sup>F1</sup>(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.]

- (3) Subsections (1) and (2) are without prejudice to the powers of the Secretary of State under section 431; and the power conferred by subsection (2) is exercisable with respect to a body corporate notwithstanding that it is in course of being voluntarily wound up.
- (4) The reference in subsection (2)(a) to a company's members includes any person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

**Textual Amendments**

F1 S. 432(2A) inserted by Companies Act 1989 (c. 40, SIF 27), ss. 55, 213(2)

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

C2 S. 432 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

C3 S. 432(1)(2) extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 para. 5

**433 Inspectors' powers during investigation.**

- (1) If inspectors appointed under section 431 or 432 to investigate the affairs of a company think it necessary for the purposes of their investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company's

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subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, they have power to do so; and they shall report on the affairs of the other body corporate so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned above.

<sup>F2</sup>(2) .....

**Textual Amendments**

**F2** S. 433(2) repealed by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), ss. 182, 212(3), Sch. 13 para. 7, [Sch. 17 Pt. 1](#)

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

**C4** S. 433 applied (with modifications) (6.4.2001) by [S.I. 2001/1090, reg. 4, Sch. 2 Pt. 1](#)

**434 Production of documents and evidence to inspectors.**

(1) When inspectors are appointed under section 431 or 432, it is the duty of all officers and agents of the company, and of all officers and agents of any other body corporate whose affairs are investigated under section 433(1)—

- (a) to produce to the inspectors all [<sup>F3</sup>documents] of or relating to the company or, as the case may be, the other body corporate which are in their custody or power,
- (b) to attend before the inspectors when required to do so, and
- (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.

[<sup>F4</sup>(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.]

[<sup>F5</sup>(3) An inspector may for the purposes of the investigation examine any person on oath, and may administer an oath accordingly.]

(4) In this section a reference to officers or to agents includes past, as well as present, officers or agents (as the case may be); and “agents”, in relation to a company or other body corporate, includes its bankers and solicitors and persons employed by it as auditors, whether these persons are or are not officers of the company or other body corporate.

(5) An answer given by a person to a question put to him in exercise of powers conferred by this section (whether as it has effect in relation to an investigation under any of sections 431 to 433, or as applied by any other section in this Part) may be used in evidence against him.

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[<sup>F6</sup>(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.]

**Textual Amendments**

- F3** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 56(2)**, 213(2)  
**F4** [S. 434\(2\)](#) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 56(3)**, 213(2)  
**F5** [S. 434\(3\)](#) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 56(4)**, 213(2)  
**F6** [S. 434\(6\)](#) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 56(5)**, 213(2)

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

- C5** [S. 434](#) extended (with modifications) by [S.I. 1989/638](#), regs. 18, 21, **Sch. 4 para. 6**  
**C6** [S. 434](#) applied (with modifications) by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), **s. 94(3)(7)**

<sup>F7</sup>435 .....

**Textual Amendments**

- F7** [S. 435](#) repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 212, 213(2)**, **Sch. 24**

**436 Obstruction of inspectors treated as contempt of court.**

[<sup>F8</sup>(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.]

- (3) The court may thereupon enquire into the case; and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, the court may punish the offender in like manner as if he had been guilty of contempt of the court.

**Textual Amendments**

- F8** [S. 436\(1\)](#) substituted for subsections (1)(2) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 56(6)**, 213(2)

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

- C7** [S. 436](#) applied (with modifications) by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), **s. 94(3)(7)**  
[S. 436](#) applied (with modifications) (6.1.1997) by [S.I. 1996/2827](#), **reg. 22(3)(4)**  
**C8** [S. 436](#) extended (with modifications) by [S.I. 1989/638](#), regs. 18, 21, **Sch. 4 para. 7**  
**C9** [S. 436](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, **Sch. 2 Pt. I**

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### 437 Inspectors' reports.

- (1) The inspectors may, and if so directed by the Secretary of State shall, make interim reports to the Secretary of State, and on the conclusion of their investigation shall make a final report to him.

Any such report shall be written or printed, as the Secretary of State directs.

[<sup>F9</sup>(1A) Any persons who have been appointed under section 431 or 432 may at any time and, if the Secretary of State directs them to do so, shall inform him of any matters coming to their knowledge as a result of their investigations.]

[<sup>F10</sup>(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—

- (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.]

- (2) If the inspectors were appointed under section 432 in pursuance of an order of the court, the Secretary of State shall furnish a copy of any report of theirs to the court.

- (3) In any case the Secretary of State may, if he thinks fit—

- (a) forward a copy of any report made by the inspectors to the company's registered office,
- (b) furnish a copy on request and on payment of the prescribed fee to—
  - (i) any member of the company or other body corporate which is the subject of the report,
  - (ii) any person whose conduct is referred to in the report,
  - (iii) the auditors of that company or body corporate,
  - (iv) the applicants for the investigation,
  - (v) any other person whose financial interests appear to the Secretary of State to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate, or otherwise, and
- (c) cause any such report to be printed and published.

#### Textual Amendments

**F9** S. 437(1A) inserted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 182, [Sch. 13 para. 7](#)

**F10** S. 437(1B)(1C) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), [ss. 57, 213\(2\)](#)

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

**C10** S. 437 extended (with modifications) by [S.I. 1989/638](#), [regs. 18, 21](#)

**C11** S. 437 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [reg. 4](#), [Sch. 2 Pt. I](#)

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#### 438 Power to bring civil proceedings on company's behalf.

- (1) [<sup>F11</sup>If from any report made or information obtained under this Part it appears to the Secretary of State] that any civil proceedings ought in the public interest to be brought by any body corporate, he may himself bring such proceedings in the name and on behalf of the body corporate.
- (2) The Secretary of State shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with proceedings brought under this section.

##### Textual Amendments

**F11** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 58, 213(2)**

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

**C12** [S. 438](#) extended (with modifications) by [S.I. 1989/638](#), regs. 18, 21, **Sch. 4 para. 8**

**C13** [S. 438](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, **Sch. 2 Pt. I**

**C14** [S. 438\(1\)](#): transfer of functions (5.1.1998) by virtue of [S.I. 1997/2781](#), **art. 4(2)** (with [art. 7](#))

#### 439 Expenses of investigating a company's affairs.

- [<sup>F12</sup>(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.]

- (2) A person who is convicted on a prosecution instituted as a result of the investigation, or is ordered to pay the whole or any part of the costs of proceedings brought under section 438, may in the same proceedings be ordered to pay those expenses to such extent as may be specified in the order.
- (3) A body corporate in whose name proceedings are brought under that section is liable to the amount or value of any sums or property recovered by it as a result of those proceedings; and any amount for which a body corporate is liable under this subsection is a first charge on the sums or property recovered.
- (4) A body corporate dealt with by [<sup>F13</sup>an inspectors' report], where the inspectors were appointed otherwise than of the Secretary of State's own motion, is liable except where it was the applicant for the investigation, and except so far as the Secretary of State otherwise directs.
- [<sup>F14</sup>(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.]
- (6) The report of inspectors appointed otherwise than of the Secretary of State's own motion may, if they think fit, and shall if the Secretary of State so directs, include a

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recommendation as to the directions (if any) which they think appropriate, in the light of their investigation, to be given under subsection (4) or (5) of this section.

- (7) For purposes of this section, any costs or expenses incurred by the Secretary of State in or in connection with proceedings brought under section 438 (including expenses incurred under subsection (2) of it) are to be treated as expenses of the investigation giving rise to the proceedings.
- (8) Any liability to repay the Secretary of State imposed by subsections (2) and (3) above is (subject to satisfaction of his right to repayment) a liability also to indemnify all persons against liability under subsections (4) and (5); and any such liability imposed by subsection (2) is (subject as mentioned above) a liability also to indemnify all persons against liability under subsection (3).
- (9) A person liable under any one of those subsections is entitled to contribution from any other person liable under the same subsection, according to the amount of their respective liabilities under it.
- (10) Expenses to be defrayed by the Secretary of State under this section shall, so far as not recovered under it, be paid out of money provided by Parliament.

#### Textual Amendments

**F12** S. 439(1) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 59(2)**, 213(2)

**F13** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 59(3)**, 213(2)

**F14** S. 439(5) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 59(4)**, 213(2)

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

**C15** S. 439 extended (with modifications) by [S.I. 1989/638, regs. 18, 21](#), **Sch. 4 para. 8**

**C16** S. 439 applied (with modifications) (6.4.2001) by [S.I. 2001/1090, reg. 4](#), **Sch. 2 Pt. I**

### **<sup>F15</sup>440 Power of Secretary of State to present winding-up petition.**

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#### Textual Amendments

**F15** S. 440 repealed and superseded by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 60, 212, 213(2)**, **Sch. 24** and amended by [1995 c. 40, s. 5](#), **Sch. 4 para. 56**

### **441 Inspectors' report to be evidence.**

- (1) A copy of any report of inspectors appointed under [<sup>F16</sup>this Part], certified by the Secretary of State to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report [<sup>F17</sup>and, in proceedings on an application under [<sup>F18</sup>section 8 of the Company Directors Disqualification Act 1986], as evidence of any fact stated therein].
- (2) A document purporting to be such a certificate as is mentioned above shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

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#### **Textual Amendments**

**F16** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 61**, 213(2)

**F17** Words inserted by [Insolvency Act 1985 \(c. 65, SIF 27\)](#), s. 109, **Sch. 6 para. 3**

**F18** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(1), **Sch. 13 Pt. I**

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

**C17** S. 441 extended (with modifications) by [S.I. 1989/638](#), regs. 18, 21, **Sch. 4 para. 9**

**C18** S. 441 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, **Sch. 2 Pt. I**

### *Other powers of investigation available to the Secretary of State*

#### **442 Power to investigate company ownership.**

- (1) Where it appears to the Secretary of State that there is good reason to do so, he may appoint one or more competent inspectors to investigate and report on the membership of any company, and otherwise with respect to the company, for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence its policy.
- (2) The appointment of inspectors under this section may define the scope of their investigation (whether as respects the matter or the period to which it is to extend or otherwise) and in particular may limit the investigation to matters connected with particular shares or debentures.
- [<sup>F19</sup>(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 investigating the matters which inspectors would be appointed to investigate, he may instead conduct the investigation under that section.]
- (4) Subject to the terms of their appointment, the inspectors' powers extend to the investigation of any circumstances suggesting the existence of an arrangement or



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understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

**Textual Amendments**

**F19** S. 442(3)–(3C) substituted for s. 442(3) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 62, 213(2)**

**443 Provisions applicable on investigation under s. 442.**

- (1) For purposes of an investigation under section 442, sections 433(1), 434, 436 and 437 apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, subject however to the following subsections.
- (2) Those sections apply to—
  - (a) all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially influence its policy (including persons concerned only on behalf of others), and
  - (b) any other person whom the inspector has reasonable cause to believe possesses information relevant to the investigation,as they apply in relation to officers and agents of the company or the other body corporate (as the case may be).
- (3) If the Secretary of State is of opinion that there is good reason for not divulging any part of a report made by virtue of section 442 and this section, he may under section 437 disclose the report with the omission of that part; and he may cause to be kept by the registrar of companies a copy of the report with that part omitted or, in the case of any other such report, a copy of the whole report.

<sup>F20</sup>(4) .....

**Textual Amendments**

**F20** S. 443(4) repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 212, 213(2), Sch. 24**

**444 Power to obtain information as to those interested in shares, etc.**

- (1) If it appears to the Secretary of State that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint inspectors for the purpose, he may require any person whom he has reasonable cause to believe to have or to be able to obtain any information as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures to give any such information to the Secretary of State.
- (2) For this purpose a person is deemed to have an interest in shares or debentures if he has any right to acquire or dispose of them or of any interest in them, or to vote in respect of them, or if his consent is necessary for the exercise of any of the rights of other persons interested in them, or if other persons interested in them can be required, or are accustomed, to exercise their rights in accordance with his instructions.

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- (3) A person who fails to give information required of him under this section, or who in giving such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is liable to imprisonment or a fine, or both.

#### **445 Power to impose restrictions on shares and debentures.**

- (1) If in connection with an investigation under either section 442 or 444 it appears to the Secretary of State that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), he may by order direct that the shares shall until further order be subject to the restrictions of Part XV of this Act.

[<sup>F21</sup>(1A) If the Secretary of State is satisfied that an order under subsection (1) may unfairly affect the rights of third parties in respect of shares then the Secretary of State, for the purpose of protecting such rights and subject to such terms as he thinks fit, may direct that such acts by such persons or descriptions of persons and for such purposes as may be set out in the order, shall not constitute a breach of the restrictions of Part XV of this Act.]

- (2) This section, and Part XV in its application to orders under it, apply in relation to debentures as in relation to shares [<sup>F22</sup>save that subsection (1A) shall not so apply.]

#### **Textual Amendments**

**F21** S. 445(1A) inserted by [S.I. 1991/1646, reg. 5\(a\)](#)

**F22** Words in s. 445(2) inserted by [S.I. 1991/1646, reg. 5\(b\)](#)

#### **446 Investigation of share dealings.**

- (1) If it appears to the Secretary of State that there are circumstances suggesting that contraventions may have occurred, in relation to a company's shares or debentures, of section 323 or 324 (taken with Schedule 13), or of subsections (3) to (5) of section 328 (restrictions on share dealings by directors and their families; obligation of director to disclose shareholding in his own company), he may appoint one or more competent inspectors to carry out such investigations as are requisite to establish whether or not such contraventions have occurred and to report the result of their investigations to him.
- (2) The appointment of inspectors under this section may limit the period to which their investigation is to extend or confine it to shares or debentures of a particular class, or both.
- (3) For purposes of an investigation under this section, sections 434 [<sup>F23</sup>to 437] apply—
- (a) with the substitution, for references to any other body corporate whose affairs are investigated under section 433(1), of a reference to any other body corporate which is, or has at any relevant time been, the company's subsidiary or holding company, or a subsidiary of its holding company, . . . <sup>F24</sup>
  - (b) . . . . . <sup>F24</sup>
- (4) Sections 434 to 436 apply under the preceding subsection—
- [<sup>F25</sup>(a) to any individual who is an authorised person within the meaning of the Financial Services Act 1986;

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- (b) to any individual who holds a permission granted under paragraph 23 of Schedule 1 to that Act;
  - (c) to any officer (whether past or present) of a body corporate which is such an authorised person or holds such a permission;
  - (d) to any partner (whether past or present) in a partnership which is such an authorised person or holds such a permission;
  - (e) to any member of the governing body or officer (in either case whether past or present) of an unincorporated association which is such an authorised person or holds such a permission].
- (5) ..... F26
- (6) ..... F27
- (7) ..... F28

#### Textual Amendments

- F23** Words substituted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 182, **Sch. 13 para. 8(a)**
- F24** [S. 446\(3\)\(b\)](#) and the word “and” preceding it repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 212, 213(2), **Sch. 24**
- F25** [S. 446\(4\)\(a\)–\(e\)](#) substituted for [s. 446\(4\)\(a\)–\(c\)](#) by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 212(2), **Sch. 16 para. 21**
- F26** [S. 446\(5\)](#) repealed by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), ss. 182, 212(3), **Sch. 13 para. 8(b)**, Sch. 17 Pt. I
- F27** [S. 446\(6\)](#) repealed by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 212(3), **Sch. 17 Pt. I**
- F28** [S. 446\(7\)](#) repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 212, 213(2), **Sch. 24**

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

- C19** [S. 446\(4\)\(c\)–\(e\)](#) amended (1.1.1993) by [S.I. 1992/3218](#), reg. 82(1), **Sch. 10 Pt. I para.16**.
- C20** [S. 446\(4\)\(c\)–\(e\)](#) amended (1.1.1996) by [S.I. 1995/3275](#), reg. 57, **Sch. 10 Pt. I para. 4**

PROSPECTIVE

### *[<sup>F29</sup>Powers of Secretary of State to give directions to inspectors*

#### Textual Amendments

- F29** Ss. 446A, 446B and preceding cross-heading inserted (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), **ss. 1035(1), 1300**; [S.I. 2007/2194](#), **art. 2(1)(k)** (with [art. 12](#), [Sch. 3 para. 48](#))

#### **446A General powers to give directions**

- (1) In exercising his functions an inspector shall comply with any direction given to him by the Secretary of State under this section.
- (2) The Secretary of State may give an inspector appointed under section 431, 432(2) or 442(1) a direction—

*Status: Point in time view as at 18/07/1991. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1985, Part XIV. (See end of Document for details)*

- (a) as to the subject matter of his investigation (whether by reference to a specified area of a company's operation, a specified transaction, a period of time or otherwise), or
  - (b) which requires the inspector to take or not to take a specified step in his investigation.
- (3) The Secretary of State may give an inspector appointed under any provision of this Part a direction requiring him to secure that a specified report under section 437—
- (a) includes the inspector's views on a specified matter,
  - (b) does not include any reference to a specified matter,
  - (c) is made in a specified form or manner, or
  - (d) is made by a specified date.
- (4) A direction under this section—
- (a) may be given on an inspector's appointment,
  - (b) may vary or revoke a direction previously given, and
  - (c) may be given at the request of an inspector.
- (5) In this section—
- (a) a reference to an inspector's investigation includes any investigation he undertakes, or could undertake, under section 433(1) (power to investigate affairs of holding company or subsidiary);
  - (b) “specified” means specified in a direction under this section.

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

**C21** S. 446A applied (with modifications) (E.W.S.) (6.4.2014) by [The Co-operative and Community Benefit Societies and Credit Unions \(Investigations\) Regulations 2014 \(S.I. 2014/574\)](#), regs. 1(1), 2

**446B Direction to terminate investigation**

- (1) The Secretary of State may direct an inspector to take no further steps in his investigation.
- (2) The Secretary of State may give a direction under this section to an inspector appointed under section 432(1) or 442(3) only on the grounds that it appears to him that—
- (a) matters have come to light in the course of the inspector's investigation which suggest that a criminal offence has been committed, and
  - (b) those matters have been referred to the appropriate prosecuting authority.
- (3) Where the Secretary of State gives a direction under this section, any direction already given to the inspector under section 437(1) to produce an interim report, and any direction given to him under section 446A(3) in relation to such a report, shall cease to have effect.
- (4) Where the Secretary of State gives a direction under this section, the inspector shall not make a final report to the Secretary of State unless—
- (a) the direction was made on the grounds mentioned in subsection (2) and the Secretary of State directs the inspector to make a final report to him, or
  - (b) the inspector was appointed under section 432(1) (appointment in pursuance of order of the court).

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**Changes to legislation:** There are currently no known outstanding effects for the Companies Act 1985, Part XIV. (See end of Document for details)

- (5) An inspector shall comply with any direction given to him under this section.
- (6) In this section, a reference to an inspector's investigation includes any investigation he undertakes, or could undertake, under section 433(1) (power to investigate affairs of holding company or subsidiary).]

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

- C22** S. 446B applied (with modifications) (E.W.S.) (6.4.2014) by [The Co-operative and Community Benefit Societies and Credit Unions \(Investigations\) Regulations 2014 \(S.I. 2014/574\)](#), regs. 1(1), 2

PROSPECTIVE

*<sup>F30</sup>Resignation, removal and replacement of inspectors*

**Textual Amendments**

- F30** Ss. 446C, 446D and preceding cross-heading inserted (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1036, 1300; S.I. 2007/2194, art. 2(1)(k) (with art. 12, Sch. 3 para. 48)

**446C Resignation and revocation of appointment**

- (1) An inspector may resign by notice in writing to the Secretary of State.
- (2) The Secretary of State may revoke the appointment of an inspector by notice in writing to the inspector.

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

- C23** S. 446C applied (with modifications) (E.W.S.) (6.4.2014) by [The Co-operative and Community Benefit Societies and Credit Unions \(Investigations\) Regulations 2014 \(S.I. 2014/574\)](#), regs. 1(1), 2

**446D Appointment of replacement inspectors**

- (1) Where—
  - (a) an inspector resigns,
  - (b) an inspector's appointment is revoked, or
  - (c) an inspector dies,the Secretary of State may appoint one or more competent inspectors to continue the investigation.
- (2) An appointment under subsection (1) shall be treated for the purposes of this Part (apart from this section) as an appointment under the provision of this Part under which the former inspector was appointed.
- (3) The Secretary of State must exercise his power under subsection (1) so as to secure that at least one inspector continues the investigation.

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**Changes to legislation:** There are currently no known outstanding effects for the Companies Act 1985, Part XIV. (See end of Document for details)

- (4) Subsection (3) does not apply if—
- (a) the Secretary of State could give any replacement inspector a direction under section 446B (termination of investigation), and
  - (b) such a direction would (under subsection (4) of that section) result in a final report not being made.
- (5) In this section, references to an investigation include any investigation the former inspector conducted under section 433(1) (power to investigate affairs of holding company or subsidiary).]

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

- C24** S. 446D applied (with modifications) (E.W.S.) (6.4.2014) by [The Co-operative and Community Benefit Societies and Credit Unions \(Investigations\) Regulations 2014 \(S.I. 2014/574\)](#), regs. 1(1), 2

PROSPECTIVE

*<sup>F31</sup>Power to obtain information from former inspectors etc*

**Textual Amendments**

- F31** S. 446E and preceding cross-heading inserted (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. [1037\(1\)](#), [1300](#); S.I. 2007/2194, [art. 2\(1\)\(k\)](#) (with [art. 12](#), Sch. 3 para. 48)

**446E Obtaining information from former inspectors etc**

- (1) This section applies to a person who was appointed as an inspector under this Part—
  - (a) who has resigned, or
  - (b) whose appointment has been revoked.
- (2) This section also applies to an inspector to whom the Secretary of State has given a direction under section 446B (termination of investigation).
- (3) The Secretary of State may direct a person to whom this section applies to produce documents obtained or generated by that person during the course of his investigation to—
  - (a) the Secretary of State, or
  - (b) an inspector appointed under this Part.
- (4) The power under subsection (3) to require production of a document includes power, in the case of a document not in hard copy form, to require the production of a copy of the document—
  - (a) in hard copy form, or
  - (b) in a form from which a hard copy can be readily obtained.
- (5) The Secretary of State may take copies of or extracts from a document produced in pursuance of this section.

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**Changes to legislation:** There are currently no known outstanding effects for the Companies Act 1985, Part XIV. (See end of Document for details)

- (6) The Secretary of State may direct a person to whom this section applies to inform him of any matters that came to that person's knowledge as a result of his investigation.
- (7) A person shall comply with any direction given to him under this section.
- (8) In this section—
  - (a) references to the investigation of a former inspector or inspector include any investigation he conducted under section 433(1) (power to investigate affairs of holding company or subsidiary), and
  - (b) “document” includes information recorded in any form.]

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

**C25** S. 446E applied (with modifications) (E.W.S.) (6.4.2014) by [The Co-operative and Community Benefit Societies and Credit Unions \(Investigations\) Regulations 2014 \(S.I. 2014/574\)](#), regs. 1(1), 2

*Requisition and seizure of books and papers*

**447 Secretary of State’s power to require production of documents.**

- (1) .....<sup>F32</sup>
- (2) The Secretary of State may at any time, if he thinks there is good reason to do so, give directions to [<sup>F33</sup>a company] requiring it, at such time and place as may be specified in the directions, to produce such [<sup>F34</sup>documents] as may be so specified.
- (3) The Secretary of State may at any time, if he thinks there is good reason to do so, authorise an officer of his [<sup>F35</sup>or any other competent person], on producing (if so required) evidence of his authority, to require [<sup>F36</sup>a company] to produce to him (the officer [<sup>F35</sup>or other person]) forthwith any [<sup>F37</sup>documents] which [<sup>F38</sup>he (the officer or other person)] may specify.
- (4) Where by virtue of subsection (2) or (3) the Secretary of State or an officer of his [<sup>F39</sup>or other person] has power to require the production of [<sup>F37</sup>documents] from [<sup>F40</sup>a company], he or the officer [<sup>F39</sup>or other person] has the like power to require production of those [<sup>F37</sup>documents] from any person who appears to him or the officer [<sup>F39</sup>or other person] to be in possession of them; but where any such person claims a lien on [<sup>F37</sup>documents] produced by him, the production is without prejudice to the lien.
- (5) The power under this section to require [<sup>F41</sup>a company] or other person to produce [<sup>F34</sup>documents] includes power—
  - (a) if the [<sup>F34</sup>documents] are produced—
    - (i) to take copies of them or extracts from them, and
    - (ii) to require that person, or any other person who is a present or past officer of, or is or was at any time employed by, [<sup>F41</sup>the company] in question, to provide an explanation of any of them;
  - (b) if the [<sup>F34</sup>documents] are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

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- (6) If the requirement to produce [<sup>F34</sup>documents] or provide an explanation or make a statement is not complied with, [<sup>F42</sup>the company] or other person on whom the requirement was so imposed is guilty of an offence and liable to a fine.

[<sup>F43</sup>Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to this offence.]

- (7) However, where a person is charged with an offence under subsection (6) in respect of a requirement to produce any [<sup>F34</sup>documents], it is a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

- (8) A statement made by a person in compliance with such a requirement may be used in evidence against him.

[<sup>F44</sup>(9) 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

- F32** S. 447(1) repealed by Companies Act 1989 (c. 40, SIF 27), ss. 63(2), 212, 213(2), **Sch. 24**
- F33** Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(2)(a)**, 213(2)
- F34** Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(3)**, 213(2)
- F35** Words inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(4)**, 213(2)
- F36** Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(2)(a)**, 213(2)
- F37** Word substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(3)**, 213(2)
- F38** Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(4)**, 213(2)
- F39** Words inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(5)**, 213(2)
- F40** Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(2)(b)**, 213(2)
- F41** Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(2)(b)**, 213(2)
- F42** Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(2)(c)**, 213(2)
- F43** S. 447(6): second sentence substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 63(6)**, 213(2)
- F44** S. 447(9) inserted by Companies Act 1989 (c. 40, SIF 27), **s. 63(7)**, 213(2)

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

- C26** S. 447 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 10**

VALID FROM 06/04/2005

#### [<sup>F45</sup>447A] Information provided: evidence

- (1) A statement made by a person in compliance with a requirement under section 447 may be used in evidence against him.
- (2) But in criminal proceedings in which the person is charged with a relevant offence—
- no evidence relating to the statement may be adduced by or on behalf of the prosecution, and
  - no question relating to it may be asked by or on behalf of the prosecution,



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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.

- (3) A relevant offence is any offence other than the following—
- (a) an offence under section 451,
  - (b) an offence under section 5 of the Perjury Act 1911 (false statement made otherwise than on oath), or
  - (c) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statement made otherwise than on oath).]

#### Textual Amendments

**F45** S. 447A inserted (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), ss. 25, 65, [Sch. 2 para. 17](#); S.I. 2004/3322, [art. 2\(2\)](#), Sch. 2 (subject to arts. 3-13)

#### [<sup>F46</sup>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
  - (d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.

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- (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.]

#### Textual Amendments

**F46** S. 448 substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 64(1)**, 213(2)

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

**C27** S. 448 extended (with modifications) by [S.I. 1989/638](#), regs. 18, 21, **Sch. 4 para. 11**

**C28** S. 448 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, **Sch. 2 Pt. I**

**C29** S. 448 restricted (20.1.2007, 6.4.2007, 1.10.2007, 6.4.2008 for specified purposes) by [Companies Act 2006 \(c. 46\)](#), **ss. 1126**, 1300 (with s. 1133); [S.I. 2006/3428](#), **art. 3(2)(b)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by [S.I. 2007/3495](#), art. 11, Sch. 5)); [S.I. 2007/1093](#), **art. 2(2)(c)**; [S.I. 2007/2194](#), **art. 2(1)(I)(3)(h)** (with art. 12); [S.I. 2007/3495](#), **art. 3(1)(n)** (with arts. 7, 12)

**C30** S. 448(3): powers of seizure extended (8.10.2004) by [2001 c. 16](#), **ss. 50**, 52-54, 68, 138(2), Sch. 1 Pt. I para. 35; [S.I. 2004/1376](#), **art. 3**

**C31** S. 448(6) applied (1.4.2003) by [2001 c. 16](#), **ss. 57(1)(f)**, 138(2) (with s. 57(4)); [S.I. 2003/708](#), **art. 2**

**Status:** Point in time view as at 18/07/1991. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Companies Act 1985, Part XIV. (See end of Document for details)

VALID FROM 06/04/2005

**[<sup>F47</sup>448A Protection in relation to certain disclosures: information provided to Secretary of State**

- (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 Secretary of State 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 Secretary of State for the purposes of the exercise of his functions under this Part;
  - (d) the information disclosed is not more than is reasonably necessary for the purpose of assisting the Secretary of State for the purposes of the exercise of those functions;
  - (e) the disclosure is not one falling within subsection (3) or (4).
- (3) A disclosure falls within this subsection if the disclosure is prohibited by virtue of any enactment.
- (4) A disclosure falls within this subsection 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.
- (5) An enactment includes an enactment—
  - (a) comprised in, or in an instrument made under, an Act of the Scottish Parliament;
  - (b) comprised in subordinate legislation (within the meaning of the Interpretation Act 1978);
  - (c) whenever passed or made.]

**Textual Amendments**

**F47** S. 448A inserted (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), **ss. 22, 65**; [S.I. 2004/3322](#), **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

**449 Provision for security of information obtained.**

- (1) No information or document relating to a [<sup>F48</sup>company] which has been obtained under section 447 . . . <sup>F49</sup> shall, without the previous consent in writing of that [<sup>F48</sup>company], be published or disclosed, except to a competent authority, unless the publication or disclosure is required—

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- [<sup>F50</sup>(a) with a view to the institution of or otherwise for the purposes of criminal proceedings;]
- [<sup>F51</sup>(ba) with a view to the institution of, or otherwise for the purposes of, any proceedings on an application under [<sup>F52</sup>section 6, 7 or 8 of the Company Directors Disqualification Act 1986],]
- [<sup>F53</sup>(c) for the purposes of enabling or assisting any inspector appointed under this Part, or under section 94 or 177 of the Financial Services Act 1986, to discharge his functions;]
- [<sup>F54</sup>(cc) for the purpose of enabling or assisting any 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 to discharge his functions;]
- [<sup>F55</sup>(d) for the purpose of enabling or assisting the Secretary of State to exercise any of his functions under this Act, the Insider Dealing Act, [<sup>F56</sup>the Prevention of Fraud (Investments) Act <sup>M1</sup>1958], the Insurance Companies Act <sup>M2</sup>1982, the Insolvency Act <sup>M3</sup>1986, the Company Directors Disqualification Act <sup>M4</sup>1986 [<sup>F57</sup>, the Financial Services Act 1986 or Part II, III or VII of the Companies Act 1989,].]
- [<sup>F55</sup>(dd) for the purpose of enabling or assisting the Department of Economic Development for Northern Ireland to exercise any powers conferred on it by the enactments relating to companies or insolvency or for the purpose of enabling or assisting any inspector appointed by it under the enactments relating to companies to discharge his functions]
- <sup>F58</sup>(e) .....
- [<sup>F59</sup>(f) for the purpose of enabling or assisting the Bank of England to discharge its functions under [<sup>F60</sup>the Banking Act 1987] or any other functions,
- (g) for the purpose of enabling or assisting the Deposit Protection Board to discharge its functions under that Act,
- (h) for any purpose mentioned in section 180(1)(b), (e), (h), [<sup>F61</sup>or (n)] of the Financial Services Act 1986,
- [ for the purpose of enabling or assisting a body established by order under section 46 of the Companies Act 1989 to discharge its functions under Part II of that Act, or of enabling or assisting a recognised supervisory or qualifying body within the meaning of that Part to discharge its functions as such;]
- (i) for the purpose of enabling or assisting the Industrial Assurance Commissioner or the Industrial Assurance Commissioner for Northern Ireland to discharge his functions under the enactments relating to industrial assurance,
- (j) for the purpose of enabling or assisting the Insurance Brokers Registration Council to discharge its functions under the Insurance Brokers (Registration) Act <sup>M5</sup>1977,
- (k) for the purpose of enabling or assisting an official receiver to discharge his functions under the enactments relating to insolvency or for the purpose of enabling or assisting a body which is for the time being a recognised professional body for the purposes of section 391 of the Insolvency Act 1986 to discharge its functions as such,
- (l) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by a solicitor, auditor, accountant, valuer or actuary of his professional duties,

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[<sup>F63</sup>(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;]

[<sup>F64</sup>(m) for the purpose of enabling or assisting an overseas regulatory authority to exercise its regulatory functions.]]

[<sup>F65</sup> In subsection (1)—

- <sup>F66</sup>(1A) (a) in 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 paragraph by the Secretary of State by order made by statutory instrument; and
- (b) in paragraph (m) “overseas regulatory authority” and “regulatory functions” have the same meaning as in section 82 of the Companies Act 1989.]

(1B) Subject to subsection (1C), subsection (1) shall not preclude publication or disclosure for the purpose of enabling or assisting any public or other authority for the time being [<sup>F67</sup>designated for the purposes of this subsection] by the Secretary of State by an order in a statutory instrument to discharge any functions which are specified in the order.

(1C) An order under subsection (1B) designating an authority for the purpose of that subsection may—

- (a) impose conditions subject to which the publication or disclosure of any information or document is permitted by that subsection; and
- (b) otherwise restrict the circumstances in which that subsection permits publication or disclosure.

(1D) Subsection (1) shall not preclude the publication or disclosure of any such information as is mentioned in section 180(5) of the Financial Services Act 1986 by any person who by virtue of that section is not precluded by section 179 of that Act from disclosing it.]

(2) A person who publishes or discloses any information or document in contravention of this section is guilty of an offence and liable to imprisonment or a fine, or both.

[<sup>F68</sup>Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to this offence.]

[<sup>F69</sup> For the purposes of this section each of the following is a competent authority—

- <sup>F70</sup>(3) (a) the Secretary of State,
- (b) an inspector appointed under this Part or under section 94 or 177 of the Financial Services Act 1986,
- (c) any 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,
- (d) the Department of Economic Development in Northern Ireland,
- (e) the Treasury,
- (f) the Bank of England,
- (g) the Lord Advocate,
- (h) the Director of Public Prosecutions, and the Director of Public Prosecutions for Northern Ireland,
- (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

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- of or paragraph 18 of Schedule 11 to that Act (schemes for compensation of investors),
- (j) the Chief Registrar of friendly societies and the Registrar of Friendly Societies for Northern Ireland,
  - (k) the Industrial Assurance Commissioner and the Industrial Assurance Commissioner for Northern Ireland,
  - (l) any constable,
  - (m) any procurator fiscal.
- (3A) Any information which may by virtue of this section be disclosed to a competent authority may be disclosed to any officer or servant of the authority.]]
- [<sup>F69</sup>(4) A statutory instrument containing an order under [<sup>F71</sup>subsection (1A)(a) or (1B)] is subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F48** The word “company” substituted (21.2.1990 to the extent mentioned in S.I. 1990/142, **art. 4**, otherwise 25.4.1991) for the word “body” by **Companies Act 1989 (c. 40, SIF 27), s. 65(2)(a)**; S.I. 1990/142, **art. 4**; S.I. 1991/878, **art. 2**, Sch.
- F49** Words repealed by **Companies Act 1989 (c. 40, SIF 27)**, ss. 212, 213(2), **Sch. 24**
- F50** S. 449(1)(a) substituted for s. 449(1)(a)(b) by **Financial Services Act 1986 (c. 60, SIF 69)**, s. 182, **Sch. 13 para. 9(1)(a)**
- F51** S. 449(1)(ba) inserted by **Insolvency Act 1985 (c. 65, SIF 27)**, s. 109, **Sch. 6 para. 4**
- F52** Words substituted by **Insolvency Act 1986 (c. 45, SIF 66)**, s. 439(1), **Sch. 13 Pt. I**
- F53** S. 449(1)(c) substituted (21.2.1990 to the extent mentioned in S.I. 1990/142, **art. 4** otherwise 25.4.1991) by **Companies Act 1989 (c. 40, SIF 27), s. 65(2)(b)**; S.I. 1990/142, **art. 4**; S.I. 1991/878, **art. 2**, Sch.
- F54** S. 449(1)(cc) inserted (21.2.1990 to the extent mentioned in S.I. 1990/142, **art. 4** otherwise 25.4.1991) by **Companies Act 1989 (c. 40, SIF 27), s. 65(2)(c)**; S.I. 1990/142, **art. 4**; S.I. 1991/878, **art. 2**, Sch.
- F55** S. 449(1)(d)(dd) substituted for para. (d) by **Financial Services Act 1986 (c. 60, SIF 69)**, s. 182, **Sch. 13 para. 9(1)(b)**
- F56** Words repealed (29.4.1988 to the extent mentioned in S.I. 1988/740, **art. 2, Sch.** otherwise *prosp.*) by **Financial Services Act 1986 (c. 60, SIF 69)**, ss. 211, 212(3), **Sch. 17 Pt. I**
- F57** Words “, the” to “Act 1989,” substituted (21.2.1990 to the extent mentioned in S.I. 1990/142, **art. 4** and otherwise 25.4.1991) for the words “or the” to “1986” by **Companies Act 1989 (c. 40, SIF 27), s. 65(2)(d)**; S.I. 1990/142, **art. 4**; S.I. 1991/878, **art. 2**, Sch.
- F58** S. 449(1)(e) repealed (21.2.1990 to the extent mentioned in S.I. 1990/142, **art. 4** otherwise 25.4.1991) by **Companies Act 1989 (c. 40, SIF 27)**, ss. 65(2)(e), 212, **Sch. 24**; S.I. 1990/142, **art. 4**; S.I. 1991/878, **art. 2**, Sch.
- F59** S. 449(1)(f)–(m) inserted by **Financial Services Act 1986 (c. 60, SIF 69)**, s. 182, **Sch. 13 para. 9(1)(c)**
- F60** Words substituted by **Banking Act 1987 (c. 22, SIF 10)**, s. 108(1), **Sch. 6 para. 18(7)**
- F61** Words “or (n)” substituted (21.2.1990 to the extent mentioned in S.I. 1990/142, **art. 4** otherwise 25.4.1991) for the words “(n) or (p)” by **Companies Act 1989 (c. 40, SIF 27), s. 65(2)(f)**; S.I. 1990/142, **art. 4**; S.I. 1991/878, **art. 2**, Sch.
- F62** Para. (hh) inserted (21.2.1990 to the extent mentioned in S.I. 1990/142, **art. 4**, 25.4.1991 to the extent mentioned in S.I. 1991/878, **art. 2, Sch** and otherwise *prosp.*) by **Companies Act 1989 (c. 40, SIF 27), ss. 65(2)(g)**, 215(2); S.I. 1990/142, **art. 4**; S.I. 1991/878, **art. 2**, Sch.
- F63** Para. (ll) inserted (21.2.1990 to the extent mentioned in S.I. 1990/142, **art. 4** otherwise 25.4.1991) by **Companies Act 1989 (c. 40, SIF 27), s. 65(2)(h)**; S.I. 1990/142, **art. 4**; S.I. 1991/878, **art. 2**, Sch.
- F64** Para. (m) ending with words “regulatory functions” substituted (21.2.1990 to the extent mentioned in S.I. 1990/142, **art. 4** otherwise 25.4.1991) for para. (m) ending with the words “supervisory functions” by **Companies Act 1989 (c. 40, SIF 27), s. 62(2)(i)**; S.I. 1990/142, **art. 4**; S.I. 1991/878, **art. 2**, Sch.

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- F65** S. 449(1A)–(1D) inserted by Financial Services Act 1986 (c. 60, SIF 69), s. 182, **Sch. 13 para. 9(2)**
- F66** Subsection (1A) substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 65(3)**, 213(2)
- F67** Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 65(4)**, 213(2)
- F68** Sentence substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 65(5)**, 213(2)
- F69** S. 449(3) and new s. 449(4) substituted for s. 449(3) by Financial Services Act 1986 (c. 60, SIF 69), s. 182, **Sch. 13 para. 9(3)**
- F70** S. 449(3) and new s. 449(3A) substituted for s. 449(3) by Companies Act 1989 (c. 40, SIF 27), **ss. 65(6)**, 213(2)
- F71** Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 65(7)**, 213(2)

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

- C32** S. 449 extended (with modifications) by S.I. 1989/638, regs. 18, 21, **Sch. 4 para. 11**
- C33** S. 449 modified by Companies Act 1989 (c. 40, SIF 27), **ss. 88(3)(b)(5)(6)**, 213(2)
- C34** S. 449(1A) amended by S.I. 1987/942, **art. 11**

#### **Marginal Citations**

- M1** 1958 c.45 (69).
- M2** 1982 c.50 (67).
- M3** 1986 c.45 (66).
- M4** 1986 c.46 (27).
- M5** 1977 c.46 (67).

### **450 Punishment for destroying, mutilating, etc. company documents.**

[<sup>F72</sup>(1) An officer of a company, or of an insurance company], to which Part II of the Insurance Companies Act <sup>M6</sup>1982 applies, who—

- (a) destroys, mutilates or falsifies, or is privy to the destruction, mutilation or falsification of a document affecting, or relating to the [<sup>F73</sup>company's] property or affairs, or
- (b) makes, or is privy to the making of, a false entry in such a document,

is guilty of an offence, unless he proves that he had no intention to conceal the state of affairs of [<sup>F74</sup>the company] or to defeat the law.

(2) Such a person as above mentioned who fraudulently either parts with, alters or makes an omission in any such document or is privy to fraudulent parting with, fraudulent altering or fraudulent making of an omission in, any such document, is guilty of an offence.

(3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

[<sup>F75</sup>(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.]

[<sup>F76</sup>(5) In this section “document” includes information recorded in any form.]

#### **Textual Amendments**

- F72** Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 66(2)**, 213(2)
- F73** Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 66(2)**, 213(2)
- F74** Words substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 66(2)**, 213(2)

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**F75** S. 450(4) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 66(3), 213(2)

**F76** S. 450(5) inserted by Companies Act 1989 (c. 40, SIF 27), ss. 66(4), 213(2)

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

**C35** S. 450 extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 para. 11

**C36** S. 450 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

**C37** S. 450(1) amended (1.7.1994) by S.I. 1994/1696, reg. 68, Sch. 8 Pt. I para. 9(1)(c)

**Marginal Citations**

**M6** 1982 c.50 (67).

**451 Punishment for furnishing false information.**

A person who, in purported compliance with a requirement imposed under section 447 to provide an explanation or make a statement, provides or makes an explanation or statement which he knows to be false in a material particular or recklessly provides or makes an explanation or statement which is so false, is guilty of an offence and liable to imprisonment or a fine, or both.

[<sup>F77</sup>Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to this offence.]

**Textual Amendments**

**F77** S. 451: sentence substituted by Companies Act 1989 (c. 40, SIF 27), ss. 67, 213(2)

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

**C38** S. 451 extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 para. 11

**C39** S. 451 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I

[<sup>F78</sup>**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—
  - (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.



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- (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.]

**Textual Amendments**

**F78** S. 451A inserted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), s. 182, [Sch. 13 para. 10](#) and substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), [ss. 68, 213\(2\) Supplementary](#)

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

**C40** S. 451A extended (with modifications) by [S.I. 1989/638](#), [regs. 18, 21](#), [Sch. 4 para. 11](#)

**452 Privileged information.**

- (1) Nothing in sections 431 to 446 requires the disclosure to the Secretary of State or to an inspector appointed by him—
- (a) by any person of information which he would in an action in the High Court or the Court of Session be entitled to refuse to disclose on grounds of legal professional privilege except, if he is a lawyer, the name and address of his client,
  - (b) .....<sup>F79</sup>

[<sup>F80</sup>(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.]

(2) Nothing in sections 447 to 451 compels the production by any person of a document which he would in an action in the High Court or the Court of Session be entitled to refuse to produce on grounds of legal professional privilege, or authorises the taking of possession of any such document which is in the person's possession.

(3) The Secretary of State shall not under section 447 require, or authorise an officer of his [<sup>F81</sup>or other person] to require, the production by a person carrying on the business of banking of a document relating to the affairs of a customer of his unless either it appears to the Secretary of State that it is necessary to do so for the purpose of investigating the affairs of the first-mentioned person, or the customer is a person on

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whom a requirement has been imposed under that section, or under section 44(2) to (4) of the <sup>M7</sup>Insurance Companies Act 1982 (provision corresponding to section 447).

#### Textual Amendments

**F79** S. 452(1)(b) repealed by Companies Act 1989 (c. 40, SIF 27), ss. 69(2), 212, 213(2), Sch. 24

**F80** S. 452(1A)(1B) inserted by Companies Act 1989 (c. 40, SIF 27), ss. 69(3), 213(2)

**F81** Words inserted by Companies Act 1989 (c. 40, SIF 27), ss. 69(4), 213(2)

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

**C41** S. 452 extended (with modifications) by S.I. 1989/638, regs. 18, 21, Sch. 4 para. 11

#### Marginal Citations

**M7** 1982 c. 50.

### 453 Investigation of overseas companies.

[<sup>F82</sup>(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.]

(2) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F82** S. 453(1)(1A)(1B) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 70, 213(2)

VALID FROM 06/04/2005

#### [<sup>F83</sup>453A Power to enter and remain on premises

(1) An inspector or investigator may act under subsection (2) in relation to a company if—

- (a) he is authorised to do so by the Secretary of State, 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—

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- (a) require entry to relevant premises, and
  - (b) remain there for such period as he thinks necessary for the purpose mentioned in subsection (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 subsection (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 subsection (2) or (4)—
- (a) is guilty of an offence, and
  - (b) is liable on conviction to a fine.
- (6) Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to the offence under subsection (5).
- (7) An inspector is a person appointed under section 431, 432 or 442.
- (8) An investigator is a person authorised for the purposes of section 447.]

#### Textual Amendments

**F83** Ss. 453A, 453B inserted (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), **ss. 23, 65**; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

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

**C42** S. 453A restricted (20.1.2007, 6.4.2007, 1.10.2007 for specified purposes) by [Companies Act 2006 \(c. 46\)](#), **ss. 1126, 1300** (with s. 1133); S.I. 2006/3428, **art. 3(2)(b)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5 (as amended by S.I. 2007/3495, art. 11, Sch. 5)); S.I. 2007/1093, **art. 2(2)(c)**; S.I. 2007/2194, **art. 2(1)(l)(3)(h)** (with art. 12); S.I. 2007/3495, **art. 3(1)(n)** (with arts. 7, 12)

VALID FROM 06/04/2005

#### <sup>F83</sup> **453B Power to enter and remain on premises: procedural**

- (1) This section applies for the purposes of section 453A.
- (2) The requirements of subsection (3) must be complied with at the time an inspector or investigator seeks to enter relevant premises under section 453A(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—

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- (a) the powers of the investigator or inspector (as the case may be) under section 453A;
  - (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 subsection (8), 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 subsection (4).
- (6) As soon as reasonably practicable after exercising his powers under section 453A(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 subsection (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) A statutory instrument containing regulations made under this section is subject to annulment in pursuance of a resolution of either House of Parliament.]

#### **Textual Amendments**

**F83** Ss. 453A, 453B inserted (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), **ss. 23, 65**; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

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VALID FROM 06/04/2005

### **[<sup>F84</sup>453C Failure to comply with certain requirements**

- (1) This section applies if a person fails to comply with a requirement imposed by an inspector, the Secretary of State or an investigator in pursuance of either of the following provisions—
  - (a) section 447;
  - (b) section 453A.
- (2) The inspector, Secretary of State 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.]

#### **Textual Amendments**

**F84** S. 453C inserted (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), **ss. 24, 65**; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

VALID FROM 06/04/2008

### **[<sup>F85</sup>453D Offences by bodies corporate**

Where an offence under any of sections 448, 449 to 451 and 453A is committed by a body corporate, every officer of the body who is in default also commits the offence. For this purpose—

- (a) any person who purports to act as director, manager or secretary of the body is treated as an officer of the body, and
- (b) if the body is a company, any shadow director is treated as an officer of the company.]

#### **Textual Amendments**

**F85** S. 453D inserted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 82** (with arts. 6, 11, 12)

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Companies Act 1985, Part XIV.