

**EXPLANATORY MEMORANDUM TO**  
**THE SUPERVISION OF ACCOUNTS AND REPORTS (PRESCRIBED BODY) AND**  
**COMPANIES (DEFECTIVE ACCOUNTS AND DIRECTORS' REPORTS)**  
**(AUTHORISED PERSON) ORDER 2012**

**2012 No. 1439**

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills (BIS) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

This order appoints the Conduct Committee of the Financial Reporting Council Limited (“the FRC”) to exercise a number of functions. These functions are keeping under review certain accounts and reports; informing the Financial Services Authority of certain matters; and applying to the court for a declaration (in Scotland, a declarator) that a company’s annual accounts etc are defective and an order requiring the preparation of revised accounts etc. In addition, this order will allow the Conduct Committee more widely to share information which it has obtained using powers to compel others to provide it with information.

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

Since it amends primary legislation, article 6 has been cleared by Parliamentary Counsel.

4. **Legislative Context**

- 4.1 Section 14 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (“the 2004 Act”) allows the Secretary of State to prescribe a body to keep under review certain accounts and reports produced by companies etc which issue “transferable securities” (such as publically-traded shares) and to advise the Financial Services Authority of any conclusions it may reach as regards any such accounts and reports. Prior to the coming into force of this Order, the Financial Reporting Review Panel (“the FRRP”) established under the articles of association of the FRC is the prescribed body.

- 4.2 Section 457 of the Companies Act 2006 (“the 2006 Act”) allows the Secretary of State to authorise a body to apply to the court for declarations (or declarators) and remedial orders in respect of a company’s defective annual accounts or directors’ report. Broadly speaking, defective means failing to comply with the requirements of the 2006 Act. Prior to the coming into force of this Order, the FRRP is thus authorised.

- 4.3 The FRC is being reformed and restructured and this will involve the dissolution of the FRRP. A new body within the FRC has been established - the Conduct Committee – and this Order appoints this new body to exercise the FRRP’s abovementioned functions in place of the FRRP.
- 4.4 In connection with determining whether an issuer of transferable securities has produced accounts and reports which comply with the relevant requirements, the body prescribed under section 14 of the 2004 Act can, under section 15B, require certain persons to provide it with information. Section 15C prohibits the disclosure to third parties of any such information, whilst section 15D creates exceptions to this prohibition. In connection with determining whether a company’s annual accounts etc comply with the requirements of the 2006 Act, someone authorised under section 457 of that Act may similarly require certain persons to provide information – section 459 of the 2006 Act. Again there is a prohibition on the disclosure to third parties of that information and there are exceptions to this prohibition – sections 460 and 461 of the 2006 Act.
- 4.5 Sections 15E and 462 of, respectively, the 2004 Act and the 2006 Act permit the Secretary of State to amend section 15D of the former and section 461 of the latter to create more exceptions to these prohibitions on the sharing of information. These powers are being exercised in this Order and for the first time.
- 4.6 An affirmative procedure instrument addressing most other aspects of the FRC’s reform and restructuring, together with certain other matters, has been laid before Parliament – the Statutory Auditors (Amendment of Companies Act 2006 Delegation of Functions etc) Order 2012. It is intended that both instruments will come into effect at the same time.

## **5. Territorial Extent and Application**

This instrument extends and applies to all of the United Kingdom.

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

The Minister for Employment Relations, Consumer and Postal Affairs, Norman Lamb MP, has made the following statement regarding Human Rights:

In my view the provisions of the Companies (Defective Accounts and Directors’ Reports) (Authorised Person) and Supervision of Accounts and Reports (Prescribed Body) Order 2012 are compatible with the Convention rights.

## **7. Policy background**

- 7.1 The FRC is the UK's independent regulator responsible for promoting confidence in corporate reporting and governance. In October 2011 the Government and the FRC launched a joint consultation outlining proposals to reform the work of the FRC to improve its efficiency and effectiveness; rationalise and minimise the regulatory burdens on market participants; and reinforce the FRC's independence from those it regulates. Originally, the planned implementation date was April 2012, but July 2012 is now proposed. A number of the changes which emerged from the consultation require amendments to legislation. The policy gives rise to two types of legislative change: firstly, amendments to the 2006 Act in connection with overseeing the accountancy professional bodies (responsible for authorising and supervising their "statutory auditor" members) and, secondly, replacing existing appointments of, and delegations to, the FRC's current divisions or operating bodies with (in most cases) appointments of, and delegations to, the FRC itself.
- 7.2 Most of the legislative changes are contained in the Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc) Order 2012. This Order addresses those functions exercised by the FRRP i.e. those functions which, after the FRRP's dissolution, it is proposed will be exercised by the new Conduct Committee of the FRC, as opposed to the FRC itself. The considerations which informed the policy decision to "ring fence" the relevant functions within part of the FRC included not wanting the Board of the FRC to be responsible for individual regulatory action and keeping distinct the functions of issuing accounting standards and taking enforcement action involving the failure to comply with those standards.
- 7.3 The new information sharing provisions will allow the Conduct Committee to disclose information (obtained using its compulsory powers) to facilitate the inspection of audit work – itself a function of a public nature. In practice any such disclosures will usually be to those carrying out these inspections.

## **8. Consultation outcome**

The consultation on FRC reform was launched in October 2011 and closed on 10 January 2012. A total of 75 responses were received. The main concerns raised were to do with ensuring the quality of accounting standards (granted that the relevant operating body, the Accounting Standards Board, is being dissolved) and the continued international influence of these standards; maintaining appropriate governance arrangements; maintaining appropriate procedures and sanctions in relation to conduct; and defining the respective roles of the Council and the accountancy professional bodies. In their joint response to the consultation ([www.bis.gov.uk/Consultations](http://www.bis.gov.uk/Consultations)), the Government and the FRC have explained that the FRC will maintain a strong contribution to EU and international policy-making; that the FRC will enhance the role of the new Committees to address concerns as

regards the setting of accounting standards; and that the FRC will be publishing additional detail about the operation of the new sanctioning regime.

**9. Guidance**

None

**10. Impact**

10.1 For the most part this instrument is simply appointing a new FRC body to carry out functions currently exercised by another, moribund, FRC body. That being the case, there will be no impact upon business, charities or voluntary bodies.

10.2 This instrument affects the FRC and the public sector is affected in so far as the FRC is carrying out public functions. There is otherwise no public sector impact.

10.2 An Impact Assessment specific to this Order has not been prepared. The Impact Assessment in respect of the FRC reform and restructuring project as whole is attached will be published alongside this Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk)

**11. Regulating small business**

This is not relevant.

**12. Monitoring & review**

The FRC will monitor the implementation of the changes, particularly to see if they contribute to the efficiency of the capital markets. Additionally, the Council will conduct an in-depth review in 2015.

**13. Contact**

Angela Rabess at the Department of Business, Innovation and Skills, Tel: 020 7215 1661 or email: [angela.rabess@bis.gsi.gov.uk](mailto:angela.rabess@bis.gsi.gov.uk) can answer any queries regarding the instrument.