

**EXPLANATORY MEMORANDUM TO**  
**THE COMPANIES (DISCLOSURE OF INFORMATION) (SPECIFIED PERSONS)**  
**ORDER 2016**

**2016 No. 741**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by Department of Business Innovation and Skills and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 The Insolvency Service conducts investigations into live companies under section 447 of the Companies Act 1985 (as amended) (“CA85”). Disclosure of information in connection with these enquiries is only permitted through the statutory gateways under Schedules 15C and 15D to CA85. The Companies (Disclosure of Information) (Specified Persons) Order 2016 amends Schedule 15C to CA85 by adding four additional regulatory and enforcement bodies to the list of “specified persons” to whom disclosure of information obtained using CA85 investigation powers under section 447 CA85 and section 453A CA85 can be made (those bodies are: HMRC; the Serious Fraud Office; the registrar of companies; and the Gangmasters and Labour Abuse Authority).

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to Parliament*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The powers under section 447 CA85 are civil, fact finding powers used by the Insolvency Service to investigate registered companies and limited liability partnerships that have a business address in England, Wales, Scotland or Northern Ireland. Section 447 CA85 investigations are confidential enquiries carried out usually into companies that are actively trading (“live”) or which have ceased trading without going into any formal insolvency proceedings.
- 4.2 Section 449 CA85 provides strict controls with regard to disclosure of information obtained using CA85 powers, to ensure that disclosure is only made in appropriate circumstances. Section 449(2) CA85 states that information must not be disclosed unless the disclosure is either made to a person specified in Schedule 15C or is of a description specified in Schedule 15D. Section 449(6) CA85 confirms that a breach of section 449 CA85 is a criminal offence.

- 4.3 Section 449 CA85 applies to information that is obtained using section 447 CA85 powers, section 453A CA85 powers and also to information received as a “relevant disclosure” within the meaning of section 448A(2) CA85.
- 4.4 The net effect is that any complaint or information received by the Secretary of State prior to commencement of a section 447 investigation (including even where no formal section 447 investigation is ever instigated), should only be disclosed where there is a suitable gateway under either Schedule 15C or 15D.
- 4.5 Under section 449(3) CA85, the Secretary of State has the power to amend Schedule 15C where the purpose for which the disclosure is to be permitted is likely to facilitate the exercise of a function of a public nature. Under section 449(4) CA85 any person(s) that the Secretary of State wishes to add to 15C must exercise functions of a public nature. The bodies to be added to Schedule 15C primarily perform functions of a public nature.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.
- 5.3 The UK Government is responsible for company law in England and Wales, and in Scotland. The Northern Ireland administration has agreed that, while company law remains a transferred matter within the legislative competence of the Northern Ireland Assembly, the CA85 should apply to the whole of the United Kingdom.

## **6. European Convention on Human Rights**

- 6.1 The Minister for Small Business, Anna Soubry, has made the following statement regarding Human Rights:  
  
“In my view the provisions of the Companies (Disclosure of Information) (Specified Persons) Order 2016 are compatible with the Convention rights.”

## **7. Policy background**

- 7.1 The government is committed to improving the levels of data sharing between public bodies. The aim of the amendments to Schedule 15C CA85 is to enhance the ability to disclose information in connection with investigations conducted by the Insolvency Service under section 447 CA85.
- 7.2 Whilst many regulatory bodies are already covered by Schedule 15C, where no statutory gateway exists the Insolvency Service is unable to make disclosure. There is a criminal sanction for disclosure outside the gateways. The currently available gateways are inadequate for many scenarios that occur during the course of the Insolvency Service’s investigations, for instance cases where we have become aware of corporate tax avoidance or companies set up with criminal intent. The inability to share this information carries reputational risks were it to become known that the Insolvency Service was not able to share information with the appropriate bodies, as well as a risk that potential harm might go unaddressed.
- 7.3 The enhancement of the statutory gateways will address as far as is practicable the most significant gaps in the Insolvency Service’s inability to disclose information to other regulators. This will permit the disclosure of information obtained that relates to behaviour that cannot be addressed using the Insolvency Service’s powers under

CA85. The additional bodies can consider use of their powers to address potential harm and thereby maximise the value of the information obtained by the Insolvency Service during the course of its work.

- 7.4 Reform of public bodies across government has already led to previous amendments of Schedules 15C and D. These amendments will ensure that Schedule 15C is fit for purpose and enable the Insolvency Service to maximise the benefit to the wider regulatory regime of the information it obtains through its investigation and enforcement activities; and of the intelligence received from third party complainants in cases where another public body might be better placed to act.

## **8. Consultation outcome**

- 8.1 There is no statutory requirement to consult concerning the proposed amendments. There is no change in policy regarding disclosure of material using CA85 powers and engagement with interested parties including but not restricted to the bodies to be added to the gateway, has shown strong support for the proposed amendments. Cabinet Office Consultation Principles Guidance states, a consultation should not be undertaken for the sake of it. A consultation has not therefore been undertaken.

## **9. Guidance**

- 9.1 The expansion of gateways is likely to be of interest within the regulatory and enforcement sector and may attract specialist media interest. A media strategy to address this has been devised.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is minimal impact on the public sector. Enhancing the gateways will allow the Insolvency Service to share information that relates to behaviour that cannot be addressed using powers available under CA85.
- 10.3 An Impact Assessment has not been prepared for this instrument because no impact on business is foreseen.

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring and review**

- 12.1 There are no plans for monitor or review of the SI, which will address current operational gaps in disclosure under Section 449 CA85. There is no impact on business and we are not aware of any likely objections to the addition of the four bodies to Schedule 15C CA85.

## **13. Contact**

- 13.1 Helen Jeffery at the Insolvency Service - Telephone: 020 7291 6783 or email: [helen.jeffery@insolvency.gsi.gov.uk](mailto:helen.jeffery@insolvency.gsi.gov.uk) can answer any queries regarding the instrument.