

---

STATUTORY INSTRUMENTS

---

**2012 No. 1741**

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

**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<sup>M1</sup> or 3<sup>M2</sup> 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<sup>M3</sup> of Schedule 11 is not satisfied, or
- (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) <sup>M4</sup> (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,

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.”.

### Marginal Citations

- M1** 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.
- M2** 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.
- M3** Part 2 of Schedule 11 was amended by regulation 44 of S.I. 2007/3494.
- M4** 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.

### 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) ”.

**Changes to legislation:**

There are currently no known outstanding effects for the The Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc) Order 2012, PART 2.