

**2012 No. 1439**

**COMPANIES**

**The Supervision of Accounts and Reports (Prescribed Body) and  
Companies (Defective Accounts and Directors' Reports)  
(Authorised Person) Order 2012**

<i>Made</i> - - - -	<i>31st May 2012</i>
<i>Laid before Parliament</i>	<i>11th June 2012</i>
<i>Coming into force</i> - -	<i>2nd July 2012</i>

It appears to the Secretary of State that the Conduct Committee of the Financial Reporting Council Limited<sup>(a)</sup>—

- (a) is a body having an interest in, and having satisfactory procedures directed to, monitoring compliance by issuers of transferable securities with accounting requirements imposed by Part 6 rules<sup>(b)</sup> in relation to periodic accounts and reports produced by such issuers;
- (b) is otherwise a fit and proper body to be appointed to exercise the functions mentioned at section 14(2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004<sup>(c)</sup>;
- (c) will exercise its functions as a prescribed body in accordance with the requirements of this Order;
- (d) is a person having an interest in, and having satisfactory procedures directed to, securing compliance by companies with the requirements of the Companies Act 2006<sup>(d)</sup> (or, where applicable, Article 4 of the IAS Regulation<sup>(e)</sup>) relating to accounts and directors' reports;
- (e) is a person having satisfactory procedures for receiving and investigating complaints about companies' annual accounts and directors' reports;
- (f) is otherwise a fit and proper person to be authorised for the purposes of section 456 of the Companies Act 2006; and
- (g) will exercise its functions as an authorised person in accordance with the requirements of this Order.

The Secretary of State makes the following Order in exercise of the powers conferred by sections 14(1), (5) and (8) and 15E of the Companies (Audit, Investigations and Community Enterprise)

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(a) A company registered in England and Wales with number 02486368.  
(b) Defined in section 103(1) of the Financial Services and Markets Act 2000 (c.8); section 103 was substituted by S.I. 2005/1433.  
(c) 2004 c.27. Section 14(2) was amended by section 1272 of, and paragraphs 13 and 14 of Schedule 15 to the Companies Act 2006 (c.46).  
(d) 2006 c.46.  
(e) Regulation (EC) No. 1606/2002 of the European Parliament and the Council of 19.7.2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p.1).

Act 2004(a) and by sections 457(1), (2), (5) and (6), 462 and 1292(1)(b) and (c) of the Companies Act 2006.

### **Citation, coming into force and interpretation**

1.—(1) This Order may be cited as the Supervision of Accounts and Reports (Prescribed Body) and Companies (Defective Accounts and Directors' Reports) (Authorised Person) Order 2012.

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

(3) In this Order—

“the 2004 Act” means the Companies (Audit, Investigation and Community Enterprise) Act 2004;

“the 2005 Order” means the Supervision of Accounts and Reports (Prescribed Body) Order 2005(b);

“the 2006 Act” means the Companies Act 2006;

“the 2007 Order” means the Supervision of Accounts and Reports (Prescribed Body) Order 2007(c);

“the 2008 Order” means the Companies (Defective Accounts and Directors' Reports) (Authorised Person) and Supervision of Accounts and Reports (Prescribed Body) Order 2008(d);

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

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

“the Conduct Committee” means the body of that name established under the articles of association of The Financial Reporting Council Limited;

“LLPs” means limited liability partnerships;

“regulated market” has the meaning given by Article 4(1)(14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments(f); and

“the transparency obligations directive” means Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market(g).

### **Appointment in relation to issuers**

2.—(1) The Conduct Committee is appointed to exercise the functions mentioned in section 14(2) of the 2004 Act in respect of any issuer of transferable securities admitted to trading on a regulated market which is—

(a) a body corporate incorporated or otherwise formed under the law of, or of a part of, the United Kingdom of which the United Kingdom is the home Member State for the purposes of the transparency obligations directive;

(b) a body corporate incorporated or otherwise formed under the law of a place outside the United Kingdom of which the United Kingdom is the home Member State for the purposes of the transparency obligations directive.

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(a) Section 14(3) was amended by section 1272 of, and paragraphs 13 and 14 of Schedule 15 to, the Companies Act 2006. Section 15E was inserted by article 3(1) and paragraph 232(2) of Schedule 1 to S.I. 2008/948.

(b) S.I. 2005/715, revoked with savings by S.I. 2007/2583.

(c) S.I. 2007/2583, revoked with savings by S.I. 2008/623.

(d) S.I. 2008/623.

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

(f) OJ L 145, 30.4.2004, p.1.

(g) OJ L 390, 31.12.2004, p.38.

(2) In paragraph (1), “issuer” does not include a person which is not required to comply with the reporting requirements of provisions implementing Articles 4 and 5 of the transparency obligations directive (annual financial reports and half-yearly financial reports) by virtue of—

- (a) provisions implementing Article 8(1) of that Directive (exemptions), or
- (b) the Transparency Obligations Directive (Disclosure and Transparency Rules) Instrument 2006(a) made on 21st December 2006 by the Financial Services Authority under sections 73A, 89A to 89E, 101 and 157(1) of the Financial Services and Markets Act 2000(b).

### **Appointment in relation to accounts**

3. The Conduct Committee is appointed to exercise the functions mentioned in section 14(2) of the 2004 Act only in respect of the periodic accounts and reports required to be produced under Articles 4 and 5 of the transparency obligations directive.

### **Authorisation**

4. The Conduct Committee is authorised for the purposes of section 456 of the 2006 Act (application to court in respect of defective accounts or reports).

### **Decision recording etc requirements**

5. The Conduct Committee must have satisfactory arrangements for—
- (a) recording decisions made in connection with the functions it exercises by virtue of its appointment under articles 2 and 3 and its authorisation under article 4 of this Order; and
  - (b) the safekeeping of all material records.

### **Amendments to categories of permitted disclosure**

- 6.—(1) After section 15D(4)(a) of the 2004 Act insert—
- “(aa) for the purpose of facilitating the carrying out of inspections under any of the following—
    - (i) paragraph 23 of Schedule 10 to the Companies Act 2006 (arrangements for independent monitoring of audits of listed companies and other major bodies);
    - (ii) paragraph 23A of that Schedule to that Act (arrangements for independent monitoring of third country audits); and
    - (iii) paragraph 1 of Schedule 12 to that Act (arrangements for independent monitoring of audits of UK-traded non-EEA companies);”.
- (2) After section 461(4)(a) of the 2006 Act insert—
- “(aa) for the purpose of facilitating the carrying out of inspections under paragraph 23 of Schedule 10 (arrangements for independent monitoring of audits of listed companies and other major bodies);”.

### **Application, revocations and transitional provisions**

7.—(1) Articles 2 and 3 of this Order apply in respect of periodic accounts and reports relating to financial years beginning on or after 20th January 2007.

- (2) The 2007 Order, so far as unrevoked, and the 2008 Order are revoked.

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(a) FSA 2006/70. The Order is available on the Financial Services Authority’s website at [www.fsa.gov.uk/Pages/handbook](http://www.fsa.gov.uk/Pages/handbook).  
(b) 2000 c.8. Section 73A was inserted by S.I. 2005/381, Schedule 1, paragraph 2, and amended by S.I. 2005/1433, Schedule 1, paragraph 1, and by paragraphs 1 and 3 of Part 1 of Schedule 15 to the Companies Act 2006. Sections 89A to 89E were inserted by section 1266(1) of the Companies Act 2006. Section 101 was amended by S.I. 2005/381, Schedule 1, paragraph 10.

(3) The 2005 Order continues in operation to apply in respect of periodic accounts and reports—  
(a) to which section 14(2)(a) of the 2004 Act as amended by the 2006 Act applies; and  
(b) which relate to financial years beginning before 20th January 2007,  
and the Conduct Committee is appointed to exercise the functions for the exercise of which the prescribed body under the 2005 Order had been appointed under that Order.

(4) Anything which—  
(a) has been done by or in relation to the body known as the Financial Reporting Review Panel in connection with any of the functions referred to in this Order; and  
(b) is in effect immediately before coming into force,  
is to be treated as if done by or in relation to the Conduct Committee.

(5) Anything which —  
(a) relates to any of the functions referred to in this Order; and  
(b) is in the process of being done by or in relation to the body known as the Financial Reporting Review Panel immediately before coming into force,  
may be continued by or in relation to the Conduct Committee.

### **Consequential amendments**

**8.—**(1) The 2006 Act as it applies to LLPs by virtue of the 2008 Regulations is amended as follows.

(2) For subsection (1)(b) of section 456 of the 2006 Act (application to court in respect of defective accounts) as it applies to LLPs by virtue of regulation 23 of the 2008 Regulations, substitute “the Conduct Committee”.

(3) In sections 458 (disclosure of information by tax authorities), 459 (power to require documents etc), 460 (restrictions on disclosure of information etc) and 461 (permitted disclosure of information etc) of the 2006 Act as these sections apply to LLPs by virtue of regulation 24 of the 2008 Regulations, for “the Financial Reporting Review Panel” wherever these words occur, substitute “the Conduct Committee”.

(4) In section 474 of the 2006 Act (minor definitions) as it applies to LLPs by virtue of regulation 32 of the 2008 Regulations—

- (a) insert the following definition after the definition of “banking LLP”—  
““Conduct Committee” means the body of that name established under the Articles of Association of the Financial Reporting Council Limited;”;  
and  
(b) delete the definition of “Financial Reporting Review Panel”.

(5) For subsection (2)(b) of section 524 of the 2006 Act (information to be given to accounting authorities) as it applies to LLPs by virtue of regulation 46 of the 2008 Regulations, substitute “the Conduct Committee”.

*Norman Lamb*

Parliamentary Under Secretary of State for Employment Relations, Consumer and Postal Affairs  
31st May 2012  
Department Business, Innovation and Skills

## EXPLANATORY NOTE

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

This Order appoints and authorises the Conduct Committee established under the articles of association of the Financial Reporting Council Limited for certain purposes under the Companies (Audit, Investigations and Community Enterprise) Act 2004 (“the 2004 Act”) and the Companies Act 2006 (“the 2006 Act”). It extends to the whole of the United Kingdom.

Article 2 appoints the Conduct Committee to exercise the functions described in section 14(2) of the 2004 Act. These functions are keeping certain periodic accounts and reports under review, and informing the Financial Services Authority of any conclusions the Committee reaches as regards those accounts and reports. Article 2 limits the appointment to accounts and reports produced by relevant corporate bodies issuing transferable securities which are admitted to trading on a regulated market. The relevant corporate bodies are those whose home Member State is the United Kingdom for the purposes of Directive 2004/109/EC of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (“the Directive”). Under article 3 the appointment only relates to periodic accounts and reports which must be produced under Articles 4 and 5 of the Directive i.e. to annual and half-yearly reports.

Article 4 authorises the Conduct Committee for the purposes of section 456 of the 2006 Act i.e. authorises the Committee to apply to the court for a declaration (or declarator in Scotland) etc in respect of defective accounts or directors’ reports.

Article 5 imposes a record keeping requirement in relation to the functions conferred by this Order.

Article 6(1) amends the 2004 Act to permit certain information obtained by the body exercising the functions described at section 14(2) of that Act to be shared more widely. Article 6(2) amends the 2006 Act to permit certain information obtained by the person authorised for the purposes of section 456 of that Act to be shared more widely.

Subject to transitional provision, Article 7 revokes the Companies (Defective Accounts and Directors’ Reports) (Authorised Person) and Supervision of Accounts and Reports (Prescribed Body) Order 2008 (S.I. 2008/623) whereby a body known as the Financial Reporting Review Panel performed the roles now conferred upon the Conduct Committee. Article 8 contains consequential amendments in respect of limited liability partnerships.

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](http://www.bis.gov.uk) and is annexed to the Explanatory Memorandum which is available alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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STATUTORY INSTRUMENTS

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£4.00

E3607 06/2012 123607 19585

ISBN 978-0-11-152504-3



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