

**EXPLANATORY MEMORANDUM TO  
THE INDEPENDENT SUPERVISOR APPOINTMENT ORDER**

**2007 No. 3534**

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

**2. Description**

- 2.1 This instrument appoints the Professional Oversight Board, established under the articles of association of the Financial Reporting Council Ltd, as the independent supervisor of the Auditors General when they act as statutory auditors.

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

None.

**4. Legislative background**

- 4.1 This is the first use of the appointment power under section 1228 of the Companies Act 2006. It provides for the Secretary of State to appoint, by order, an independent supervisor of the performance of each Auditor General as a statutory auditor. Under Directive 2006/43 EC on statutory audits of annual accounts and consolidated accounts, (“the Audit Directive”) an independent supervision framework is required if the Auditors General are to become statutory auditors and thus eligible to audit companies.
- 4.2 Sections 1229 to 1238 of the 2006 Act set out the detail of the independent supervisor’s functions. Sections 1229 and 1230 are amended by regulations 9 and 10 of the Statutory Auditors and Third Country Auditors Regulations 2007 (SI 2007/xxxx). Those Regulations, the relevant provisions of the 2006 Act, and this Order all come into force on 6<sup>th</sup> April 2008.
- 4.3 Under the Act, it is intended that the Professional Oversight Board is also to carry out other supervisory functions in relation to statutory auditors other than the Auditors General by virtue of the Statutory Auditors (Delegation of Functions etc) Order 2008.
- 4.4 By virtue of section 1228(3) of the 2006 Act, this Order has the effect of designating the Professional Oversight Board for the purposes of the Freedom of Information Act 2000 (2000 c.36).

## 5. **Extent**

5.1 This instrument applies to all of the United Kingdom.

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

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

## 7. **Policy background**

7.1 In the 2002 response to Lord Sharman's Report  *Holding to Account* <sup>1</sup>, the Government agreed in principle that the Comptroller & Auditor General (C&AG) should have statutory authority to audit all non-departmental public bodies (NDPBs). The government has implemented this policy either by including provision in the founding legislation of new NDPBs or through instruments under section 25(6) of the Government Resources and Accounts Act 2000 (2000 c.20).

7.2 However, the C&AG is not currently eligible to audit NDPBs that are companies and NDPB subsidiaries that are companies. One reason for this has been because he does not meet the requirements in the Audit Directive that all statutory auditors of companies should be subject to independent public oversight. The Auditors General for Scotland, Wales and the Comptroller & Auditor General for Northern Ireland are not currently eligible to audit companies for the same reason.

7.3 These provisions in the Companies Act 2006 will enable the Auditors General to become eligible to audit companies, including NDPB companies and subsidiaries of NDPBs that are companies. The Auditors General have indicated that they will restrict the use of their powers to audit companies to those companies linked to public bodies contemplated by the Sharman report.

7.4 This instrument sets requirements and provisions on the way in which the Professional Oversight Board is to exercise its supervision function. These include a requirement for financial statements of the Board's expenditure to be audited by an auditor other than an Auditor General and published, in line with a commitment given during consideration of the Companies Bill on Report in the House of Lords (HL Debates 16 May 2006 c245).

## 8. **Impact**

8.1 The appointment order completes the arrangements in Chapter 3 of Part 42 of the Companies Act, empowering the Auditors General to conduct the audit of certain government bodies constituted as companies. It affects a limited group of public sector bodies. It does

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<sup>1</sup> Audit and Accountability in Central Government – CM 5456, March 2002

not impose any new administrative burdens on them. While simplifying their audit arrangements, the financial benefits are limited. In these circumstances, a full formal impact assessment is not necessary.

9. **Contact**

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