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## STATUTORY INSTRUMENTS

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# 2010 No. 906

## The Credit Rating Agencies Regulations 2010

### PART 4

#### Investigatory Powers

##### Application of this Part

- 11.** The powers conferred on the Authority by this Part—
- (a) may only be used to obtain information, documents or a report which is necessary for the exercise of the Authority's functions under the EC Regulation; and
  - (b) may not be used to require the production, disclosure or inspection of a protected item.

##### Interpretation of this Part

- 12.** In this Part—
- “document” includes information recorded in any form;
  - “information requirement” means a requirement imposed by the Authority under regulation 13(1), or by an investigator under sub-paragraph (a) or (b) of regulation 16(1);
  - “investigator” means a person appointed to conduct an investigation under regulation 15(1);
  - “person under investigation” means a person who is the subject of an investigation under regulation 15(1);
  - “premises” includes a vehicle;
  - “relevant person” means any of the persons referred to in the last sub-paragraph of Article 23(3) of the EC Regulation.

##### Information and documents

- 13.—**(1) A relevant person must give the Authority such information or documents as the Authority may direct.
- (2) Information or documents required under this regulation must be given at such times, in such form and at such place, and verified in such manner, as the Authority may reasonably direct.

##### Reports by skilled persons

- 14.—**(1) The Authority may, by written notice, require a credit rating agency which is registered in accordance with the EC Regulation to provide the Authority with a report on any relevant matter.
- (2) The Authority may require the report to be in such form, and to be provided by such date, as may be specified in the notice.
- (3) The person appointed to make a report required under paragraph (1) (the “skilled person”) must be a person—

**Status:** Point in time view as at 07/06/2010.

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- (a) nominated or approved by the Authority; and
  - (b) appearing to the Authority to have the skills necessary to make a report on the matter concerned.
- (4) The agency must—
- (a) require the skilled person to prepare a report in accordance with the notice;
  - (b) permit the skilled person to disclose information to the Authority in accordance with paragraph (5)(b); and
  - (c) give the skilled person such assistance as the skilled person may reasonably require.
- (5) The skilled person must—
- (a) give the Authority such assistance in connection with the report as the Authority may reasonably require; and
  - (b) disclose to the Authority any information which—
    - (i) the skilled person receives in their capacity as a skilled person; and
    - (ii) might reasonably suggest that the agency has not complied with a requirement imposed on the agency by the EC Regulation.
- (6) A relevant person who is providing, or who has provided, services to the reporting agency in relation to a matter on which a report is required under paragraph (1) must give the skilled person such assistance as the skilled person may reasonably require.
- (7) The obligations imposed by paragraphs (4) to (6) are enforceable, on the application of the Authority, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988 <sup>M1</sup>.

#### Marginal Citations

M1 1988 c. 36.

### Investigations

**15.—**(1) If it appears to the Authority that there is good reason for doing so, the Authority may appoint a competent person to conduct an investigation on its behalf.

(2) Only a relevant person who is, or has been, a credit rating agency or a member of the senior management of such an agency may be the subject of an investigation under paragraph (1).

(3) The Authority must give written notice of the appointment of an investigator to the person under investigation.

(4) The notice under paragraph (3) must state the reason for the investigator's appointment.

(5) Nothing prevents the Authority from appointing a person who is a member of its staff as an investigator.

(6) An investigator must make a report of the investigation to the Authority.

(7) The Authority may, by a direction to an investigator, control—

- (a) the scope of the investigation;
- (b) the period during which the investigation is to be conducted;
- (c) the conduct of the investigation; and
- (d) the reporting of the investigation.

(8) A direction may, in particular—

- (a) confine the investigation to particular matters;
- (b) extend the investigation to additional matters;
- (c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction;
- (d) require the investigator to make such interim reports as are so specified.

(9) If there is a change in the scope or conduct of the investigation and, in the opinion of the Authority, the person under investigation is likely to be significantly prejudiced by not being made aware of it, that person must be given written notice of the change.

(10) Paragraphs (3) and (9) do not apply if the notice required by paragraph (3) or (9) would be likely to result in the investigation being frustrated.

### **Investigators: powers and evidence**

**16.—**(1) An investigator may require a relevant person to—

- (a) attend before the investigator at a specified time and place and answer questions;
- (b) give the investigator such information or documents as the investigator may require; or
- (c) give the investigator all assistance in connection with the investigation as the person is reasonably able to give.

(2) A requirement under paragraph (1)—

- (a) may be imposed only so far as the investigator reasonably considers the question, the provision of the information or production of the document, or the assistance to be relevant to the purposes of the investigation; and
- (b) may not be imposed so as to require the production, disclosure or inspection of a protected item.

(3) Information or documents required under paragraph (1)(b) must be given at such times, in such form and at such place, and verified in such manner, as the investigator may reasonably direct.

(4) Section 174 of the Act (admissibility of statements made to investigators) applies for the purposes of these Regulations as it applies for the purposes of the Act with the following modifications—

- (a) in subsection (2), omit “or in proceedings in relation to action to be taken against that person under section 123”;
- (b) at the end of subsection (3)(a) insert “ as applied by regulations 24 and 25 respectively of the Credit Rating Agencies Regulations 2010 ”; and
- (c) for subsections (4) and (5), substitute—

“(4) “Investigator” and “information requirement” have the meaning given in regulation 12 of the Credit Rating Agencies Regulations 2010.”.

### **Information and documents: supplemental provisions**

**17.** Section 175 of the Act (information and documents: supplemental provisions) applies for the purposes of these Regulations as it applies for the purposes of Part 11 of the Act (information gathering and investigations) with the following modifications—

- (a) omit subsection (1);
- (b) in subsection (2)(b), omit “, or any relevant person,”;
- (c) omit subsection (7); and
- (d) for subsection (8) substitute—

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“(8) “Investigator” means a person appointed to conduct an investigation under regulation 15(1) of the Credit Rating Agencies Regulations 2010.”.

### **Entry of premises under warrant**

**18.**—(1) A justice of the peace may, on an application by the Authority, issue a warrant under this regulation if satisfied on information on oath given on behalf of the Authority, an overseas competent authority or an investigator that there are reasonable grounds for believing that the first or second set of conditions is satisfied.

- (2) The first set of conditions is—
  - (a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it; and
  - (b) that on the premises specified in the warrant—
    - (i) there are documents which have been required; or
    - (ii) there is information which has been required.
- (3) The second set of conditions is—
  - (a) that the premises specified in the warrant are premises used by a relevant person;
  - (b) that there are on the premises documents or information in relation to which an information requirement could be imposed; and
  - (c) that if such a requirement were imposed—
    - (i) it would not be complied with; or
    - (ii) the documents or information to which it related would be removed, tampered with or destroyed.
- (4) A warrant under this regulation shall authorise a constable—
  - (a) to enter the premises specified in the warrant;
  - (b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this regulation was issued (“the relevant kind”) or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them;
  - (c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;
  - (d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and
  - (e) to use such force as may be reasonably necessary.
- (5) In England and Wales, sections 15(5) to (8) and 16 of the Police and Criminal Evidence Act 1984 <sup>M2</sup> (execution of search warrants and safeguards) apply to warrants issued under this regulation.
- (6) In Northern Ireland, Articles 17(5) to (8) and 18 of the Police and Criminal Evidence (Northern Ireland) Order 1989 <sup>M3</sup> apply to warrants issued under this regulation.
- (7) Any document of which possession is taken under this regulation may be retained—
  - (a) for a period of three months; or
  - (b) if within that period proceedings to which the document is relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.
- (8) In the application of this regulation to Scotland—

- (a) for the reference in paragraph (1) to a justice of the peace substitute a reference to a justice of the peace or a sheriff; and
- (b) for the reference in paragraph (1) to information on oath substitute a reference to evidence on oath.

(9) In the application of this regulation to Northern Ireland, for the reference in paragraph (1) to a justice of the peace substitute a reference to a lay magistrate appointed under section 9(1) of the Justice (Northern Ireland) Act 2002 <sup>M4</sup>.

#### Marginal Citations

- M2** 1984 c. 60; subsections (5) to (8) of section 15 were amended by sections 113 and 114 of the [Serious Organised Crime and Police Act 2005 \(c. 15\)](#) and article 7 of the [Serious Organised Crime and Police Act 2005 \(Amendment\) Order 2005 \(S.I. 2005/3496\)](#); [section 16](#) was amended by section 109(1) of, and paragraph 281 of Schedule 8 to, the [Courts Act 2003 \(c. 39\)](#), [section 2](#) of the [Criminal Justice Act 2003 \(c. 44\)](#), [sections 113](#) and 114 of the [Serious Organised Crime and Police Act 2005](#) and article 8 of the [Serious Organised Crime and Police Act 2005 \(Amendment\) Order 2005](#).
- M3** [S.I. 1989 No. 1341 \(N.I. 12\)](#); [article 17](#) was amended by article 9 of the [Police and Criminal Evidence \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007 No. 288 \(N.I. 2\)\)](#).
- M4** 2002 c. 26.

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