EXPLANATORY MEMORANDUM TO

THE FINANCIAL REPORTING COUNCIL (MISCELLANEOUS PROVISIONS) ORDER 2021

2021 No. [XXXX]

1. Introduction

This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This instrument imposes three statutory duties and regulatory requirements on the Financial Reporting Council (FRC). It designates the FRC as a public authority for the purposes of the Freedom of Information Act 2000 (c.36) in respect of specific public functions. It ensures that all the regulatory functions exercised by the FRC are subject to the Regulators' Code. It also confirms the FRC's responsibilities to adhere to the Public Sector Equality Duty, by adding the FRC to the list of public authorities which are explicitly subject to the duty.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

The territorial application of this instrument includes Scotland and Northern Ireland.

The powers under which this instrument is made cover the whole of the UK with the exception of those powers in the Equality Act 2010 (c. 15) which only cover Scotland and England and Wales. The territorial application of this instrument is not limited by the other Acts under which it is made and the territorial extent of this instrument is not limited by any of its provisions.

4. Extent and Territorial Application

The territorial extent of this instrument is the United Kingdom.

The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

The Minister for Climate Change and Corporate Responsibility, Lord Callanan, has made the following statement regarding Human Rights:

"In my view the provisions of The Financial Reporting Council (Miscellaneous provisions) Order 2021 are compatible with the Convention rights."

6. Legislative Context

Freedom of Information

The Freedom of Information Act 2000 ("the FOI Act") applies to public authorities as defined by section 3 of that Act. Included in that definition is a body designated by an Order made under section 5 of that Act. Section 5(1)(a) of that Act allows the Secretary of State or Minister for the Cabinet Office to designate a public authority which appears to exercise functions of a public nature.

Section 5(3) of the FOI Act states that before making an Order under this section the Secretary of State or Minister for the Cabinet Office must consult every person to whom this Order relates, or persons appearing to represent such persons.

Section 7(5) of the FOI Act provides that an Order under section 5(1) must specify the functions of the public authority designated by the Order with respect to which the designation is to have effect.

Regulators' Code

Section 24 of the Legislative and Regulatory Reform Act 2006 (c. 51) ("the LRRA") makes provision for an Order specifying the regulatory functions to which the duties in sections 21 and 22 of that Act apply.

Section 21 of the LRRA sets out the principles to which any person exercising a regulatory function must have regard.

Section 22 of the LRRA provides for the issuing of a code of practice (the Regulators' Code) to which that person must have regard.

Section 24(6) of the LRRA requires the Secretary of State to consult representatives of persons whose functions are specified in this Order and such other persons as the Secretary of State considers appropriate.

Public Sector Equality Duty

Section 151(1) of the Equality Act 2010 provides a Minister of the Crown with the ability, by Order, to amend Schedule 19, which is a list of specified public authorities that are subject to the public sector equality duty. The duty is imposed by section 149(1) of that Act but it is extended to the bodies on the list so that a Minister of the Crown may, if required, impose specific duties on them for the purpose of enabling the better implementation of the public sector equality duty.

Section 152(1) of the Equality Act 2010 requires the Secretary of State to consult with the Commission for Equality and Human Rights before amending Schedule 19 to extend the public sector equality duty to a new body.

7. Policy background

What is being done and why?

This Order imposes specific duties on the FRC related to Freedom of Information, the Regulators' Code and the Public Sector Equality Duty (PSED).

The FRC is the UK's independent regulator of accounting and reporting and competent authority for external audit. The role of the FRC has developed over time, and in 2017 the Department for Business, Energy and Industrial Strategy concluded that the

Department should work with the FRC to ensure the application of all relevant public body guidelines.

In 2018 the Government commissioned an independent Review of the FRC. The Review recommended that the Regulator should be subject to the FOI Act and the Regulators' Code. The Government has committed to implement these changes.

The Government is also legislating to add FRC to the list of bodies subject to the Public Sector Equality Duty. These changes will ensure that the FRC's position is consistent with those of other public authorities and regulators.

Freedom of Information

The FRC is already subject to the FOI Act in respect to certain statutory functions, including the functions that have been delegated to it under sections 1228 and 1252 of the Companies Act 2006. The Government intends to ensure full transparency and accountability of the regulator, and therefore to bring all other appropriate functions in scope of the FOI Act.

It appears to the Secretary of State that the FRC exercises functions of a public nature in relation to all of its functions specified in Article 4 of this Order and they are therefore eligible for inclusion in an Order made under section 5 of the FOI Act in respect of those functions.

Regulators' Code

The Regulators' Code provides a principles-based framework for how regulators should engage with those they regulate. It aims to promote proportionate, consistent, accountable and targeted regulatory activity. To achieve this, it encourages transparent dialogue between regulators and those they regulate.

The FRC is already subject to the Regulators' Code in respect of the regulatory functions that have been delegated to it under section 1252 of the Companies Act 2006, and in respect of specific regulatory functions that are exercised by the FRC's Conduct Committee under section 456 of that Act. This Order applies the Regulators' Code to the remaining regulatory functions of the FRC.

The Order omits the inclusion of the regulatory functions listed in regulation 3 of the Statutory Auditors and Third Country Auditors Regulations 2016 (SI 2016/649) which the FRC as the competent authority for statutory audit has delegated to the Recognised Supervisory Bodies (RSBs). This will ensure that in carrying out regulatory functions exercisable by the FRC, but delegated to the Recognised Supervisory Bodies (RSBs), the RSBs do not become subject to the Regulators' Code.

Public Sector Equality Duty

The Public Sector Equality Duty requires public authorities or those exercising public functions to have due regard, in the exercise of their functions, to specified equality aims.

The FRC is already subject to the public sector equality duty when exercising public functions by virtue of section 149(2) of the Equality Act 2010.

This Order adds FRC to the list of public authorities in Schedule 19 which are subject to the duty. This provides greater certainty as to the extent to which the FRC is subject to the duty. Listing a body in Schedule 19 also allows a Minister of the Crown, through

application of section 153(1) of the Act, by regulations to impose specific duties on that body for the purpose of enabling the better performance of the duty imposed by section 149(1).

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

This instrument does not relate to withdrawal from the European Union.

9. Consolidation

This is not a consolidation.

10. Consultation outcome

In accordance with section 5(3) of the FOI Act the FRC was consulted on the application of the Freedom of Information Act. The FRC supported the application of the FOI Act to its public functions.

The FRC was consulted on the application of the Regulators' Code. The Recognised Supervisory Bodies, which have been delegated some of the FRC's regulatory functions but will not be subject to the Code, were also consulted. All parties consulted supported the position in the Order.

In accordance with section 152(1) of the Equality Act 2010, the Commission for Equality and Human Rights has been consulted and was content. In accordance with section 151(8) of that Act, the Secretary of State considers that the extension of the application of section 149 relates to persons by whom a public function is exercisable.

11. Guidance

Guidance is not required.

12. Impact

There is no, or no significant, impact on business, charities or voluntary bodies.

There is no, or no significant, impact on the public sector.

An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, voluntary or public sectors is foreseen.

13. Regulating small business

The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

No specific monitoring and review arrangements are needed.

15. Contact

Laura Thomson at the Department for Business, Energy and Industrial Strategy Telephone: 0207 215 8223 or email: laura.thomson@beis.gov.uk can be contacted with any queries regarding the instrument.

Mark Holmes, Deputy Director for Audit Reform and Regulation at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

Lord Callanan at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.