

# Net Zero, Energy and Transport Committee

## 18<sup>th</sup> Meeting, 2022 (Session 6), Tuesday, 24 May 2022

### Subordinate Legislation - The Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2022

SSI 2022/Draft

<b>Title of Instrument:</b>	The Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2022
<b>Type of Instrument:</b>	Affirmative
<b>Laid Date:</b>	29 April 2022
<b>Circulated to Members:</b>	6 May 2022
<b>Meeting Date:</b>	24 May 2022
<b>Minister to attend meeting:</b>	Yes
<b>Motion to approve:</b>	<a href="#">S6M-04466</a>
<b>Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?</b>	No
<b>Reporting deadline:</b>	07 June 2022

## Background

1. On 1 April 2022, operation of ScotRail services transferred to Scottish Rail Holdings Ltd, the arms-length company owned and controlled by the Scottish Government.
2. The Scottish Government says that the purpose of the instrument is to enable Scottish Rail Holdings Ltd to have their accounts audited by the Auditor General for Scotland, and to have an Accountable Officer appointed.
3. An electronic copy of the order is available online. [Read the order](#). Copies of the Scottish Government's Explanatory and Policy Notes are included in **Annexe A**.

## Delegated Powers and Law Reform Committee consideration

4. At its [meeting on 10 May 2022](#), the DPLR Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit. [Read the Official report for the meeting on 10 May 2022.](#)

## Procedure for Affirmative instruments

5. An Order subject to affirmative procedure cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).
6. Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee (i.e. the Committee within whose remit the subject matter of the instrument falls). It is for the Net Zero, Energy and Transport Committee to recommend to the Parliament whether the Order should be approved.
7. It is usual practice for the lead committee to take evidence from the relevant Scottish Minister in advance of the motion for approval being formally moved. The committee can use this evidence session to ask the minister and their officials questions about the SSI.
8. Once the motion is moved, the Committee may debate whether to approve the instrument. Only Committee Members and the relevant Minister may take part in the debate and, if there is a vote, only Committee Members may take part.
9. The lead committee must report its recommendation to Parliament within 40 days of the SSI being laid. If the committee agrees the SSI should be approved, the whole of the Parliament then gets a chance to vote on it in the Chamber. If the lead committee decides the SSI should not be approved, the Parliamentary Bureau decides whether MSPs should vote on it in the Chamber.

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Net Zero, Energy and Transport Committee

## Annexe A

### Scottish Government Explanatory Note

Article 2 of this Order provides that Scottish Rail Holdings 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.

### Scottish Government Policy Note

#### POLICY NOTE

The Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2022

SSI 2022/XXX

The above instrument will be made in exercise of the powers conferred by section 483(1) and (4) of the Companies Act 2006. The instrument is subject to the affirmative procedure.

#### Purpose of the instrument

To enable Scottish Rail Holdings Ltd to have their accounts audited by the Auditor General for Scotland, and to have an Accountable Officer appointed.

#### Policy Objectives

Scottish Rail Holdings is a private limited company (company number SC548826) established under the Companies Act and an executive non-departmental public body. Scottish Rail Holdings and its subsidiary ScotRail Trains Limited, were established by Transport Scotland on behalf of Scottish Ministers to further the discharge of their duties under Section 30 of the Railways Act 1993 with effect from 1 April 2022. The Scottish Ministers are the sole shareholder of Scottish Rail Holdings.

As a matter of policy, Scottish Rail Holdings, as an executive non-departmental public body would be expected to have an Accountable Officer. Scottish Rail Holdings 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 Rail Holdings as a purely administrative exercise. To enable that to happen, an Order is required under section 483 of the Companies Act 2006, requiring Scottish Rail Holdings accounts to be audited by the Auditor General for Scotland, which engages the

relevant provisions of Part 2 of the 2000 Act, including power to designate an Accountable Officer for Scottish Rail Holdings under section 15 of that Act.

ScotRail Trains Limited, (company number SC328826) will have its accounts treated as part of Scottish Rail Holdings' group accounts being a subsidiary company in terms of section 479A of the Companies Act 2006.

### Consultation

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

### Impact Assessments

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

### Financial Effects

The Cabinet Secretary for Finance confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no material financial effects on the Scottish Government, local government or on business.

Rail Directorate  
Transport Scotland  
Scottish Government  
April 2022