

Enforcement Strategy Policy Document for publication on Companies House Website

Introduction

Companies House¹ aims to develop an efficient and effective corporate registry within a regulatory framework, which promotes fairness and sustainability. The principal aim of Companies House is to ensure compliance with the regulatory requirements. When necessary there will be enforcement of regulations and prosecution of criminal activity to nurture confidence in the effectiveness of the corporate registry and provide stability for business and enterprise.

Compliance and Prosecution

Where Companies House has a responsibility as agreed with the Department of Trade and Industry ("the DTI") it will try to ensure that corporates comply with their obligations under the Companies Act 1985 and related legislation. Companies House compliance action will involve contacting the corporates in writing to determine the circumstances of failing to meet their statutory obligations and try to ensure that they are met. If compliance is not forthcoming, Companies House will consider enforcement action. Companies House uses a number of enforcement tools, which range from follow up telephone calls and issuing warning letters to the prosecution of corporate officers.

Companies House has responsibility for prosecuting the offences of failing to file annual accounts and annual returns. When annual accounts and annual returns for each period are not filed by the due date letters warning of the consequences of non-compliance are written to the corporates. Efforts are made to determine the factual circumstances on a case by case basis, and this may involve telephone contact. There may be cases such as corporates with a history of persistent late filing, when prosecution action is taken earlier. Prosecutions are instituted if Companies House's effort to obtain compliance is not successful and the matter fulfils the criteria set out in the Code for Crown Prosecutors.

It is agreed between the DTI and Companies House that the latter sifts all its other regulatory offences to DTI prosecutors. These offences include the failure to notify interested parties of an application to dissolve a private company, and a failure to comply with a direction to change a company name. The DTI is responsible for deciding whether the allegations of criminal conduct referred to it should be investigated and prosecuted. In making the referrals, Companies House will determine from the information available to it whether the essential elements of the offence can be made out. If a case is referred to the DTI, its prosecutors will decide whether to instigate a criminal investigation or to bring prosecution proceedings.

Once a case has been sent to the DTI for consideration of criminal investigation and prosecution proceedings, all further action is at the discretion of the DTI prosecutor who will consider the case in accordance with the Code for Crown Prosecutors.

¹ Companies House is an executive agency of the Department of Trade and Industry incorporating the office of the registrar of companies and certain functions of the Secretary of State.

Prosecution Policy

All allegations of criminal conduct dealt with by Companies House are considered in accordance with the Code for Crown Prosecutors (available from the CPS website- www.cps.gov.uk).

The Code for Crown Prosecutors comprises a two stage test:

- First, the prosecutor must be satisfied that there is enough evidence to provide a realistic prospect of conviction.
- Secondly, they must be satisfied that it is in the public interest to bring a prosecution.

No prosecution may go ahead unless the prosecutor is satisfied that there is enough evidence to provide a realistic prospect of conviction. If there is, then the prosecutor must decide whether a prosecution is needed in the public interest. Each case is considered on its own merits and individual facts in accordance with the Code for Crown Prosecutors.

Prosecution policy for Scottish Corporates

Companies House refers all offences concerning corporates that are registered in Scotland to the Procurator Fiscal. Companies House will determine from the information available to it whether the essential elements of an offence can be made out. Once a case has been sent to the Procurator Fiscal for consideration of criminal investigation and prosecution proceedings, all further action is at Procurator Fiscal's discretion who will consider the case in accordance with their Prosecution Code.