Draft Order laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, and under sections 1252(11), 1290 and 1292(3) and (4) of the Companies Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No.0000

COMPANIES AUDITORS

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

Made - - - -	***
Coming into force - -	*2nd July 2012*

The Secretary of State makes this Order in exercise of the powers conferred by section 2(2)(a) and (b) of the European Communities Act 1972(**1**) ("the 1972 Act") and by sections 464(1) and (3), 504(1)(b)(ii), 525(1)(a)(ii), 1228(1), (2) and (6), 1231(4), 1239, 1252(1), (2)(b), (4)(a), (5), (6), (7) and (8), 1253(4) and 1292(1)(b) and (c) and (2) of, and paragraphs 7(3) and 11(2) and (3)(a) of Schedule 13 to, the Companies Act 2006(**2**) ("the 2006 Act").

The Secretary of State is a Minister designated(**3**) for the purposes of section 2(2) of the 1972 Act in relation to auditors and the audit of accounts.

It appears to the Secretary of State that it is no longer in the public interest that the Statutory Auditors (Delegation of Functions etc) Order 2008(**4**) should remain in force.

It appears to the Secretary of State that the Financial Reporting Council Limited(**5**) is able and willing to exercise the functions transferred by Part 3 of this Order and to discharge the function (supervision of Auditors General) mentioned in section 1229(1) of the 2006 Act.

It appears to the Secretary of State that that body has arrangements in place relating to the exercise of the functions transferred by Part 3 of this Order, and to the discharge of the function mentioned in section 1229(1) of the 2006 Act, which are such as to be likely to ensure that those functions will be exercised effectively and in accordance with the relevant requirements and provisions specified in this Order.

In accordance with paragraph 2(2) of Schedule 2 to the 1972 Act and with sections 1252(11), 1290 and 1292(3) and (4) of the 2006 Act, a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament.

(**1**) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).
(**2**) 2006. c.46.
(**3**) S.I. 2007/1679.
(**4**) S.I. 2008/496.
(**5**) A company registered in England and Wales with number 02486368.

PART 1

Introduction

Citation and coming into force

1.—(1) This Order may be cited as the Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc) Order 2012.

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

Interpretation

2. In this Order—

"the 2008 Regulations" means the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008(**6**);

"the Act" means the Companies Act 2006;

"coming into force" means the coming into force of this Order;

"the designated body" means the Financial Reporting Council Limited; and

"LLPs" means limited liability partnerships.

Schedule

3. The Schedule (which makes minor and consequential amendments) has effect.

PART 2

Amendment of the Act

Substitution for section 1225

4. For section 1225 of the Act (compliance orders), substitute—

"**Enforcement: General**

1225.—(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(**7**) or 3(**8**) 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(**9**) of Schedule 11 is not satisfied, or

(**6**) S.I. 2008/1911, amended by S.I. 2009/1804; there are other amending instruments but none is relevant.
(**7**) 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.
(**8**) 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.
(**9**) Part 2 of Schedule 11 was amended by regulation 44 of S.I. 2007/3494.

(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).

Directions: General

1225A.—(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.

Directions: supplementary

1225B.—(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 directions decision notice was published.

Compliance orders

1225C.—(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.

Financial penalties: general

1225D.—(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.

Financial penalties: supplementary

1225E.—(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—