

2012 No. 1741

COMPANIES

AUDITORS

**The Statutory Auditors (Amendment of Companies Act 2006
and Delegation of Functions etc) Order 2012**

Made - - - - *2nd July 2012*

Coming into force - - *2nd July 2012*

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The Secretary of State makes this Order in exercise of the powers conferred by section 2(2)(a) and (b) of the European Communities Act 1972(a) (“the 1972 Act”) and by sections 464(1) and (3), 504(1)(b)(ii), 525(1)(a)(ii), 1228(1), (2) and (6), 1231(4), 1239, 1252(1), (2)(b), (4)(a), (5), (6), (7) and (8), 1253(4) and 1292(1)(b) and (c) and (2) of, and paragraphs 7(3) and 11(2) and (3)(a) of Schedule 13 to, the Companies Act 2006(b) (“the 2006 Act”).

The Secretary of State is a Minister designated(c) for the purposes of section 2(2) of the 1972 Act in relation to auditors and the audit of accounts.

It appears to the Secretary of State that it is no longer in the public interest that the Statutory Auditors (Delegation of Functions etc) Order 2008(d) should remain in force.

It appears to the Secretary of State that the Financial Reporting Council Limited(e) is able and willing to exercise the functions transferred by Part 3 of this Order and to discharge the function (supervision of Auditors General) mentioned in section 1229(1) of the 2006 Act.

It appears to the Secretary of State that that body has arrangements in place relating to the exercise of the functions transferred by Part 3 of this Order, and to the discharge of the function mentioned in section 1229(1) of the 2006 Act, which are such as to be likely to ensure that those functions will be exercised effectively and in accordance with the relevant requirements and provisions specified in this Order.

(a) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).

(b) 2006. c.46.

(c) S.I. 2007/1679.

(d) S.I. 2008/496.

(e) A company registered in England and Wales with number 02486368.

In accordance with paragraph 2(2) of Schedule 2 to the 1972 Act and with sections 1252(11), 1290 and 1292(3) and (4) of the 2006 Act, a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation and coming into force

1.—(1) This Order may be cited as the Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc) Order 2012.

(2) This Order comes into force on 2nd July 2012.

Interpretation

2. In this Order—

“the 2008 Regulations” means the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008(a);

“the Act” means the Companies Act 2006;

“coming into force” means the coming into force of this Order;

“the designated body” means the Financial Reporting Council Limited; and

“LLPs” means limited liability partnerships.

Schedule

3. The Schedule (which makes minor and consequential amendments) has effect.

PART 2

Amendment of the Act

Substitution for section 1225

4. For section 1225 of the Act (compliance orders), substitute—

“1225 Enforcement: general

(1) This section applies if at any time it appears to the Secretary of State—

(a) in the case of a recognised supervisory body, that any requirement of Part 2(b) or 3(c) of Schedule 10 is not satisfied,

(b) in the case of a recognised professional qualification offered by a recognised qualifying body, that any requirement of Part 2(d) of Schedule 11 is not satisfied,
or

(a) S.I. 2008/1911, amended by S.I. 2009/1804; there are other amending instruments but none is relevant.

(b) Part 2 of Schedule 10 was amended by regulations 17, 18, 19, 20, 21, 22, 23, 24 and 25 of S.I. 2007/3494; by regulation 5 of S.I. 2010/2537; and by regulation 5(2) and (3) of S.I. 2011/1856.

(c) Part 3 of Schedule 10 was amended by regulations 26, 27 and 28 of S.I. 2007/3494; and by regulation 5(4), (5), (6), (7) and (8) of S.I. 2011/1856.

(d) Part 2 of Schedule 11 was amended by regulation 44 of S.I. 2007/3494.

- (c) that a recognised supervisory body or a recognised qualifying body has not complied with an obligation imposed on it by or by virtue of this Part (other than an obligation to pay a financial penalty under section 1225D).
- (2) The Secretary of State may do any one or more of the following—
- (a) give a direction to the body under section 1225A;
 - (b) make an application to the court in respect of the body under section 1225C;
 - (c) impose a financial penalty on the body under section 1225D.
- (3) Subsection (2) is without prejudice to the powers of the Secretary of State under paragraph 3 of Schedule 10 and paragraph 3 of Schedule 11 (revocation of recognition orders).

1225A Directions: general

- (1) A direction under this section is one directing a body to take such steps as the Secretary of State considers will—
- (a) secure that the requirement in question is satisfied or the obligation in question is complied with, or
 - (b) mitigate the effect, or prevent the recurrence, of the failure to satisfy the requirement or comply with the obligation.
- (2) A direction under this section—
- (a) may only require a body to take steps which it has power to take;
 - (b) may require a body to refrain from taking a particular course of action.
- (3) The power to give a direction under this section is subject to any provision made by or under any other enactment.
- (4) The Secretary of State may take such steps as the Secretary of State considers appropriate to monitor the extent to which a direction under this section is being, or has been, complied with.

1225B Directions: supplementary

- (1) Before giving a direction to a body under section 1225A, the Secretary of State must give the body a notice (a “notice of proposed direction”) accompanied by a copy of the proposed direction.
- (2) A notice of proposed direction must—
- (a) state that the Secretary of State proposes to give the body a direction in the form of the accompanying draft,
 - (b) identify the requirement or obligation in question and state why it appears to the Secretary of State that the requirement is not satisfied or the obligation has not been complied with,
 - (c) specify a period within which the body may make written representations with respect to the proposal.
- (3) The period specified under subsection (2)(c)—
- (a) must begin with the date on which the notice of proposed direction is given to the body, and
 - (b) must not be less than 14 days.
- (4) Written representations made by the body within the period specified under subsection (2)(c) must be considered by the Secretary of State.
- (5) After considering any such representations or, in their absence, on the expiry of the period specified under subsection (2)(c), the Secretary of State must decide whether to give the body the proposed direction.

(6) The Secretary of State must give notice of the decision (a “direction decision notice”) to the body.

(7) Where the Secretary of State decides to give the proposed direction, the direction decision notice must—

- (a) contain the direction,
- (b) state the time at which the direction is to take effect, and
- (c) specify the Secretary of State’s reasons for the decision to give the direction.

(8) Where the Secretary of State decides to give the proposed direction, the Secretary of State must publish the direction decision notice in such manner as the Secretary of State considers appropriate for bringing the direction to the attention of persons likely to be affected.

(9) The Secretary of State may revoke a direction given to a body under section 1225A and, where doing so, must—

- (a) give the body notice of the revocation, and
- (b) publish the notice in the same manner as the direction decision notice was published.

1225C Compliance orders

(1) If on an application under this section in respect of a body, the court decides that a requirement is not satisfied or an obligation has not been complied with, the court may, subject to subsection (2), order the body to take such steps as it considers will secure that the requirement is satisfied or the obligation is complied with.

(2) Where the obligation is an obligation to comply with a direction under section 1225A, the court may not order compliance with the direction unless it also decides that—

- (a) the requirement in respect of which the direction was given is not satisfied, or
- (b) the obligation in respect of which the direction was given has not been complied with.

(3) In this section, “the court” means the High Court or, in Scotland, the Court of Session.

1225D Financial penalties: general

(1) A financial penalty imposed on a body under this section is a financial penalty of such amount as the Secretary of State considers appropriate, subject to subsection (2).

(2) In deciding what amount is appropriate the Secretary of State—

- (a) must have regard to the nature of the requirement which is not satisfied or the obligation which has not been complied with; and
- (b) must not take into account the Secretary of State’s costs in discharging functions under this Part.

(3) A financial penalty under this section is payable to the Secretary of State.

(4) In sections 1225E to 1225G, references to a penalty are to a financial penalty under this section.

1225E Financial penalties: supplementary

(1) Before imposing a penalty on a body, the Secretary of State must give the body a notice (a “notice of proposed penalty”)—

- (a) stating that the Secretary of State proposes to impose a penalty and the amount of the penalty proposed,
- (b) identifying the requirement or obligation in question and stating why it appears to the Secretary of State that the requirement is not satisfied or the obligation has not been complied with, and

- (c) specifying a period within which the body may make written representations with respect to the proposed penalty.
- (2) The period specified under subsection (1)(c)—
 - (a) must begin with the date on which the notice of proposed penalty is given to the body, and
 - (b) must not be less than 21 days.
- (3) Written representations made by the body before the end of the period specified under subsection (1)(c) must be considered by the Secretary of State.
- (4) After considering any such representations or, in their absence, on the expiry of the period specified under subsection (1)(c), the Secretary of State must decide—
 - (a) whether to impose a penalty, and
 - (b) where the Secretary of State decides to do so, whether to reduce the proposed amount of the penalty.
- (5) The Secretary of State must give notice of the decision (a “penalty decision notice”) to the body.
- (6) Where the Secretary of State decides to impose a penalty, the penalty decision notice must—
 - (a) state that the Secretary of State has imposed a penalty on the body and its amount,
 - (b) identify the requirement or obligation in question and state—
 - (i) why it appears to the Secretary of State that the requirement is not satisfied or the obligation has not been complied with, or
 - (ii) where, by that time, the requirement is satisfied or the obligation has been complied with, why it appeared to the Secretary of State when giving the notice of proposed penalty that the requirement was not satisfied or the obligation had not been complied with, and
 - (c) specify a time by which the penalty is required to be paid.
- (7) The time specified under subsection (6)(c) must be at least 3 months after the date on which the penalty decision notice is given to the body.
- (8) Where the Secretary of State decides to impose a penalty, the Secretary of State must publish the penalty decision notice and must do so in such manner as the Secretary of State considers appropriate for bringing the penalty to the attention of persons likely to be affected.
- (9) The Secretary of State may rescind a penalty imposed on a body under section 1225D and, where doing so, must—
 - (a) give the body notice of the rescission, and
 - (b) publish the notice in the same manner as the penalty decision notice was published.

1225F Appeals against financial penalties

- (1) A body on which a penalty is imposed may appeal to the court on one or more of the appeal grounds.
- (2) The appeal grounds are—
 - (a) that, before the giving of the notice under section 1225E(1), the requirement in respect of which the penalty was imposed was satisfied or the obligation in respect of which the penalty was imposed had been complied with;
 - (b) that, where the penalty was imposed in respect of a failure to comply with a direction under section 1225A, before the giving of the notice under section 1225B(6), the requirement in respect of which the direction was given was

satisfied or the obligation in respect of which the direction was given had been complied with;

- (c) that any of the requirements of section 1225E have not been complied with in relation to the imposition of the penalty and the interests of the body have been substantially prejudiced by the non-compliance;
- (d) that the amount of the penalty is unreasonable;
- (e) that it was unreasonable of the Secretary of State to require the penalty imposed to be paid by the time specified in the notice under section 1225E(5).

(3) An appeal under subsection (1) must be made within the period of 3 months beginning with the day on which the notice under section 1225E(5) is given to the body in respect of the penalty.

(4) On any such appeal, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the appeal grounds, the court may—

- (a) quash the penalty,
- (b) substitute a penalty of such lesser amount as the court considers appropriate, or
- (c) in the case of the appeal ground in subsection (2)(e), substitute a later time for the time specified in the notice under section 1225E(5).

(5) Where the court substitutes a penalty of a lesser amount, it may require the payment of interest on the substituted penalty, accruing from the time specified in the notice under section 1225E(5) or such later time as the court considers just and equitable.

(6) Where the court substitutes a later time for the time specified in the notice under section 1225E(5), it may require the payment of interest on the penalty, accruing from the substituted time or such later time as the court considers just and equitable.

(7) Where the court dismisses the appeal, it may require the payment of interest on the penalty, accruing from the time specified in the notice under section 1225E(5).

(8) Where the court requires the payment of interest under this section, the interest is payable at such rate as the court considers just and equitable.

(9) Except as provided by this section, the validity of a penalty is not to be questioned by any legal proceedings whatever.

(10) In this section “the court” means the High Court or, in Scotland, the Court of Session.

1225G Recovery of financial penalties

(1) If the whole or any part of a penalty is not paid by the time by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (c 110)(a) (unless a different rate is specified by the court under section 1225F(8)).

(2) If an appeal is made under section 1225F in relation to a penalty, the penalty is not required to be paid until the appeal has been determined or withdrawn.

(3) Subsection (2) does not prevent the court from specifying that interest is to accrue from an earlier date under section 1225F.

(4) Where a penalty, or any portion of it, has not been paid by the time when it is required to be paid and—

- (a) no appeal relating to the penalty has been made under section 1225F during the period within which such an appeal can be made, or
- (b) an appeal has been made under that section and has been determined or withdrawn,

(a) 1838 c.110; section 17 was amended by the Civil Procedure Acts Repeal Act 1879 (.59), Schedule, Part 1; article 2 of S.I. 1993/564; and article 3 of S.I. 1998/2940.

the Secretary of State may recover from the body, as a debt due to the Secretary of State, any of the penalty and any interest which has not been paid.”.

Amendments to Schedule 10

5.—(1) Schedule 10 (Recognised Supervisory Bodies) to the Act is amended as follows.

(2) In paragraph 3 (revocation of recognition), in sub-paragraph (1)(a), after “Part 2” insert “or 3”.

(3) In paragraph 13 (monitoring of audits), for sub-paragraph (1)(b) substitute—

“(b) in the case of members of the body who perform any statutory audit functions in respect of major audits—

(i) participate in arrangements within paragraph 23(1); and

(ii) have rules and practices designed to ensure that a sanction determined under paragraph 23(1)(b) is to be treated as if it were a sanction which the body had determined under arrangements for enforcement within paragraph 12(1A);”.

(4) In paragraph 23 (arrangements for independent monitoring of audits of listed companies and other major bodies), for sub-paragraph (1) substitute—

“(1) The arrangements referred to in paragraph 13(1)(b)(i) are appropriate arrangements—

(a) for enabling the performance by members of the supervisory body of statutory audit functions in respect of major audits to be monitored by means of inspections carried out under the arrangements;

(b) for enabling the body performing the inspections to determine sanctions (including those mentioned in paragraph 12(3)(a)) against members of the supervisory body where, pursuant to an inspection, it concludes that the members have not complied with the supervisory body’s rules in so far as they are relevant to the performance of statutory audit functions; and

(c) for ensuring that the carrying out of such inspections and the determination of such sanctions are done independently of the supervisory body.”.

(5) In paragraph 24 (arrangements for independent investigation for disciplinary purposes of public interest cases), for sub-paragraph (1) substitute—

“(1) The arrangements referred to in paragraph 16(1) are appropriate arrangements—

(a) for the carrying out of investigations into public interest cases arising in connection with the performance of statutory audit functions or third country audit functions by members of the body,

(b) where it appears to be desirable following the conclusion of such investigations—

(i) for the holding, subject to sub-paragraph (1A), of disciplinary hearings relating to members of the body,

(ii) unless the interests of justice otherwise require, for any such hearings to be held in public, and

(iii) for decisions to be made as to whether (and, if so, what) disciplinary action should be taken against the members of the body, and

(c) for ensuring that the carrying out of those investigations, the holding of those hearings and the making of those decisions are done independently of the body.

(1A) The arrangements may provide that decisions to take disciplinary action, and decisions as to what that action should be, may be made in respect of a member of the body without the holding of a disciplinary hearing relating to that member where the member agrees in writing that such a hearing need not be held.”.

(6) In paragraph 25 (supplementary: arrangements to operate independently of body)—

(a) for “paragraph 23(1)(b)” substitute “paragraph 23(1)(c)”, and

(b) for “paragraph 24(1)(e)” substitute “paragraph 24(1)(c)”.

PART 3

Transfer of Functions of the Secretary of State

The Statutory Auditors (Delegation of Functions etc) Order 2008

6. The Statutory Auditors (Delegation of Functions etc) Order 2008(a) is revoked.

Transfer of functions

7.—(1) The designated body is designated for the purpose of enabling it to exercise functions of the Secretary of State under Part 42 of the Act (statutory auditors).

(2) The functions of the Secretary of State under—

- (a) section 1210(1)(h) of the Act (meaning of “statutory auditor” etc),
- (b) section 1214(4) of the Act (power to specify connection between persons for purposes of independence requirement),
- (c) section 1231(2)(a) (receipt of report by independent supervisor of auditors general),
- (d) section 1231(3) of the Act (laying report by independent supervisor of auditors general before each House of Parliament),
- (e) section 1237(3) of the Act (provision for pending proceedings in order revoking appointment of independent supervisor),
- (f) section 1239(1)(b) of the Act (making regulations for register of third country auditors),
- (g) section 1246 of the Act (regulations conferring power to remove third country auditors from the register of auditors),
- (h) section 1261(3) of the Act (power to modify Part 42 of the Act (statutory auditors) for purposes of application to certain bodies), and
- (i) section 1263 of the Act (power to amend enactments in consequence of changes affecting accountancy bodies),

are not transferred by this Order.

(3) The transfer of the functions of the Secretary of State under—

- (a) section 1224 of the Act (power to call for information from recognised bodies etc),
- (b) section 1239(8) of the Act (obligations relating to register enforceable by injunction etc),
- (c) section 1244 of the Act (power to call for information from registered third country auditors),
- (d) section 1253A of the Act(b) (requests to foreign competent authorities), and
- (e) section 1254(c) of the Act (directions to comply with international obligations),

is subject to the reservation that these functions remain exercisable concurrently by the Secretary of State.

(4) The transfer of the functions of the Secretary of State of—

- (a) refusing to make a declaration under section 1221(1) of the Act(d) (approval of overseas qualification) on the grounds referred to in section 1221(4) (lack of comparable treatment),

(a) S.I. 2008/496, amended by S.I. 2010/2537.

(b) Section 1253A was inserted by regulation 14 of S.I. 2007/3494.

(c) Section 1254 was amended by regulation 16 of S.I. 2007/3494.

(d) Section 1221 was amended by regulation 6 of S.I. 2007/3494.

- (b) withdrawing such a declaration under section 1221(7) of the Act on those grounds,
- (c) refusing to comply with a request under section 1253B(1) of the Act^(a) (requests from EEA competent authorities) on the grounds referred to in section 1253B(3)(a) (prejudice to sovereignty, security or public order), and
- (d) refusing a request, or directing a statutory auditor to refuse a request, from a third country competent authority in a case referred to in section 1253E(7)(a) of the Act^(b) (prejudice to sovereignty, security or public order),

is subject to the reservation that these functions are exercisable only with the consent of the Secretary of State.

(5) The transfer of the function of the Secretary of State under section 1241(2)(c) of the Act^(c) (order to exclude bodies corporate from definition of “UK-traded non-EEA company”) is subject to the reservations that this function remains exercisable concurrently by the Secretary of State and is exercisable by the designated body only with the consent of the Secretary of State.

Appropriate audit authority

8. The functions of the designated body include the receipt of notices under sections 522 and 523 of the Act (notices of auditor ceasing to hold office) and, accordingly, the designated body is the appropriate audit authority under section 525(1)(a)(ii) of the Act.

Consultation requirement

9.—(1) Before the designated body makes any order or regulations in exercise of the functions transferred to it by this Order, it must, unless paragraph (2) applies—

- (a) publish the proposed order or regulations in such manner as appears to the body to be best calculated to bring the order or regulations to the attention of persons who may be affected by them;
- (b) publish at the same time a statement that representations in respect of the proposals may be made to the body within a specified period which must not be less than 12 weeks following the date of publication of the proposed order or regulations; and
- (c) have regard to any representations duly made in accordance with the statement before making the order or regulations.

(2) Paragraph (1) does not apply in any case in which the body considers that the delay involved in complying with that paragraph would be prejudicial to the public interest.

Annual work programme

10. The designated body must publish a work programme at least once in every calendar year.

Requirements for recording decisions

11. The designated body must have satisfactory arrangements for—

- (a) recording decisions made in the exercise of the functions transferred by this Order; and
- (b) the safekeeping of the records of those decisions.

Matters notified to the designated body

12.—(1) If under section 1223(1) or 1243(1) the designated body requires notification or the provision of information, it must notify the Secretary of State of the requirement without undue delay.

(a) Section 1253B was inserted by regulation 14 of S.I. 2007/3494.

(b) Section 1253E was inserted by regulation 15 of S.I. 2007/3494 and substituted by regulation 3 of S.I. 2010/2537.

(c) Section 1241(2) was amended by regulation 31 of S.I. 2007/3494.

(2) If the Secretary of State so requests, the designated body must send the Secretary of State a copy of any notification or information received pursuant to the requirement.

Payment of amounts of financial penalties (less costs) by designated body to Secretary of State

13.—(1) The designated body must, subject to subsection (2), pay the amount of a financial penalty under section 1225D(a) to the Secretary of State as soon as reasonably practicable after it is paid to the body.

(2) The designated body may deduct and retain from the amount of any financial penalty a sum in respect of its reasonable costs incurred in relation to the imposition of that penalty up to the time of the giving of the relevant notice under section 1225E(5).

(3) The costs of the designated body referred to in subsection (2) are—

- (a) its administrative costs (including any administrative costs incurred in determining that the requirement or obligation in respect of which the financial penalty was imposed had not been complied with);
- (b) its costs of obtaining legal advice (including any legal advice in connection with determining that the requirement or obligation in respect of which the financial penalty was imposed had not been complied with);
- (c) any other costs incurred in determining that the requirement or obligation in respect of which the financial penalty was imposed had not been complied with.

Time limits for prosecution of offences

14. Section 1256(1), (2), (4) and (6) of the Act (time limits for prosecution of offences) has effect as if the references to the Secretary of State were references to the Secretary of State or the designated body.

Appointment of body to issue guidance as to identifying senior statutory auditor

15. The designated body is appointed for the purposes of section 504(1)(b)(ii) of the Act (body to issue guidance on meaning of senior statutory auditor).

Transitional Provisions

16.—(1) Anything which—

- (a) relates to any function transferred by virtue of this Order; and
- (b) is in the process of being done by or in relation to the body known as the Professional Oversight Board immediately before coming into force,

may be continued by or in relation to the designated body.

(2) Guidance issued by the body known as the Auditing Practices Board for the purposes mentioned in article 15 and which is in effect immediately before coming into force shall be treated as if it were issued by the designated body.

(a) Section 1225D is inserted by article 3 of this Order.

PART 4

Appointment of the Independent Supervisor

The Independent Supervisor Appointment Order 2007

17. The Independent Supervisor Appointment Order 2007(a) is revoked.

Appointment of Independent Supervisor

18. The designated body is appointed to discharge the function mentioned in section 1229(1) of the Act (supervision of Auditors General).

Requirements and provisions concerning the exercise of the supervision function

19. The report which is required under section 1231 of the Act(b) (reports by the Independent Supervisor) must include—

- (a) an account of how the Independent Supervisor has discharged the supervision function, including why it considers that this function has been discharged effectively;
- (b) an account of the extent to which each Auditor General has complied with its duties under the Act;
- (c) an account of any matters notified to the Independent Supervisor under section 1232 of the Act (matters to be notified to the Independent Supervisor);
- (d) an account of the Independent Supervisor's enforcement activity, including the issue of any suspension notices and any applications for compliance orders; and
- (e) an account of the activities carried out by the Independent Supervisor as a consequence of its status as a public authority for the purpose of the Freedom of Information Act 2000.

20.—(1) Before amending, revoking, establishing or entering into a supervision arrangement for the purposes of section 1229 of the Act(c) (supervision of Auditors General by the Independent Supervisor), the Independent Supervisor must consult with the Auditors General and such other persons as seem to it to be appropriate.

(2) The Independent Supervisor must have satisfactory arrangements for—

- (a) recording decisions made in the exercise of the function mentioned in section 1229(1) of the Act; and
- (b) the safekeeping of all material records.

Transitional Provisions

21.—(1) Anything which—

- (a) has been done by or in relation to the body known as the Professional Oversight Board for the purposes of or in connection with the function referred to in article 18; and
- (b) is in effect immediately before coming into force,

is to be treated as if done by or in relation to the designated body.

(2) Anything which—

- (a) relates to the function referred to in article 18; and
- (b) is in the process of being done by or in relation to the body known as the Professional Oversight Board immediately before coming into force,

(a) S.I. 2007/3534.

(b) Section 1231 was amended by S.I. 2009/2958, articles 8 and 12.

(c) Section 1229 was amended by S.I. 2007/3494, regulation 9.

may be continued by or in relation to the designated body.

PART 5

Prescription of Body to issue Accounting Standards

The Accounting Standards (Prescribed Body) Regulations 2008

22. The Accounting Standards (Prescribed Body) Regulations 2008(a) are revoked.

Prescribed body

23. The designated body is prescribed for the purposes of section 464 of the Act.

Transitional Provisions

24.—(1) Unless withdrawn, statements of standard accounting practice issued before coming into force for the purposes of section 464 of the Act are to be treated after coming into force as statements of standard accounting practice issued for those purposes by the designated body.

(2) The reference in paragraph (1) to statements of standard accounting practice issued before coming into force is to be taken to include statements issued for the purposes of either section 256 of the Companies Act 1985(b) or Article 264 of the Companies (Northern Ireland) Order 1986(c) where, by virtue of regulation 4 of the Accounting Standards (Prescribed Body) Regulations 2008, those statements fell to be treated as statements issued for the purposes of section 464 of the Act.

(3) Anything which—

- (a) has been done by or in relation to the body known as the Accounting Standards Board for the purposes of or in connection with the issue of statements of standard accounting practice; and
- (b) is in effect immediately before coming into force,

is to be treated as if done by or in relation to the designated body.

(4) Anything which—

- (a) relates to the issue of statements of standard accounting practice; and
- (b) is in the process of being done by or in relation to the body known as the Accounting Standards Board immediately before coming into force,

may be continued by or in relation to the designated body.

Norman Lamb

Parliamentary Under Secretary of State for Employment Relations, Consumer and Postal Affairs
2nd July 2012

Department for Business, Innovation and Skills

(a) S.I. 2008/651.

(b) 1985 c.6; section 256 was repealed by the Companies Act 2006.

(c) S.I. 1986/1032 (N.I. 6). This Order was repealed by the Companies Act 2006.

Minor and Consequential Amendments

PART 1

References to Professional Oversight Board

1. For the definition of “the designated body” in regulation 29 (interpretation) of the Statutory Auditors and Third Country Auditors Regulations 2007(a), substitute—

““the designated body” means the Financial Reporting Council Limited;”.

2. For subsection (4)(a) of section 461 of the Act (permitted disclosure of information obtained under compulsory powers) as it applies to LLPs by virtue of regulation 24 of the 2008 Regulations, substitute—

“(a) for the purpose of assisting the Financial Reporting Council Limited to exercise its functions under Part 42 of this Act;”.

3. For subsection (1)(a) of section 525 of the Act (meaning of “appropriate audit authority” etc) as it applies to LLPs by virtue of regulation 46 of the 2008 Regulations, substitute:

“(a) in the case of a major audit (other than one conducted by an Auditor General), the Financial Reporting Council Limited;”.

PART 2

References to Accounting Standards Board

4. In paragraph 8 of the Schedule (contents of accounts etc) to the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996(b), for “the Accounting Standards Board”, substitute “the Financial Reporting Council Limited”.

5. In paragraph 8 of the Schedule (contents of accounts etc) to the Pension Protection Fund (Entry Rules) Regulations 2005(c), for “the Accounting Standards Board”, substitute “the Financial Reporting Council Limited”.

6. In paragraph 8 of the Schedule (contents of accounts etc) to the Pension Protection Fund (Valuation) Regulations 2005(d), for “the Accounting Standards Board”, substitute “the Financial Reporting Council Limited”.

7. In paragraph 8 of the Schedule to the Pension Protection Fund (Closed Schemes) Regulations 2007(e), for “the Accounting Standards Board”, substitute “the Financial Reporting Council Limited”.

8. For regulation 25 (accounting standards) of the 2008 Regulations, substitute—

“25. Section 464 applies to LLPs, modified so that it reads as follows—

(a) S.I. 2007/3494, amended by S.I. 2008/2639; there are other amending instruments, but none is relevant.
(b) S.I. 1996/1975, to which there are amendments not relevant to this order.
(c) S.I. 2005/590, amended by S.I. 2005/993; there are other amending instruments, but none is relevant.
(d) S.I. 2005/672, amended by S.I. 2007/782; there are other amending instruments, but none is relevant.
(e) S.I. 2007/865, to which there is an amendment not relevant to this Order.

464 Accounting Standards

(1) In this Part “accounting standards” means statements of standard accounting practice issued by the Financial Reporting Council Limited.

(2) References in this Part to accounting standards applicable to an LLP’s annual accounts are to such standards as are, in accordance with their terms, relevant to the LLP’s circumstances and to the accounts”.

9. For the definition of “applicable accounting principles” at regulation 16(9)(a) of the Charities (Accounts and Reports) Regulations 2008**(a)** substitute—

“(a) “applicable accounting principles” means, in relation to a parent charity that is required to prepare group accounts, the methods and principles set out in—

- (i) the financial reporting standards and statements of standard accounting practice issued by the Financial Reporting Council Limited (“the Council”);
- (ii) any abstract issued by the Council which is relevant to the preparation of those accounts by that parent charity; and
- (iii) any statement of recommended practice (including the SORP) issued by a body recognised by the Council for the purpose of issuing guidance on the standards in paragraph (i) relevant to the preparation of those accounts by that parent charity.”

10. For paragraph 10(19)(a) of Schedule 1 to the Unregistered Companies Regulations 2009**(b)**, substitute—

“(a) in subsection (1) for “such body or bodies as may be prescribed by regulations” substitute “the Financial Reporting Council Limited”.”

11. In sub-paragraphs (a) and (b) of paragraph 19 (application of accounting standards) of Schedule 3 to the Payment Services Regulations 2009**(c)**, for “the Accounting Standards Board” substitute “the Financial Reporting Council Limited”.

12. In sub-paragraphs (a) and (b) of paragraph 25 (application of accounting standards) of Schedule 2 to the Electronic Money Regulations 2011**(d)**, for “the Accounting Standards Board”, substitute “the Financial Reporting Council Limited”.

(a) S.I. 2008/629, to which there are amendments not relevant to this Order.

(b) S.I. 2009/2436.

(c) S.I. 2009/209, to which there are amendments not relevant to this Order.

(d) S.I. 2011/99.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the law relating to statutory auditors as defined in section 1210 of the Companies Act 2006 (“the 2006 Act”). It extends to the whole of the United Kingdom.

Part 2 of the Order (articles 4 and 5) amends the 2006 Act. It re-implements obligations in Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts (OJ L 157, 9.6.2006, p.87), and makes provision for matters which arise out of or relate to these obligations.

Article 4 substitutes new sections 1225 to 1225G for the existing section 1225 in Part 42 of the 2006 Act. They provide for additional types of action which may be taken against a statutory auditor’s professional body (in connection with securing the body’s responsibilities properly to supervise its statutory auditor members). The Secretary of State may now give a direction to a professional body (e.g. directing the body to do specified things) and may now impose a financial penalty upon such a body.

Article 5(3) and (4) amends Schedule 10 to the 2006 Act to allow an entity carrying out inspections of “major” audits (defined in section 525(2)) to determine sanctions against statutory auditors if its inspections reveal breaches of relevant rules of the professional body. In addition, they oblige the professional body to treat such sanctions as if they were sanctions which the professional body had itself imposed. Article 5(5) amends Schedule 10 to allow the waiving of hearings in connection with significant statutory auditor disciplinary proceedings.

Part 3 of the Order (articles 6 to 16) concerns the transfer of functions of the Secretary of State under Part 42 of the 2006 Act to the Financial Reporting Council Limited (“the designated body”). By virtue of section 1252(3) of the 2006 Act, the designated body is designated for the purposes of the Freedom of Information Act 2000 (c.36).

Article 6 revokes the Statutory Auditors (Delegation of Functions etc) Order 2008, whereby functions under Part 42 were transferred to a body called the Professional Oversight Board.

The effect of article 7 is to transfer all of the functions under Part 42 of the 2006 Act to the designated body, subject to a number of specified exceptions and reservations. The functions transferred include the new functions which arise by virtue of the amendments to Part 42 made by Part 2 of the Order.

Article 8 confers on the designated body the functions relating to notices of auditor resignations (see sections 522 to 525 of the 2006 Act).

Articles 9 imposes consultation requirements on the designated body and articles 10, 11 and 12 respectively impose obligations to publish an annual work programme, to record decisions, and to notify the Secretary of State of certain matters.

Article 13 provides that financial penalties received by the designated body may not be retained but (less the body’s reasonable costs) must be paid over to the Secretary of State.

Article 14 has the effect that references to the Secretary of State in section 1256 of the 2006 Act (time limits for prosecution of offences) are to be construed as references to either the Secretary of State or the designated body. The effect of article 15 is that the designated body is now responsible for issuing guidance as to identifying the “senior statutory auditor” (see section 504 of the 2006 Act). Article 16 makes transitional provision.

Part 4 (articles 17 to 21) concerns the appointment of the designated body as “Independent Supervisor” of the Auditors General (defined by section 1226 of the 2006 Act; and see, in particular, section 1229). Article 17 revokes the Independent Supervisor Appointment Order 2007 whereby the Professional Oversight Body performed this supervisory function. Article 18 appoints the designated body; article 19 makes provision for the content of reports prepared by the Independent Supervisor; and article 20 imposes certain consultation and record-keeping requirements. Article 21 makes transitional provisions.

Part 5 (articles 22 to 24) concerns the prescription of the designated body for the purposes of section 464 of the 2006 Act i.e. the body responsible for issuing “accounting standards”. Article 22 revokes the Accounting Standards (Prescribed Body) Regulations 2008 whereby a body known as the Accounting Standards Board performed this role. Article 23 prescribes the designated body and article 24 makes transitional provisions.

The Schedule contains minor and consequential amendments.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Business Environment Directorate, Department for Business, Innovation and Skills, 1 Victoria Street, London SW1H 0ET or at www.bis.gov.uk and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

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