

*This draft supersedes the draft laid on 24th February 2005 and is being issued free of charge to all known recipients of the earlier draft.*

*Draft Order laid before Parliament under section 46(8) of the Companies Act 1989, for approval by resolution of each House of Parliament.*

---

## DRAFT STATUTORY INSTRUMENTS

---

**2005 No.**

# COMPANIES

## The Companies Act 1989 (Delegation) Order 2005

Made - - - - 2005

*Coming into force in accordance with article 1*

Whereas it appears to the Secretary of State that the Professional Oversight Board for Accountancy is willing and able to exercise the functions transferred by this Order;

Whereas it appears to the Secretary of State that the Professional Oversight Board for Accountancy has arrangements in place relating to the exercise of those functions which are such as to be likely to ensure that the functions in question will be exercised effectively and to ensure that the functions will be exercised in accordance with the requirements specified in this Order;

Whereas the Secretary of State laid the draft of this Order before Parliament and the draft was approved by a resolution of each House of Parliament;

Now, therefore, the Secretary of State in exercise of the powers conferred upon him by sections 46(1) and (2) and 46A(4) of, and paragraph 11(3)(a),(d) and (e) of Schedule 13 to, the Companies Act 1989(1) hereby makes the following Order:

### **Citation and commencement**

**1.** This Order may be cited as the Companies Act 1989 (Delegation) Order 2005 and shall come into force on the fourteenth day after the day on which it is made.

### **Interpretation**

**2.** In this Order—

(1) “the Act” means the Companies Act 1989;

---

(1) 1989 c.40. Section 46 was amended by paragraph 2(2) of Schedule 2 to The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261) and by section 3 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 c.27. Section 46A was inserted by section 4 of that Act. Paragraph 11 of Schedule 13 was amended by section 5(4) of that Act.

(2) “designated body” means the body known as the Professional Oversight Board for Accountancy established under the articles of association of The Professional Oversight Board for Accountancy Limited(2); and

(3) “start date” means the date on which this Order comes into force.

### **Transfer of functions**

3.—(1) Except as provided in paragraph (2) and subject to the exception in section 46(2)(b) of the Act and the reservations in section 46(3) of the Act, all the functions of the Secretary of State under Part 2 of the Act (eligibility for appointment as company auditor) are hereby transferred to the designated body.

(2) The functions of the Secretary of State under section 50 of the Act (power to make consequential amendments) and under section 51 of the Act (power to make provision in consequence of changes affecting accountancy bodies) are not transferred by this Order.

### **Requirements concerning exercise of functions**

4.—(1) Subject to paragraph (2), before making any regulations by virtue of the functions transferred to it by this Order the designated body shall:

- (a) publish the proposed regulations in such manner as appears to the body to be best calculated to bring them to the attention of persons who may be affected by the proposed regulations;
- (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 shall not be less than 12 weeks following the date of publication of the proposed regulations; and
- (c) have regard to any representations duly made in accordance with the statement before making the 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.

5. The designated body shall have satisfactory arrangements for recording decisions made in the exercise of the functions transferred by this Order and for the safekeeping of those records which ought to be preserved.

6. The designated body shall forthwith send to the Secretary of State a copy of any notification made, or any information given, by a recognised supervisory body to the designated body pursuant to a requirement under section 37 of the Act (matters to be notified to the Secretary of State).

### **Transitional and supplementary provisions**

7. Any legal proceedings by the Secretary of State brought in or in connection with the exercise of any of the functions transferred by this Order which are in existence immediately prior to the start date are to continue as proceedings by the designated body.

8. Any requirement made by the Secretary of State under section 37 of the Act where any notice or information which is required to be given to the Secretary of State in accordance with that section has not been given before the start date shall be treated on and after the start date as a requirement made by the designated body.

9. Any application made to the Secretary of State before the start date in accordance with paragraph 1 of Schedule 11 or paragraph 1 of Schedule 12 to the Act in respect of which the Secretary

of State has neither made nor has refused to make a recognition order shall be treated on and after the start date as an application made to the designated body.

**10.** Section 43(1),(2) and (4) of the Act shall have effect as if the references to the Secretary of State included a reference to the designated body.

2005

Department of Trade and Industry

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order transfers the majority of the functions of the Secretary of State under Part 2 of the Companies Act 1989 (eligibility for appointment as company auditor) to the Professional Oversight Board for Accountancy established under The Professional Oversight Board for Accountancy Limited. The functions transferred are described in article 3.

Articles 4 to 6 contain requirements of consultation, record keeping and notification of certain matters to the Secretary of State relating to the exercise of the functions transferred to the Professional Oversight Board for Accountancy.

Articles 7 to 10 make certain transitional and supplementary provisions.