

Net Zero, Energy and Transport Committee  
Tuesday 3 September 2024  
24<sup>th</sup> Meeting, 2024 (Session 6)

## **Note by the Clerk on the Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2024 (draft)**

### **Overview**

1. At this meeting, the Committee will consider a draft Scottish Statutory Instrument (SSI), under the procedure set out below:

**Title of instrument:** [The Companies Act 2006 \(Scottish public sector companies to be audited by the Auditor General for Scotland\) Order 2024 \[draft\]](#)

**Laid under:** Section 483(1) of the [Companies Act 2006](#)

**Laid on:** 03 June 2024

**Procedure:** Affirmative

**Lead committee to report by:** 15 September 2024

**Commencement:** If approved, it comes into force on 1 October 2024

### **Procedure**

2. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament. Once laid, the instrument is referred to:
  - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
  - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
3. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
4. In line with standard practice for affirmative instrument, there will be two agenda items for this item:
  - an evidence session with the relevant Minister and officials, followed by
  - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
5. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote.

If the motion is agreed to, it is for the Chamber to later decide whether to approve the instrument.

## **Delegated Powers and Law Reform Committee consideration**

6. The DPLR Committee considered the instrument on 11 June and reported on it in its [41<sup>st</sup> Report, 2024](#). It made no recommendations about the instrument.

## **Purpose of the instrument**

7. This Order sets out that the accounts of Zero Waste Scotland are to be audited by the Auditor General for Scotland, bringing Zero Waste Scotland within the scope of the Public Finance and Accountability (Scotland) Act 2000. The Order also sets out that the requirements of Part 16 of the Companies Act 2006 relating to the audit of company accounts do not apply to Zero Waste Scotland for a financial year if its accounts in that year are to be audited by the Auditor General for Scotland.
8. The policy note explains that, once Zero Waste Scotland has transitioned to an executive non-departmental public body, it will be expected to have an Accountable Officer. As Zero Waste Scotland is not currently part of the Scottish Administration in terms of the Scotland Act 1998, the Permanent Secretary of the Scottish Government as the Principal Accountable Officer is not able to appoint an Accountable Officer for Zero Waste Scotland.
9. Once the Order is in force, and Zero Waste Scotland is within the scope of the Public Finance and Accountability (Scotland) Act 2000, the Principal Accountable Officer will be able to designate a member of staff of Zero Waste Scotland as its Accountable Officer under section 15(3) of the 2000 Act. The policy note states that it is expected that the designated member of staff will be the Chief Executive.
10. The Policy Note accompanying the instrument is included in the annexe. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

## **Report**

11. The Convener will invite the Committee to delegate to him authority for considering and approving a draft report prepared by the clerks after the meeting. In relation to any report finalised in this way, Committee Members may ask to see the draft and comment on it before the Convener authorises it for publication.

## **Clerks to the Committee September 2024**

## **Annexe: Scottish Government Policy Note**

### **POLICY NOTE**

#### **THE COMPANIES ACT 2006 (SCOTTISH PUBLIC SECTOR COMPANIES TO BE AUDITED BY THE AUDITOR GENERAL FOR SCOTLAND) ORDER 2024**

#### **SSI 2024/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 make provision that the accounts of Zero Waste Scotland are to be audited by the Auditor General for Scotland, which will enable an accountable officer to be appointed for Zero Waste Scotland.

#### **Policy Objectives**

Zero Waste Scotland Limited is a private limited company (company number SC436030) which was incorporated under the Companies Act 2006 in November 2012. In April 2023, the Office for National Statistics (ONS) classified Zero Waste Scotland as a public sector organisation. Work is underway to transition Zero Waste Scotland to an executive non-departmental public body.

This Order, made under section 483 of the Companies Act 2006, sets out that the accounts of Zero Waste Scotland are to be audited by the Auditor General for Scotland. This brings Zero Waste Scotland within the scope of the Public Finance and Accountability (Scotland) Act 2000 (“the 2000 Act”). The Order also sets out that the requirements of Part 16 of the 2006 Act relating to the audit of company accounts do not apply to Zero Waste Scotland for a financial year if its accounts in that year are to be audited by the Auditor General for Scotland.

As a matter of policy, Zero Waste Scotland, as an executive non-departmental public body, will be expected to have an Accountable Officer. Zero Waste Scotland is not part of the Scottish Administration in terms of the Scotland Act 1998. This means that under the purposes (“the 2000 Act”) the Permanent Secretary of the Scottish Government as the Principal Accountable Officer is not able to appoint an Accountable Officer for Zero Waste Scotland. Once this Order is in force and the accounts of Zero Waste Scotland are auditable by the Auditor General for Scotland, the Principal Accountable Officer is able to designate a member of staff of Zero Waste Scotland as its Accountable Officer under section 15(3) of the 2000 Act. It is expected that the Chief Executive of Zero Waste Scotland will be designated.

#### **EU Alignment Consideration**

This instrument is not relevant to the Scottish Government’s policy to maintain alignment with the EU.

#### **Consultation**

Audit Scotland and Zero Waste Scotland 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 *Cabinet Secretary for Net Zero and Energy* 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 for Zero Waste Scotland is due to end in 2024/25 so no financial or legal penalties will arise for ZWS, as the AGS is expected to formally commence its auditing role during 2025 following ZWS preparing its annual accounts to 31st March 2025. It is expected these annual accounts will be presented to AGS by July 2025.

Environment & Forestry Directorate  
Scottish Government

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