

**EXPLANATORY MEMORANDUM TO THE COMPANIES (DEFECTIVE  
ACCOUNTS) (AUTHORISED PERSON) ORDER 2005**

**2005 No. 699**

**1.** This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 The order authorises the Financial Reporting Review Panel (“the Panel”) as a person able to apply to the court to order a company to revise its accounts. The Panel is an unincorporated association formed under the articles of association of the Financial Reporting Review Panel Limited. The order also revokes the existing authorisation of the Financial Reporting Review Panel Limited.

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

3.1 None.

**4. Legislative Background**

4.1 Section 245B of the Companies Act 1985 (“the 1985 Act”) gives the Secretary of State the power to apply to the court to order a company to revise its accounts on the basis that they do not comply with the requirements of the 1985 Act. Section 245C of the 1985 Act, as amended by section 10 of the Companies (Audit, Investigations and Community Enterprise) Act 2004, allows the Secretary of State to authorise a person to carry out this function.

4.2 The Companies (Defective Accounts) (Authorised Person) Order 1991 [S.I. 1991/13] authorised the Financial Reporting Review Panel Limited for the purposes of section 245B. S.I. 1991/13 is revoked by this Order.

4.3 The aim of the Order is to ensure that the authorisation reflects the fact that it is the Panel formed under the articles of association of the limited company that carries out the enforcement of accounting requirements, rather than the limited company itself.

**5. Extent**

5.1 This instrument applies to Great Britain.

**6. European Convention on Human Rights**

6.1 The Minister for Industry and the Regions and Deputy Minister for Women & Equality, Jacqui Smith has made the following statement regarding Human Rights:

In my view, the provisions of the Companies (Defective Accounts) (Authorised Person) Order 2005 are compatible with the Convention rights.

## **7. Policy Background**

7.1 Under the 1985 Act, companies are able voluntarily to revise their accounts where the directors consider that they do not comply with the requirements of the 1985 Act. The Act also allows the Secretary of State to apply to the court to require a company to revise its accounts and to authorise a person to carry out this function. The person who is currently authorised is the Financial Reporting Review Panel Limited.

7.2 The reviews undertaken by Government following the corporate scandals of Enron and WorldCom (in particular, the work of the Co-ordinating Group on Audit and Accounting Issues) concluded that the Panel's enforcement role should be strengthened. A number of changes were made to the Panel's role by the Companies (Audit, Investigations and Community Enterprise) Act 2004. In particular, it:

- Gives the power to extend Panel's scope to cover periodic accounts or reports required under listing rules in addition to the annual accounts required by company law;
- provides the Panel with a statutory power to require the company and its auditors to make information available to it; and
- opens a legal gateway to enable the disclosure of information by the Inland Revenue to the Panel.

7.3 In the light of these changes, together with the Panel's move from a reactive (complaints-driven) enforcement regime to more proactive enforcement, the Government considers that it is desirable to make a technical change to the Panel's statutory authorisation. The change reflects the fact that it is the Panel rather than the limited company that carries out the enforcement function.

## **8. Impact**

8.1 A Regulatory Impact Assessment (RIA) has not been prepared for this instrument as no impact on the private or voluntary sector is foreseen. There are no public sector impacts.

## **9. Contact**

Rob Cottam at the Department of Trade and Industry, tel: 020 7215 0169 or e-mail: [Rob.Cottam@dti.gsi.gov.uk](mailto:Rob.Cottam@dti.gsi.gov.uk) can answer any queries regarding the instrument.