

SCHEDULE 2

Regulation 10

Investigation Powers

1.—(1) The competent authority may for any purpose related to inspecting or investigating statutory audit work give notice to any statutory auditor (“A”) requiring A to provide information specified in the notice.

(2) Information may be specified in a notice under sub-paragraph (1) only if it is information relating to the statutory audit of the annual accounts or the consolidated accounts of any audited person.

(3) The competent authority may give notice to any person mentioned in sub-paragraph (4) requiring that person to provide information relating to the statutory audit of the annual accounts or the consolidated accounts of any public interest entity.

(4) The persons to whom notice may be given under sub-paragraph (3) are—

- (a) any person involved in the activities of a statutory auditor (including any person to whom a statutory auditor has outsourced such activities),
- (b) any public interest entity,
- (c) any subsidiary or parent of a public interest entity or any other subsidiary of a company of which a public interest entity is a subsidiary,
- (d) any person otherwise having a connection to a statutory auditor carrying out the statutory audit of the annual accounts or consolidated accounts of a public interest entity.

(5) A notice under sub-paragraph (1) or (3) must be in writing and specify the purposes for which the information is required.

(6) A notice under sub-paragraph (1) or (3) may—

- (a) specify the time within which and the manner in which the person to whom it is given must comply with it,
- (b) require the creation of documents, or documents of a description, specified in the notice, and
- (c) require the provision of those documents to the competent authority.

(7) A requirement to provide information or create a document is a requirement to do so in a legible form.

(8) A notice under sub-paragraph (1) or (3) does not require a person to provide any information or create any documents which the person would be entitled to refuse to provide or produce—

- (a) in proceedings in the High Court on the grounds of legal professional privilege, or
- (b) in proceedings in the Court of Session on the grounds of confidentiality of communications.

(9) In sub-paragraph (8) “communications” means—

- (a) communications between a professional legal adviser and his client, or
- (b) communications made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.

2.—(1) If a person fails to comply with a notice under paragraph 1, the competent authority may make an application to the court.

(2) If it appears to the court that the person has failed to comply with the notice, it may make an order requiring the person to do anything that the court thinks it is reasonable for the person to do, for any of the purposes for which the notice was given, to ensure that the notice is complied with.

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- (3) Where the court makes an order under sub-paragraph (2)—
- (a) it may require the person to meet the costs or expenses of the competent authority’s application, or
 - (b) if the person is a company, partnership or unincorporated association, the court may require an officer who is responsible for the failure to meet those costs or expenses.
- (4) In this paragraph—
- “the court” means—
- (a) the High Court,
 - (b) in relation to England and Wales, the county court,
 - (c) in relation to Northern Ireland, a county court,
 - (d) the Court of Session, or
 - (e) the sheriff;
- “officer” means—
- (a) in the case of a company, a director, manager, secretary or other similar officer,
 - (b) in the case of a limited liability partnership, a member,
 - (c) in the case of a partnership other than a limited liability partnership, a partner, and
 - (d) in the case of an unincorporated association, a person who is concerned in the management or control of its affairs.

3.—(1) This paragraph applies if a person provides information (including information contained in a document created by the person) in response to a notice under paragraph 1.

- (2) In any criminal proceedings against the person—
- (a) no evidence relating to the information may be adduced by or on behalf of the prosecution, and
 - (b) no question relating to the information may be asked by or on behalf of the prosecution.
- (3) Sub-paragraph (2) does not apply if, in the proceedings—
- (a) evidence relating to the information is adduced by or on behalf of the person providing it, or
 - (b) a question relating to the information is asked by or on behalf of that person.
- (4) Sub-paragraph (2) does not apply if the proceedings are for—
- (a) an offence under paragraph 5 (obstruction),
 - (b) an offence under section 5 of the Perjury Act 1911⁽¹⁾ (false statutory declarations and other false statements without oath),
 - (c) an offence under section 44(2) of the Criminal Law (Consolidation)(Scotland) Act 1995⁽²⁾ (false statements or declarations),
 - (d) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979⁽³⁾ (false statutory declarations and other false unsworn statements).

4.—(1) An officer of the competent authority may, for the purposes of inspecting or investigating the statutory audit of a public interest entity, enter relevant premises at any reasonable time if—

- (a) the requirements of sub-paragraph (3) are satisfied, or

(1) 1911 c. 6.
(2) 1995 c. 39.
(3) S.I. 1979/1714 (N.I. 19).

- (b) the occupier of the premises has waived those requirements.
- (2) In this paragraph “relevant premises” means premises—
 - (a) in which a statutory auditor is carrying out a statutory audit, or
 - (b) where documents related to a statutory audit are kept,and does not include premises used wholly or mainly as a dwelling.
- (3) The requirements of this sub-paragraph are that—
 - (a) a notice in writing is given to the occupier of the premises by an officer of the competent authority,
 - (b) the notice sets out why entry is necessary and gives details of the statutory audit work subject to inspection (including the name of the audited person and the accounting years in question) and indicates the nature of the offence under paragraph 5, and
 - (c) there are at least two working days between the date the occupier of the premises receives the notice and the date of entry.
- (4) An officer of the competent authority who enters premises under this paragraph must produce evidence of the officer’s identity and authority to the occupier of the premises.
- (5) An officer of the competent authority entering premises under this paragraph may—
 - (a) be accompanied by such persons and may take onto the premises such equipment as the officer thinks necessary,
 - (b) require a statutory auditor or any person acting on behalf of a statutory auditor to produce any documents relating to the statutory audit of the annual or consolidated accounts of a public interest entity to which the statutory auditor has access,
 - (c) require a statutory auditor or any person acting on behalf of a statutory auditor to give an explanation of any document produced under paragraph (b).
- (6) Where a document required to be produced under sub-paragraph (5)(b) contains information recorded electronically, the power in that sub-paragraph includes power to require the production of a copy of the document in a form in which it can easily be taken away and in which it is visible and legible.
- (7) This paragraph does not permit an officer of the competent authority to require a person to produce any document which the person would be entitled to refuse to produce—
 - (a) in proceedings in the High Court on the grounds of legal professional privilege, or
 - (b) in proceedings in the Court of Session on grounds of confidentiality of communications.
- (8) In this paragraph—
 - “communications” means—
 - (a) communications between a professional legal adviser and the adviser’s client, or
 - (b) communications made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.
 - “give”, in relation to the giving of a notice to the occupier of premises, includes delivering it or leaving it at the premises or sending it there by post;
 - “working day” means a day other than—
 - (a) Saturday or Sunday,
 - (b) Christmas Day or Good Friday, or

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- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971⁽⁴⁾ in that part of the United Kingdom in which the premises are situated.

5.—(1) A person commits an offence if the person—

- (a) intentionally obstructs the competent authority or an officer of the competent authority in exercising or seeking to exercise a power under and in accordance with this Schedule,
- (b) intentionally fails to comply with a requirement properly imposed by the competent authority or an officer of the competent authority under this Schedule,
- (c) without reasonable excuse fails to give the competent authority or an officer of the competent authority any other assistance or information which the competent authority or officer may reasonably require for a purpose for which the competent authority or officer may exercise a power under this Schedule.

(2) A person commits an offence if, in giving information of a kind mentioned in sub-paragraph (1)(c), the person—

- (a) makes a statement which the person knows is false or misleading in a material respect, or
- (b) recklessly makes a statement which is false or misleading in a material respect.

(3) A person who is guilty of an offence under sub-paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Nothing in this paragraph requires a person to answer any question or give any information if to do so might incriminate that person.

⁽⁴⁾ 1971 c. 80.