

Economy and Fair Work Committee

SSI cover note

22nd Meeting 2022, (Session 6), 5 October 2022

Title of Instrument:	Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) (No.2) Order 2022
Laid Date:	5 September 2022
Reporting deadline:	30 October 2022
Type of instrument:	Affirmative

Parliamentary procedure:

The affirmative procedure means an instrument cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).

Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee (usually the committee which examined the Bill for the Act that the SSI is made under or whose remit is most aligned).

It is usual practice for the lead committee to take evidence from the relevant Scottish Minister and officials in advance of formally considering the motion to approve the instrument. During the evidence session, the committee can ask the minister and any officials questions about the instrument.

Next, the Minister proposes, by motion, that the lead committee recommend the instrument or draft instrument be approved. The committee has up to 90 minutes to debate the motion. Officials are not allowed to speak in any debate.

The lead committee must report its decision on the motion to Parliament within 40 days of the instrument being laid. If the Committee agrees the motion and recommends the instrument should be approved, that recommendation is put to a vote in the Chamber. If the lead committee does not approve the motion to approve an instrument, it reports that fact to the Parliament and it is then for the Parliamentary Bureau to decide whether MSPs should vote on it in the Chamber.

Purpose

1. The regulations are attached at **Annexe A** and the Policy Note is attached at **Annexe B**.
2. The purpose of the instrument is to enable the Scottish Futures Trust Ltd (SFT) to have their accounts audited by the Auditor General for Scotland, and to have an Accountable Officer appointed.
3. [Scottish Futures Trust Limited](#) is a private limited company established under the [Companies Act 2006](#). The SFT was established as a new “arm's length” body to support the efficiency and effectiveness of public infrastructure planning, funding and delivery in Scotland.
4. The relationship between the Scottish Government and the SFT is formally defined within the [Management Statement and Financial Memorandum](#) signed in 2008, but currently under review. The SFT has been classified as an executive non-departmental public body since 2011.
5. As a public body, the SFT is expected to have an Accountable Officer, who is responsible for the economic, efficient and effective use of all related resources and personally answerable to the Parliament for the exercise of their functions. For the purposes of the [Public Finance and Accountability \(Scotland\) Act 2000](#), the Permanent Secretary, as Principal Accountable Officer, is not automatically able to appoint an Accountable Officer within SFT as it is not part of the Scottish Administration. The Principal Accountable Officer (the Permanent Secretary) is currently the Accountable Officer for the SFT. In practice, the relationship is managed by the Director General of the Scottish Exchequer and Director for Budget and Public Spending, working closely with the chief executive of SFT.
6. To appoint an Accountable Officer, an order is required under section 483 of the Companies Act 2006, requiring SFT accounts to be audited by the Auditor General for Scotland (AGS). The accounts will then be audited either by Audit Scotland, or by a private sector accountant appointed by Audit Scotland. These accounts will be laid before the Scottish Parliament and the AGS will be able to present reports on those accounts, or undertake performance audits of the SFT under s22 and s23 of the [Public Finance and Accountability \(Scotland\) Act 2000](#).
7. The following amendment will be made to the Act—

- Adding Scottish Futures Trust to the list of bodies audited by the Auditor General for Scotland

Delegated Powers and Law Reform Committee consideration

8. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [20 September](#) and made no recommendations.

For decision

9. The Committee must decide whether or not to agree the motion and then report to Parliament by 30 October 2022.

**Economy and Fair Work Committee Clerks
30 September 2022**

Draft Order laid before the Scottish Parliament under section 483(5) of the Companies Act 2006, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

COMPANIES

The Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) (No. 2) Order 2022

<i>Made</i>	- - - -	2022
<i>Coming into force</i>	- -	2022

The Scottish Ministers make the following Order in exercise of the powers conferred by section 483(1) and (4) of the Companies Act 2006(a) and all other powers enabling them to do so.

In accordance with section 483(2) of the Companies Act 2006, it appears to Scottish Ministers that Scottish Futures Trust Limited is entirely or substantially funded from a body having accounts falling within paragraph (a) or (b) of section 483(3) of that Act.

In accordance with section 483(5) of that Act, a draft of the Order has been laid before, and approved by resolution of, the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) (No. 2) Order 2022 and comes into force on the day after it is made.

(2) In this Order “the Company” means Scottish Futures Trust Limited, a private limited company bearing company number SC348382 and having its registered office at 1st Floor, 11-15 Thistle Street, Edinburgh, EH2 1DF.

Scottish Futures Trust Limited: audit by the Auditor General for Scotland

2. The accounts of the Company are to be audited by the Auditor General for Scotland.

(a) 2006 c. 46.

Disapplication of audit requirements of Part 16 of the Companies Act 2006

3. The requirements of Part 16 of the Companies Act 2006 as to audit of accounts do not apply to the Company for a financial year if its accounts are in that year to be audited by the Auditor General for Scotland.

Name

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
Date

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order provides that Scottish Futures Trust Limited (“the Company”), being a company with a registered office in Scotland, is to have its accounts audited by the Auditor General for Scotland. Article 3 provides that the company will be exempt from the auditing of company accounts requirements of Part 16 of the Companies Act 2006.

POLICY NOTE

THE COMPANIES ACT 2006 (SCOTTISH PUBLIC SECTOR COMPANIES TO BE AUDITED BY THE AUDITOR GENERAL FOR SCOTLAND) (NO. 2) ORDER 2022

SSI 2022/XXX

The above instrument was made in exercise of the powers conferred by section 483 of the Companies Act 2006. The instrument is subject to *affirmative procedure*.

Purpose of the instrument: To enable the Scottish Futures Trust Ltd (SFT) to have their accounts audited by the Auditor General for Scotland, and to have an Accountable officer appointed.

Policy Objectives

Scottish Futures Trust Limited is a private limited company (company number SC348382) established under the Companies Act 2006 in 2008. Since 2011 it has been classified as an executive non-departmental public body.

As a matter of policy, Scottish Futures Trust, as an executive non-departmental public body would be expected to have an Accountable Officer. Scottish Futures Trust is not part of the Scottish Administration in terms of the Scotland Act 1998. This means that for the purposes of the Public Finance and Accountability (Scotland) Act 2000 (“the 2000 Act”), the Permanent Secretary as Principal Accountable Officer is not automatically able to appoint an Accountable Officer to Scottish Futures Trust. To appoint an Accountable Officer an Order is required under section 483 of the Companies Act 2006, requiring Scottish Futures Trust accounts to be audited by the Auditor General for Scotland (AGS), which engages the relevant provisions of Part 2 of the 2000 Act, including power to designate an Accountable Officer for Scottish Futures Trust under section 15 of that Act.

Consultation

Audit Scotland and Scottish Futures Trust were consulted during the preparation of the instrument. Responses have confirmed that the AGS is willing to assume the auditing role and both bodies have helped assist with best timings for introduction.

Impact Assessments

No impact assessments were undertaken given the administrative nature of this instrument.

Financial Effects

The *Minister for Business, Trade, Tourism and Enterprise* confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no financial effects on the Scottish Government, local government or on business. The current auditor contract was due to end in 2022-23 so no financial or legal penalties would arise.

Infrastructure Investment Division
Budget and Public Spending Directorate
Scottish Government

September 2022