

Draft Order laid before Parliament under section 46(8) of the Companies Act 1989 and sections 1252(11), 1290 and 1292(4) of the Companies Act 2006, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2008 No. 0000

COMPANIES

AUDITORS

The Statutory Auditors (Delegation of Functions etc) Order 2008

Made - - - - *****

Coming into force in accordance with article 1

It appears to the Secretary of State that the body known as the Professional Oversight Board established under the articles of association of The Professional Oversight Board Limited^(a) is willing and able to exercise the functions transferred by this Order.

It appears to the Secretary of State that the body known as the Professional Oversight Board established under the articles of association of The Financial Reporting Council Limited^(b) is willing and able to exercise the functions transferred by this Order and the Companies Act 1989 (Delegation) Order 2005^(c).

It appears to the Secretary of State that each of those bodies 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 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.

It appears to the Secretary of State that the body known as the Professional Oversight Board established under the articles of association of The Financial Reporting Council Limited has arrangements in place relating to the exercise of the functions transferred by the Companies Act 1989 (Delegation) Order 2005 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 that Order.

It appears to the Secretary of State that it is no longer in the public interest that the Companies Act 1989 (Delegation) Order 2005 should remain in force, except in relation to functions relating to appointments of company auditors for any financial year beginning before 6th April 2008.

(a) Registered number 05081885.
(b) Registered number 02486368.
(c) S.I. 2005/2337.

The Secretary of State laid a draft of this Order before Parliament in accordance with section 46(8) of the Companies Act 1989^(a) and sections 1252(11), 1290 and 1292(4) of the Companies Act 2006^(b), 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 section 46(4) of the Companies Act 1989 and sections 504(1)(b)(ii), 1252(1), (4)(a), (5) and (8) and 1253(4) of, and paragraphs 7(3), 11(2) and (3)(a) of Schedule 13 to, the Companies Act 2006 makes the following Order.

Citation and commencement

1.—(1) This Order may be cited as the Statutory Auditors (Delegation of Functions etc) Order 2008.

(2) This article and article 2 come into force on 1st March 2008.

(3) Articles 3, 6 and 8 come into force on 1st March 2008 for the purposes of functions in relation to appointments of auditors for financial years beginning on or after 6th April 2008.

(4) Subject to paragraph (6), articles 4, 5, 7 and 9 to 11 come into force on 6th April 2008 for the purposes of functions in relation to appointments of auditors for financial years beginning on or after 6th April 2008.

(5) Article 12 comes into force on 6th April 2008.

(6) Articles 4 and 9 come into force on 29th June 2008 for the purpose of transferring the functions under sections 1242, 1243 and 1244 of, and Schedule 12 to, the Act (registered third country auditors) in relation to appointments of registered third country auditors for financial years beginning on or after 29th June 2008.

Interpretation

2. In this Order—

“the Act” means the Companies Act 2006;

“the first designated body” means the body known as the Professional Oversight Board established under the articles of association of The Professional Oversight Board Limited;

“the second designated body” means the body known as the Professional Oversight Board established under the articles of association of The Financial Reporting Council Limited.

Transfer of certain functions conferring a power to make regulations

3.—(1) The functions of the Secretary of State conferring a power to make regulations under—

(a) section 1239 of the Act (register of auditors) except for the function under subsection (1)(b) of that section,

(b) section 1240 of the Act (information to be made available to public), and

(c) paragraph 8(1)(a) of Schedule 11 to the Act (prescription of examination subjects),

are transferred to the first designated body, subject to the reservation specified in paragraph (2).

(2) The transfer of the functions conferring a power to make regulations referred to in paragraph (1) is subject to the reservations that such regulations—

(a) must not come into force before 6th April 2008; and

(b) must not apply in relation to appointments of auditors for financial years beginning before 6th April 2008.

(a) 1989 c.40.
(b) 2006 c.46.

(3) The transfer of the functions referred to in paragraph (1) ceases to have effect on 6th April 2008.

Transfer of functions

4.—(1) All the functions of the Secretary of State under Part 42 of the Act (statutory auditors) are transferred to the second designated body, subject to—

- (a) the exceptions specified in section 1252(4)(b) of the Act (functions not transferred by the Order);
- (b) the exceptions specified in paragraph (2); and
- (c) the reservations specified in paragraphs (3) and (4).

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

- (a) section 1210 of the Act (meaning of “statutory auditor”),
- (b) section 1214 of the Act (power to specify connection between persons for purposes of independence requirement),
- (c) section 1231 of the Act (laying report by independent supervisor of auditors general before each House of Parliament),
- (d) section 1237(3) of the Act (provision for pending proceedings in order revoking appointment of independent supervisor),
- (e) section 1239(1)(b) of the Act (making regulations for register of third country auditors),
- (f) section 1241(2)(c) of the Act (exclusion of bodies corporate from definition of “traded non-Community company”),
- (g) section 1246 of the Act (removal of 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^(a) (requests to EEA competent authorities), and
- (e) section 1254 of the Act (directions to comply with international obligations),

is subject to the reservation that the 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 (approval of overseas qualification) on the grounds referred to in section 1221(4) (lack of comparable treatment),
- (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 (requests from EEA competent authorities) on the grounds referred to in section 1253B(3)(a) (prejudice to sovereignty, security or public order), and

^(a) Sections 1253A and 1253B were inserted by regulation 14 of the Statutory Auditors and Third Country Auditors Regulations 2007 (S.I. 2007/3494).

(d) certifying under paragraph 16A(6) of Schedule 10(a) (transfer of papers to third countries) that the delivery of audit working papers to a third country competent authority would adversely affect the sovereignty, security or public order of the United Kingdom, is subject to the reservation that the functions are exercisable only with the consent of the Secretary of State.

Appropriate audit authority

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

Consultation requirement

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

- (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 must 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.

(3) Documents published by the first designated body or the second designated body before the date on which this article comes into force shall be treated as meeting the requirements of paragraph (1)(a) and (b) if documents published in the same way after that date would have met those requirements.

(4) For the purposes of this article, on or after 6th April 2008 any document published by the first designated body before that date shall be treated as if it had been published by the second designated body.

Annual work programme

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

Requirements for recording decisions

8. The first designated body and the second 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 those records.

(a) Paragraph 16A was inserted by regulation 24 of the Statutory Auditors and Third Country Auditors Regulations 2007 (S.I. 2007/3494).

Matters notified to the designated body

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

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

Time limits for prosecution of offences

10. 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 second designated body.

Appointment of body to issue guidance on senior statutory auditors

11. The body known as the Auditing Practices Board established under the articles of association of The Financial Reporting Council Limited^(a) is appointed for the purposes of section 504(1)(b)(ii) of the Act (body to issue guidance on meaning of senior statutory auditor).

Companies Act 1989 (Delegation) Order 2005

12.—(1) For article 2(2) of the Companies Act 1989 (Delegation) Order 2005^(b) substitute—

“(2) “designated body” means the body known as the Professional Oversight Board established under the articles of association of The Financial Reporting Council Limited; and”.

(2) The Companies Act 1989 (Delegation) Order 2005 continues to apply in relation to functions relating to appointments of company auditors for any financial year beginning before 6th April 2008.

(3) Subject to paragraph (2), the Companies Act 1989 (Delegation) Order 2005 is revoked.

[Date]

Minister of State for Competitiveness
Department for Business, Enterprise and Regulatory Reform

^(a) Registered number 02486368.
^(b) S.I. 2005/2337.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order transfers most of the functions of the Secretary of State under Part 42 of the Companies Act 2006 (statutory auditors) to the Professional Oversight Board. It implements in part Article 32 (public oversight) of Directive 2006/43 EC on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC(a). By virtue of section 1252(3) of the Companies Act 2006, the Order also has the effect of designating the Professional Oversight Board for the purposes of the Freedom of Information Act 2000(b).

The designation is of two successive bodies known as the Professional Oversight Board, because on 6th April 2008 the body of that name established by The Professional Oversight Board Limited is replaced by the body of that name established by The Financial Reporting Council Limited.

Article 3 of the Order transfers certain functions conferring powers to make regulations on 1st March 2008.

Article 4 of the Order transfers all functions under Part 42 of the Companies Act 2006 on 6th April 2008, subject to the exceptions and reservations it describes.

Article 5 confers on the Professional Oversight Board the functions relating to notices of auditor resignations under sections 522 to 525 of the 2006 Act, also on 6th April 2008.

Articles 6, 7, 8 and 9 impose requirements on the Professional Oversight Board of consultation, publishing an annual work programme, record keeping and notification of certain matters to the Secretary of State. Articles 6 and 8 come into force on 1st March 2008, articles 7 and 9 on 6th April 2008.

Articles 4 and 9 come into force only on 29th June 2008 in respect of third country auditors.

Article 10 modifies section 1256 of the Companies Act 2006, so that references to the Secretary of State in respect of the time limits for certain prosecutions are treated as references to the Professional Oversight Board.

Article 11 appoints the Auditing Practices Board on 6th April 2008 to issue guidance on the meaning of senior statutory auditor for the purposes of sections 504(1)(b)(ii) of the Companies Act 2006.

Article 12 revokes the Companies Act 1989 (Delegation) Order 2005, which is replaced by this Order. That Order transferred to the Professional Oversight Board for Accountancy the functions of the Secretary of State under Part 2 of the Companies Act 1989. Part 2 of the 1989 Act is repealed and replaced by the Companies Act 2006.

An Impact Assessment has not been produced for this Order as it has only a negligible impact on the costs of business, charities or voluntary bodies.

(a) OJ L 157, 9.6.2006, p.87.

(b) 2000 c.36.

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DRAFT STATUTORY INSTRUMENTS

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