

**EXPLANATORY MEMORANDUM TO**  
**THE SUPERVISION OF ACCOUNTS AND REPORTS (PRESCRIBED BODY) AND**  
**COMPANIES (DEFECTIVE ACCOUNTS AND REPORTS) (AUTHORISED**  
**PERSON) ORDER 2021**

**2021 No. 465**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy, and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 In December 2018, the Independent Review of the Financial Reporting Council recommended a significant simplification of the architecture of committees and sub-committees that sit beneath the main Board, and that the Board exercise significantly stronger oversight of the investigation and enforcement functions. In its response to the Review in March 2019, the Government welcomed these recommendations and recognised that legislation might in some cases be needed to effect change.
- 2.2 The Conduct Committee of the Financial Reporting Council is currently authorised for the purposes of section 456 of the Companies Act 2006 to apply to the court for a declaration in respect of defective accounts or reports, and is appointed for the purposes of section 14(2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 to keep certain periodic accounts and reports under review, informing the Financial Conduct Authority of any conclusions that it reaches as regards those accounts and reports.
- 2.3 This Instrument authorises the Financial Reporting Council for these purposes in place of the Conduct Committee, and revokes the previous Order.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom. Company Law is a transferred matter in relation to Northern Ireland. The consent of Northern Ireland Ministers has been obtained for this instrument to extend to Northern Ireland.

## **5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **6. Legislative Context**

- 6.1 Section 457(1) of the Companies Act 2006 ('the 2006 Act') confers on the Secretary of State the power to authorise a person for the purposes of section 456 of that Act to apply to the court for a declaration in respect of defective accounts or reports. Section 14(1) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 ('the 2004 Act') confers on the Secretary of State the power to appoint a body to exercise the functions set out in section 14(2) of that Act, enabling the body to keep certain periodic accounts and reports under review and inform the Financial Conduct Authority of any conclusions it reaches as regards the accounts and reports. The Supervision of Accounts and Reports (Prescribed Body) and Companies (Defective Accounts and Directors' Reports) (Authorised Person) Order 2012 ('the 2012 Order') authorised the Conduct Committee of the FRC for the purposes of section 456 of the 2006 Act and section 14 of the 2004 Act.
- 6.2 The Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 apply relevant sections of the 2006 Act to limited liability partnerships.

## **7. Policy background**

### *What is being done and why?*

- 7.1 In response to the relevant recommendations of the Independent Review of the Financial Reporting Council in 2018, the Financial Reporting Council's Board conducted a governance review in January 2020 and agreed proposed changes to the Financial Reporting Council's governance structure.
- 7.2 To enable the intended reallocation of oversight and decision making in relation to review of corporate reports, this instrument replaces references to the Conduct Committee in legislation with references to the Financial Reporting Council as a whole.
- 7.3 The instrument makes consequential amendments to Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008, which apply sections 456 and 457 of the 2006 Act (and associated sections 458 to 462) to limited liability partnerships. The amendments reflect the authorisation of the Financial Reporting Council under section 457 of the 2006 Act in place of the Conduct Committee.
- 7.4 The instrument amends the 2012 Order and revokes most of its provisions. Articles 1 and 6 of the 2012 Order are not revoked because, while most of its provisions have either been substituted by provisions in the Statutory Auditors and Third Country Auditors Regulations 2016 (S.I. 2016/649) or are superseded by this instrument, in certain circumstances article 6 continues to have effect by virtue of the transitional provisions in regulation 1(9) to (11) of S.I. 2016/649. Article 1 provides definitions which are used in article 6.
- 7.5 Section 18A of the 2004 Act provides the Secretary of State with the power to confer an exemption from liability in damages on a body and its members when carrying out

activities specified in section 16(2) of that Act. The Companies (Bodies Concerned with Auditing Standards etc) (Exemption from Liability) Regulations 2016 confer the exemption on the Financial Reporting Council and the Conduct Committee of the Financial Reporting Council, and this instrument amends those Regulations to remove the Conduct Committee.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

9.1 Not applicable.

## **10. Consultation outcome**

10.1 A public consultation was not required.

## **11. Guidance**

11.1 Not applicable.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it does not impact on business.

## **13. Regulating small business**

13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

14.1 This regulation does not include a statutory review clause, as it is an internal administrative change to a public authority, and has no, or no significant impact, on business, charities or voluntary bodies.

## **15. Contact**

15.1 Florence Simons at the Department for Business, Energy and Industrial Strategy Telephone: 0300 0686 645 696 464 or email: Florence.simons@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Mark Holmes, Deputy Director for Business Frameworks at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Callanan at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.