

2005 No. 684

COMPANIES

**The Companies Act 1985 (Power to Enter and Remain on
Premises: Procedural) Regulations 2005**

<i>Made</i> - - - -	<i>9th March 2005</i>
<i>Laid before Parliament</i>	<i>16th March 2005</i>
<i>Coming into force</i> - -	<i>6th April 2005</i>

The Secretary of State, in exercise of her powers under section 453B(4) and (7) of the Companies Act 1985(a), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Companies Act 1985 (Power to Enter and Remain on Premises: Procedural) Regulations 2005 and shall come into force on 6 April 2005.

(2) In these Regulations “the 1985 Act” means the Companies Act 1985.

(3) References in regulations 2 and 3 to sections are references to those sections of the 1985 Act.

Prescribed contents of the written statement given under section 453B(4) or sent under section 453B(5)

2. The written statement which section 453B(4) requires the inspector or investigator to give to an appropriate recipient (or which section 453B(5), where it applies, requires him to send to the company) must contain the following information—

- (a) a statement that the inspector or investigator has been appointed or (as the case may be) authorised by the Secretary of State to carry out an investigation and a reference to the enactment under which that appointment or authorisation was made;
- (b) a statement that the inspector or investigator has been authorised by the Secretary of State under section 453A(b) to exercise the powers in that section;
- (c) a description of the conditions which are required by section 453A(1) to be satisfied before an inspector or investigator can act under section 453A(2);
- (d) a description of the powers in sub-section 453A(2);
- (e) a statement that the inspector or investigator must, at the time he seeks to enter premises under section 453A, produce evidence of his identity and evidence of his appointment or authorisation (as the case may be);

(a) 1985 c.6; section 453B was inserted by section 23 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27). See section 744 of the Companies Act 1985 for the definition of “prescribed”.

(b) Section 453A was inserted by section 23 of the Companies (Audit, Investigations and Community Enterprise) Act 2004.

- (f) a statement that any person accompanying the inspector or investigator when the inspector or investigator seeks to enter the premises must, at that time, produce evidence of his identity;
- (g) a statement that entry to premises under section 453A may be refused to an inspector, investigator or other person who fails to produce the evidence referred to (in the case of an inspector or investigator) in paragraph (e) or (in the case of any other person) in paragraph (f);
- (h) a statement that the company, occupier and the persons present on the premises may be required by the inspector or investigator, while he is on the premises, to comply with any powers the inspector or investigator may have by virtue of his appointment or authorisation (as the case may be) to require documents or information;
- (i) a statement that the inspector or investigator is not permitted to use any force in exercising his powers under section 453A and is not permitted during the course of his visit to search the premises or to seize any document or other thing on the premises;
- (j) a description of the effect of section 453C(a) as it relates to a requirement imposed by an inspector or investigator under section 453A;
- (k) a statement that it is an offence under section 453A(5) intentionally to obstruct an inspector, investigator or other person lawfully acting under section 453A;
- (l) a description of the inspector's or investigator's obligations under section 453B(6) and (7) to prepare a written record of the visit and to give a copy of the record, when requested, to the company and any other occupier of the premises; and
- (m) information about how any person entitled under section 453B(6) to receive a copy of that record can request it.

Prescribed contents of the written record prepared under section 453B(6)

3. The written record which section 453B(6) requires an inspector or investigator to prepare must contain the following information—

- (a) the name by which the company in relation to which the powers under section 453A were exercised was registered at the time of the authorisation under section 453A(1)(a);
- (b) the company's registered number at that time;
- (c) the postal address of the premises visited;
- (d) the name of the inspector or investigator who visited the premises and the name of any person accompanying him;
- (e) the date and time when the inspector or investigator entered the premises and the duration of his visit;
- (f) the name (if known by the inspector or investigator) of the person to whom the inspector or investigator and any person accompanying him produced evidence of their identity under section 453B(3);
- (g) the name (if known by the inspector or investigator) of the person to whom the inspector or investigator produced evidence of his appointment or authorisation (as the case may be) as required by section 453B(3);
- (h) if the inspector or investigator does not know the name of the person to whom he produced evidence of his identity and appointment or authorisation as required by section 453B(3), an account of how he produced that evidence under that section;
- (i) if the inspector or investigator does not know the name of the person to whom any person accompanying the inspector or investigator produced evidence of his identity under section 453B(3), an account of how that evidence was produced under that section;

(a) Section 453C was inserted by section 24 of the Companies (Audit, Investigations and Community Enterprise) Act 2004.

- (j) the name (if known by the inspector or investigator) of the person who admitted the inspector or investigator to the premises or, if the inspector or investigator does not know that person's name, an account of how he was admitted to the premises;
- (k) the name (if known by the inspector or investigator) of every appropriate recipient to whom the inspector or investigator, while on the premises, gave a written statement of powers, rights and obligations as required by section 453B(4);
- (l) if the inspector or investigator does not know the name of a person referred to in paragraph (k), an account of how the written statement was given to that person;
- (m) the name (if known by the inspector or investigator) of any person physically present on the premises (to the inspector's or investigator's knowledge) at any time during the inspector's or investigator's visit (other than another inspector or investigator, a person accompanying the inspector or investigator or a person referred to in paragraph (k)) and with whom the inspector or investigator communicated in relation to the inspector's or investigator's presence on the premises;
- (n) a record of any apparent failure by any person during the course of the inspector's or investigator's visit to the premises to comply with any requirement imposed by the inspector or investigator under Part 14 of the 1985 Act; and
- (o) a record of any conduct by any person during the course of the inspector's or investigator's visit to the premises which the inspector or investigator believes amounted to the intentional obstruction of him, or anyone accompanying him, in the lawful exercise of the power to enter and remain on the premises under section 453A.

9th March 2005

Jacqui Smith
Minister of State for Industry and the Regions
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 453A of the Companies Act 1985 confers on inspectors appointed under section 431, 432 or 442 and investigators authorised under section 447 powers to enter and remain on premises which they believe are used for the purposes of the business of the company they are investigating. Section 453B imposes procedural requirements in connection with the exercise of these powers. Among these procedural requirements are—

- (a) a requirement for an inspector or investigator, as soon as practicable after obtaining entry to premises, to give to an “appropriate recipient” a written statement containing information about the powers in section 453A and the rights and obligations of the company, the occupier and the persons present on the premises; and
- (b) a requirement for the inspector or investigator to prepare, as soon as reasonably practicable after his visit to the premises, a written record of that visit.

“Appropriate recipient” is defined in section 453B(8) and (9). Where there is no appropriate recipient present, the written statement of rights and obligations must be sent to the company under investigation, together with a notice of the fact and time that the visit to the premises took place.

Section 453B provides for Regulations to prescribe the information which the written statement of rights and obligations and the written record of the visit must contain. Regulation 2 of these Regulations prescribes the contents of the written statement and Regulation 3 prescribes the contents of the written record.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from the DTI, Companies Investigation Branch, PO Box 447, London SW1H 0WU, and is also available electronically at <http://www.dti.gov.uk/companiesbill/index.htm>. A copy of the regulatory impact assessment has been placed in the libraries of both Houses of Parliament.

£3.00

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under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0554 3/2005 150554T 19585

ISBN 0-11-072588-3



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