

*Draft Order laid before Parliament under sections 1252(11) and 1290 of the Companies Act 2006,
for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2014 No.

**LOCAL GOVERNMENT, ENGLAND AND WALES
COMPANIES
AUDITORS**

**The Local Audit (Delegation of Functions) and
Statutory Audit (Delegation of Functions) Order 2014**

Made - - - -

Coming into force in accordance with article 1

The Secretary of State for Communities and Local Government makes the following Order in exercise of the powers conferred by sections 1252 and 1253 of, and paragraphs 7(3) and 11(2) and (3)(a) of Schedule 13 to, the Companies Act 2006⁽¹⁾ (“the Act”).

It appears to the Secretary of State that the Financial Reporting Council Limited⁽²⁾ is able and willing to exercise the functions transferred by this Order.

It appears to the Secretary of State that the body has arrangements in place relating to the exercise of the functions transferred by this Order 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.

In accordance with sections 1252(11) and 1290 of the Act, a draft of this instrument has been laid before and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Local Audit (Delegation of Functions) and Statutory Audit (Delegation of Functions) Order 2014, and comes into force at the end of the period of 21 days beginning with the day on which it is made.

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- (1) [2006 c.46](#). Part 42 of the Companies Act 2006 (“the 2006 Act”), and sections 1288 to 1290 and 1292 of that Act, are applied in relation to local audits, with modifications, by Schedule 5 to the Local Audit and Accountability Act [2014 \(c.2\)](#) (“the 2014 Act”). “Local audit” means an audit under the 2014 Act of the accounts of a relevant authority (see Schedule 5, paragraph 1(2)). “Relevant authority” is defined in section 1262 of the 2006 Act by reference to the definition in section 2(1) of the 2014 Act; see the modifications to section 1262 of the 2006 Act made by paragraph 27(1) and (3) of Schedule 5 to the 2014 Act.
- (2) A company registered in England and Wales with number 02486368.

(2) In this Order—

“the Act” means the Companies Act 2006;

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

“local audit” has the same meaning as in paragraph 1(2) of Schedule 5 to the Local Audit and Accountability Act 2014⁽³⁾.

(3) Any reference in this Order to a provision of the Act is to that provision as it has effect in relation to local audit by virtue of Schedule 5 to the Local Audit and Accountability Act 2014.

Exercise of functions by the designated body

2.—(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 as it applies in relation to local audits.

(2) The functions listed in paragraph (3) are not transferred by this Order.

(3) The functions referred to in paragraph (2) are—

(a) the function of making regulations under section 1214(5);

(b) the functions under—

(i) section 1224ZA⁽⁴⁾;

(ii) section 1261(3);

(iii) section 1263;

(iv) Schedule 10, paragraph 13(10)(a); and

(c) the function of making regulations under section 1219(2).

(4) The functions listed in paragraph (5) remain exercisable concurrently with the Secretary of State.

(5) The functions referred to in paragraph (4) are the functions under—

(a) section 1224;

(b) section 1239(8);

(c) section 1254.

Freedom of information

3. This Order has the effect of making the designated body designated under section 5 of the Freedom of Information Act 2000⁽⁵⁾ (further power to designate public authorities) to the extent that it is exercising functions transferred or conferred by this Order.

Consultation requirements

4.—(1) Before the designated body makes any regulations in exercise of the functions transferred to it by this Order it must—

(a) publish the proposed regulations in such manner as appears to the body to be best calculated to bring the 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 4 weeks following the date of publication of the proposed regulations); and

(3) 2014 c.2.

(4) Section 1224ZA is inserted by paragraph 10 of Schedule 5 to the 2014 Act.

(5) 2000 c.36; section 5 was amended by S.I. 2003/1887.

- (c) have regard to any representations duly made in accordance with the statement before making the regulations.
- (2) Before the designated body gives a direction in exercise of the function in paragraph 13(10) of Schedule 10 to the Act transferred to it by this Order it must—
 - (a) consult such relevant authorities as appear to it to be appropriate;
 - (b) inform such relevant authorities that they may make representations to the body within a specified period (which must not be less than 4 weeks beginning with the date on which consultation begins); and
 - (c) have regard to any representations duly made before giving the direction.
- (3) The designated body must provide a relevant authority specified in, or of a description specified in, the direction with its reasons for giving the direction to the authority or to the description of authorities.
- (4) A requirement imposed by paragraph (1), (2) or (3) does not apply in any case in which the designated body considers that the delay involved in complying with that paragraph would be prejudicial to the public interest.

Annual work programme

- 5. The designated body must publish a work programme in relation to the functions transferred by this Order at least once in every calendar year.

Requirements for recording decisions

- 6. 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

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

- 8.—(1) The designated body must, subject to paragraph (2), pay the amount of a financial penalty under section 1225D of the Act⁽⁶⁾ 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) of the Act.
- (3) The costs of the designated body referred to in paragraph (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);

(6) Section 1225D was inserted by [S.I. 2012/1741](#).

- (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

9. Section 1256(1) and (6) of the Act has effect as if the references to the Secretary of State were references to the Secretary of State or the designated body.

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

10. In article 9(1)(b) of the Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc) Order 2012(7), for “12 weeks” substitute “4 weeks”.

Signed by authority of the Secretary of State for Communities and Local Government

Date

Name
Parliamentary Under Secretary of State
Department for Communities and Local
Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order concerns the transfer of functions of the Secretary of State under Part 42 of the Companies Act 2006 (statutory auditors), as applied with modifications to local audits by Schedule 5 to the Local Audit and Accountability Act 2014. Local audits are audits of the accounts of relevant authorities within the meaning of that Act (listed in Schedule 2 to the 2014 Act – local authorities and certain other public bodies in England and a very limited category of authorities which exercise functions partly in England and partly in Wales).

The functions are transferred to the Financial Reporting Council Limited (“the designated body”).

The effect of article 2 is to transfer all of the functions under Part 42 of the Companies Act 2006 (“the 2006 Act”) to the designated body, subject to a number of specified exceptions and reservations. Article 3 has the effect that the designated body is a public authority for the purposes of the Freedom of Information Act 2000, so far as it is exercising functions transferred or conferred by this Order. Article 4 imposes consultation requirements on the designated body. Articles 5, 6 and 7 respectively require the designated body to publish an annual work programme, to record decisions, and to notify the Secretary of State of certain matters.

Article 8 provides that financial penalties received by the designated body may not be retained but (after deduction of the body’s reasonable costs) must be paid over to the Secretary of State. Article 9 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.

Article 10 amends the Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc) Order 2012 (S.I. 2012/1741) so as to reduce the period required for consultation by the designated body prior to making an order or regulations under powers relating to statutory audit of companies.

An impact assessment of the effect that the Local Audit and Accountability Act 2014, which this instrument helps implement, will have on the costs of business is available from <http://www.parliament.uk/documents/impact-assessments/IA13-11A.pdf>. No separate assessment was carried out for this instrument.