

2005 No. 61

COMPANIES

**The Companies (1986 Order) (Operating and Financial
Review and Directors' Report etc.) Regulations
(Northern Ireland) 2005**

Made - - - - - *2nd March 2005*

Coming into operation *31st March 2005*

*To be laid before Parliament under paragraph 7(3) of the
Schedule to the Northern Ireland Act 2000*

The Department of Enterprise, Trade and Investment(a), in exercise of the powers conferred on it by Article 265 of the Companies (Northern Ireland) Order 1986(b) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

**PART I
GENERAL**

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Companies (1986 Order) (Operating and Financial Review and Directors' Report etc.) Regulations (Northern Ireland) 2005.

(2) These Regulations come into operation on 31st March 2005.

(3) Parts II, III, IV and VI have effect as respects companies' financial years which begin on or after 1st April 2005.

(4) Part V has effect as follows –

(a) regulation 13 has effect from 1st April 2005, and

(b) regulations 14 to 16 have effect as respects annual accounts, directors' reports and operating and financial reviews prepared for companies' financial years which begin on or after 1st April 2006.

(5) In these Regulations, "the 1986 Order" means the Companies (Northern Ireland) Order 1986.

(a) Formerly the Department of Economic Development: *see* S.I. 1999/283 (N.I. 1), Article 3(5)

(b) S.I. 1986/1032 (N.I. 6); Article 265 was inserted into the 1986 Order by Article 22 of the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5)) in place of an existing Article of that number

PART II

DIRECTORS' REPORT

Duty to prepare directors' report

2. For Article 242 of the 1986 Order (duty to prepare directors' report)(a) substitute –

“DIRECTORS' REPORT

Duty to prepare directors' report

242.—(1) The directors of a company shall for each financial year prepare a report (a “directors' report”) complying with the general requirements of Article 242ZZA, and containing the business review specified in Article 242ZZB.

(2) For a financial year in which –

(a) the company is a parent company, and

(b) the directors of the company prepare group accounts,

the directors' report must be a consolidated report (a “group directors' report”) relating, to the extent specified in the following provisions of this Part, to the company and its subsidiary undertakings included in the consolidation.

(3) A group directors' report may, where appropriate, give greater emphasis to the matters that are significant to the company and its subsidiary undertakings included in the consolidation, taken as a whole.

(4) In the case of a quoted company, a directors' report need not contain any information included in the operating and financial review for that financial year (see Article 242AA).

(5) If a directors' report does not comply with the provisions of this Part relating to the preparation and contents of the report, every director of the company who –

(a) knew that it did not comply or was reckless as to whether it complied, and

(b) failed to take all reasonable steps to secure compliance with the provision in question,

is guilty of an offence and liable to a fine.

Directors' report: general requirements

242ZZA.—(1) The directors' report for a financial year must state –

(a) the names of the persons who, at any time during the financial year, were directors of the company,

(b) the principal activities of the company in the course of the year, and

(c) the amount (if any) that the directors recommend should be paid by way of dividend.

(2) In relation to a group directors' report paragraph (1)(b) has effect as if the reference to the company was a reference to the company and its subsidiary undertakings included in the consolidation.

(3) The report must also comply with Schedule 7 as regards the disclosure of the matters mentioned there.

(4) In Schedule 7 –

Part I relates to matters of a general nature, including changes in asset values, directors' shareholdings and other interests and contributions for political and charitable purposes;

Part II relates to the acquisition by a company of its own shares or a charge on them;

Part III relates to the employment, training and advancement of disabled persons;

(a) Article 242 was inserted into the 1986 Order by Article 10 of the Companies (Northern Ireland) Order 1990 in place of an existing Article of that number, and amended by S.R. 1997 No. 314 and S.R. 1997 No. 501

Part V relates to the involvement of employees in the affairs, policy and performance of the company;

Part VI relates to the company's policy and practice on the payment of creditors.

Directors' report: business review

242ZZB.—(1) The directors' report for a financial year must contain –

- (a) a fair review of the business of the company, and
- (b) a description of the principal risks and uncertainties facing the company.

(2) The review required is a balanced and comprehensive analysis of –

- (a) the development and performance of the business of the company during the financial year, and
- (b) the position of the company at the end of that year,

consistent with the size and complexity of the business.

(3) The review must, to the extent necessary for an understanding of the development, performance or position of the business of the company, include –

- (a) analysis using financial key performance indicators, and
- (b) where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters.

(4) The review must, where appropriate, include references to, and additional explanations of, amounts included in the annual accounts of the company.

(5) In this Article, “key performance indicators” means factors by reference to which the development, performance or position of the business of the company can be measured effectively.

(6) In relation to a group directors' report this Article has effect as if the references to the company were references to the company and its subsidiary undertakings included in the consolidation.”.

Auditors' report on directors' report

3. In Article 243 of the 1986 Order (auditors' report)(a), for paragraph (3) substitute –

“(3) The auditors must state in their report whether in their opinion the information given in the directors' report for the financial year for which the annual accounts are prepared is consistent with those accounts.”.

Special provision for small companies

4. For sub-paragraph (a) of Article 254(4) of the 1986 Order (exemptions for small companies from disclosures in directors' report)(b) substitute –

“(a) Articles 242ZZA(1)(c) (directors' report: amount to be paid as dividend) and 242ZZB (directors' report: business review);”.

Special provision for medium-sized companies

5. After paragraph (2) of Article 254A of the 1986 Order (special provisions for medium-sized companies)(c) insert –

“(2A) The directors' report for the year need not comply with the requirements of Article 242ZZB(3) (business review to include analysis using key performance indicators) so far as they relate to non-financial information.”.

(a) Article 243 was inserted into the 1986 Order by Article 11 of the Companies (Northern Ireland) Order 1990 in place of an existing Article of that number, and amended by S.R. 2004 No. 496 and S.R. 2005 No. 56

(b) Article 254 was inserted into the 1986 Order by Article 15 of the Companies (Northern Ireland) Order 1990, substituted by S.R. 1997 No. 436 and amended by S.R. 1997 No. 545, S.R. 2001 No. 153 and S.R. 2004 No. 496

(c) Article 254A was inserted into the 1986 Order by S.R. 1997 No. 436, and amended by S.R. 2004 No. 496

Cases in which special provisions for small and medium-sized companies do not apply

6.—(1) In Article 255A of the 1986 Order (cases in which special provisions in Articles 254 and 254A do not apply)(a), for paragraph (1) substitute –

“(1) If a company is, or was at any time within the financial year to which the accounts relate, an ineligible company, Articles 254 and 254A do not apply.

(1A) If a company does not fall within paragraph (1) but is, or was at any time within the financial year to which the accounts relate, a member of an ineligible group –

- (a) Article 254(4) and (5)(b) and Article 254(2A) apply;
- (b) the other provisions of Articles 254 and 254A do not apply.

(1B) A company is ineligible if –

- (a) it is a public company,
- (b) it has permission under Part IV of the Financial Services and Markets Act 2000 to carry on one or more regulated activities, or
- (c) it carries on an insurance market activity.”.

Amendments to Schedule 7

7.—(1) Schedule 7 to the 1986 Order (matters to be dealt with in directors’ report) is amended as follows.

(2) In paragraph 1 (asset values)(b) –

- (a) in sub-paragraph (2) omit “or of any of its subsidiary undertakings”, and
- (b) after that sub-paragraph insert –

“(3) In relation to a group directors’ report sub-paragraph (2) has effect as if the reference to the fixed assets of the company was a reference to the fixed assets of the company and its subsidiary undertakings included in the consolidation.”.

(3) In paragraph 5A (use of financial instruments)(c) –

- (a) in sub-paragraph (1) omit –
 - (i) “and by its subsidiary undertakings”, and
 - (ii) “and its subsidiary undertakings included in the consolidation” in each place where it occurs, and
- (b) after that sub-paragraph insert –

“(1A) In relation to a group directors’ report sub-paragraph (1) has effect as if the references to the company were references to the company and its subsidiary undertakings included in the consolidation.”.

(4) In paragraph 6 (miscellaneous matters)(d) –

- (a) make the existing provision sub-paragraph (1),
- (b) in that sub-paragraph, omit –
 - (i) in head (a), “or any of its subsidiary undertakings”,
 - (ii) in head (b), “and of its subsidiary undertakings”, and
 - (iii) in head (c), “and its subsidiary undertakings”, and
- (c) after that sub-paragraph insert –

“(2) In relation to a group directors’ report heads (a), (b) and (c) of sub-paragraph (1) have effect as if the references to the company were references to the company and its subsidiary undertakings included in the consolidation.”.

(a) Article 255A was inserted into the 1986 Order by S.R. 1997 No. 436, and amended by S.I. 2001/3649

(b) Paragraph 1 of Schedule 7 was amended by S.R. 1997 No. 314

(c) Paragraph 5A was inserted by S.R. 2004 No. 496

(d) Paragraph 6 was amended by Article 10(2) of, and paragraph 2(2) of Schedule 5 to, the Companies (Northern Ireland) Order 1990 and by S.R. 1993 No. 199

PART III
OPERATING AND FINANCIAL REVIEWS

Duty to prepare operating and financial review

8. After Article 242A of the 1986 Order (approval and signing of directors' report)(a), insert –

“QUOTED COMPANIES: OPERATING AND FINANCIAL REVIEW

Duty to prepare operating and financial review

242AA.—(1) The directors of a quoted company shall for each financial year prepare an operating and financial review.

(2) The review must comply with Schedule 7ZA, save that nothing in that Schedule requires the disclosure of information about impending developments or about matters in the course of negotiation if the disclosure would, in the opinion of the directors, be seriously prejudicial to the interests of the company.

(3) For a financial year in which –

(a) the company is a parent company, and

(b) the directors of the company prepare group accounts,

the operating and financial review must be a consolidated review (a “group operating and financial review”) relating, to the extent specified in Schedule 7ZA, to the company and its subsidiary undertakings included in the consolidation.

(4) A group operating and financial review may, where appropriate, give greater emphasis to the matters that are significant to the company and its subsidiary undertakings included in the consolidation, taken as a whole.

(5) If an operating and financial review does not comply with the provisions of this Part relating to the preparation and contents of the review, every director of the company who –

(a) knew that it did not comply or was reckless as to whether it complied, and

(b) failed to take all reasonable steps to secure compliance with the provision in question,

is guilty of an offence and liable to a fine.

Approval and signing of operating and financial review

242AB.—(1) The operating and financial review must be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.

(2) Every copy of the operating and financial review laid before the company in general meeting, or that is otherwise circulated, published or issued, must state the name of the person who signed it on behalf of the board.

(3) The copy of the operating and financial review delivered to the registrar must be signed on behalf of the board by a director or the secretary of the company.

(4) If a copy of the operating and financial review –

(a) is laid before the company, or otherwise circulated, published or issued without the review having been signed as required by this Article or without the required statement of the signatory's name being included, or

(b) is delivered to the registrar without being signed as required by this Article,

the company and every officer of it who is in default is guilty of an offence and liable to a fine.”.

(a) Article 242A was inserted into the 1986 Order by Article 10 of the Companies (Northern Ireland) Order 1990

Objective and contents of operating and financial review

9. After Schedule 7 to the 1986 Order insert –

“SCHEDULE 7ZA OPERATING AND FINANCIAL REVIEW

Review objective

1. An operating and financial review is a balanced and comprehensive analysis, consistent with the size and complexity of the business, of –

- (a) the development and performance of the business of the company during the financial year,
- (b) the position of the company at the end of the year,
- (c) the main trends and factors underlying the development, performance and position of the business of the company during the financial year, and
- (d) the main trends and factors which are likely to affect the company’s future development, performance and position,

prepared so as to assist the members of the company to assess the strategies adopted by the company and the potential for those strategies to succeed.

Other general requirements

2. The review must include –

- (a) a statement of the business, objectives and strategies of the company;
- (b) a description of the resources available to the company;
- (c) a description of the principal risks and uncertainties facing the company; and
- (d) a description of the capital structure, the treasury policies and objectives and liquidity of the company.

Details of particular matters

3.—(1) To the extent necessary to comply with the general requirements of paragraphs 1 and 2, the review must comply with paragraphs 4 to 6.

(2) If the review does not contain information and analysis of each kind mentioned in paragraphs 4 and 5, it must state which of those kinds of information and analysis it does not contain.

4.—(1) The review must include –

- (a) information about environmental matters (including the impact of the business of the company on the environment),
- (b) information about the company’s employees, and
- (c) information about social and community issues.

(2) The review must, in particular, include –

- (a) information about the policies of the company in each area mentioned in subparagraph (1), and
- (b) information about the extent to which those policies have been successfully implemented.

5. The review must also include –

- (a) information about persons with whom the company has contractual or other arrangements which are essential to the business of the company; and
- (b) information about receipts from, and returns to, members of the company in respect of shares held by them.

6.—(1) The review must include analysis using financial and, where appropriate, other key performance indicators, including information relating to environmental matters and employee matters.

(2) In sub-paragraph (1), “key performance indicators” means factors by reference to which the development, performance or position of the business of the company can be measured effectively.

Reference to and explanation of company accounts

7. To the extent necessary to comply with the general requirements of paragraphs 1 and 2, the review must, where appropriate, include references to, and additional explanations of, amounts included in the company’s annual accounts.

Application of Schedule to group operating and financial review

8. In relation to a group operating and financial review this Schedule has effect as if the references to the company (other than the last such reference in paragraph 1) were references to the company and its subsidiary undertakings included in the consolidation.”.

Auditors’ reports on operating and financial reviews

10. In Article 243 of the 1986 Order (auditors’ report), after paragraph (3) insert –

“(3A) If the company is a quoted company, the auditors must state in their report –

- (a) whether in their opinion the information given in the operating and financial review for the financial year for which the annual accounts are prepared is consistent with those accounts; and
- (b) whether any matters have come to their attention, in the performance of their functions as auditors of the company, which in their opinion are inconsistent with the information given in the operating and financial review.”.

PART IV

SUMMARY FINANCIAL STATEMENTS

Summary financial statements

11.—(1) Article 259 of the 1986 Order (summary financial statements)(a) is amended as follows.

(2) In paragraph (1) –

(a) for “Article 246(1)” substitute “Article 246(1A)”;

(b) after the definition of “entitled person” insert –

“ “summary financial statement” means a statement that is derived from the company’s annual accounts and (in the case of a quoted company) the directors’ remuneration report and prepared in accordance with this Article and regulations made under it;”.

(3) In paragraph (2), for “Article 246(1)” substitute “Article 246(1A)”.

(4) After paragraph (2) insert –

“(2ZA) A quoted company that –

- (a) sends a summary financial statement to an entitled person, and

(a) Article 259 was inserted into the 1986 Order by Article 17 of the Companies (Northern Ireland) Order 1990 in place of an existing Article of that number, and amended by S.R. 1993 No. 220, S.I. 2001/3649, S.R. 2003 No. 3 and S.R. 2004 No. 496

- (b) does not send a full copy of its operating and financial review for the financial year to which that statement relates to each entitled person in accordance with Article 246(1),

must publish its operating and financial review on a web site throughout the period beginning at least 21 days before the date of the meeting at which the accounts and directors' remuneration report from which the statement is derived are to be laid and ending with the conclusion of that meeting.”.

- (5) In paragraph (2C)(a), for “directors’ report” substitute “directors’ remuneration report”.

- (6) In paragraph (2D) –

- (a) for “paragraph (2C)” substitute “paragraph (2ZA) or (2C)”;

- (b) for sub-paragraph (a) substitute –

- “(a) any review or statement that is required to be published on a web site as mentioned in those paragraphs is published for a part, but not all, of the period mentioned in those paragraphs; and”;

- (c) in sub-paragraph (b), after “publish that” insert “review or”.

- (7) For paragraph (3) substitute –

- “(3) The summary financial statement must –

- (a) be in such form, and

- (b) contain such information,

as the Department may by regulations specify, including information derived from the company’s directors’ report or (in the case of a quoted company) operating and financial review.

(3A) Nothing in this Article or regulations made under it prevents a company from including in its summary financial statement additional information derived from the company’s annual accounts, directors’ remuneration report, directors’ report or operating and financial review.”.

- (8) In paragraph (4) –

- (a) in sub-paragraph (a) omit “, the directors’ report”;

- (b) after sub-paragraph (a) insert –

- “(aa) state whether it contains additional information derived from the directors’ report or (in the case of a quoted company) the operating and financial review and, if so, state that it does not contain the full text of that report or review;

- (ab) state how an entitled person can obtain a full copy of the documents referred to in Article 246(1A);

- (ac) (in the case of a quoted company to which paragraph (2ZA) applies) state the address of the web site on which the operating and financial review is published, the place on that web site where it may be accessed and how it may be accessed;”;

- (c) in sub-paragraph (b) for “is consistent with those accounts and those reports and” substitute –

- “(i) is consistent with the company’s annual accounts and directors’ remuneration report and (where information derived from the directors’ report or operating and financial review is included in the statement) with that report or review,

- and

- (ii) ”;

- (d) after sub-paragraph (c) insert –

- “(ca) state whether, in that report, the auditors’ statements under –

- (i) Article 243(3) (whether directors’ report is consistent with accounts), and

- (ii) (in the case of a quoted company) under Article 243(3A) (whether operating and financial review is consistent with accounts),

were qualified or unqualified and, if either was qualified, set out the qualified statement in full together with any further material needed to understand the qualification;”.

Transitional provision

12. As respects companies’ financial years beginning on or after 1st April 2005, regulations made by the Department under Article 259 of the 1986 Order before the date on which these Regulations come into operation have effect as if –

- (a) any requirement in the regulations that a summary financial statement contain information derived from the company’s directors’ report was omitted, and
- (b) the regulations had been made (with those omissions) under Article 259 as amended by these Regulations.

PART V

REVISION OF DEFECTIVE REPORTS AND REVIEWS

Voluntary revision of defective reports and reviews

13.—(1) Article 253 of the 1986 Order (voluntary revision of defective accounts, statements and reports)(a) is amended as follows.

(2) In paragraph (1) –

- (a) after “directors’ report” insert “or operating and financial review”, and
- (b) for “revised statement or report” substitute “revised statement, report or review”.

(3) In paragraph (2), for “or report”, in each place, substitute “, report or review”.

(4) In paragraph (3), after “a revised directors’ report” insert “or a revised operating and financial review”.

(5) In sub-paragraphs (a) and (b) of paragraph (4), for “statement or report” substitute “, statement, report or review”.

(6) In sub-paragraph (c) of paragraph (4) –

- (a) for “or report” (in the first place it occurs) substitute “, report or review”;
- (b) for “based on the previous accounts or report” substitute “containing information derived from the previous accounts, report or review”.

Department’s notice in respect of reports and reviews

14.—(1) Article 253A of the 1986 Order (Department’s notice in respect of annual accounts)(b) is amended as follows.

(2) For paragraph (1) substitute –

“(1) Where –

- (a) copies of a company’s annual accounts, directors’ report or operating and financial review have been sent out under Article 246, or
- (b) a copy of a company’s annual accounts, directors’ report or operating and financial review has been laid before the company in general meeting or delivered to the registrar,

(a) Article 253 was inserted into the 1986 Order by Article 14 of the Companies (Northern Ireland) Order 1990 in place of an existing Article of that number, and amended by S.R. 1995 No. 128, S.R. 2004 No. 496 and S.R. 2005 No. 56

(b) Article 253A was inserted into the 1986 Order by Article 14 of the Companies (Northern Ireland) Order 1990, and amended by S.R. 2004 No. 496

and it appears to the Department that there is, or may be, a question whether the accounts, report or review comply with the requirements of this Order, it may give notice to the directors of the company indicating the respects in which it appears to the Department that such a question arises or may arise.”.

(3) In paragraph (2), for “or prepare revised accounts” substitute “, report or review or prepare revised accounts or a revised report or review”.

(4) In paragraph (3), for the words from “no satisfactory explanation” onwards substitute –
“the directors have not –

(a) given a satisfactory explanation of the accounts, report or review, or

(b) revised the accounts, report or review so as to comply with the requirements of this Order,

it may if it thinks fit apply to the court.”.

(5) For paragraph (4) substitute –

“(4) The provisions of this Article apply equally to revised annual accounts, revised directors’ reports and revised operating and financial reviews, in which case they have effect as if the references to revised accounts, reports or reviews were references to further revised accounts, reports or reviews.”.

Application to court in respect of defective reports and reviews

15.—(1) Article 253B of the 1986 Order (application to court in respect of defective accounts)(a) is amended as follows.

(2) In paragraph (1) –

(a) after “comply” insert “, or a directors’ report or operating and financial review does not comply,”; and

(b) at the end insert “or revised report or review”.

(3) After paragraph (3) insert –

“(3A) If the court orders the preparation of a revised directors’ report or a revised operating and financial review it may give directions with respect to –

(a) the review of the directors’ report or operating and financial review by the auditors,

(b) the revision of any directors’ report, directors’ remuneration report, operating and financial review or summary financial statement,

(c) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous report or review, and

(d) such other matters as the court thinks fit.”.

(4) In paragraph (4) –

(a) after “that the accounts” insert “, report or review”;

(b) in sub-paragraph (b), after “revised accounts” insert “or a revised report or review”;

(c) after “defective accounts” insert “, report or review”;

(d) for “the accounts were approved” substitute “of the approval of the accounts, report or review”;

(e) for “their approval” substitute “the approval”;

(f) for “their being approved” substitute “that approval”.

(5) In paragraph (5), after “accounts” (in both places) insert “, report or review”.

(6) For paragraph (7) substitute –

“(7) The provisions of this Article apply equally to revised annual accounts, revised directors’ reports and revised operating and financial reviews, in which case they have effect

(a) Article 253B was inserted into the 1986 Order by Article 14 of the Companies (Northern Ireland) Order 1990, and amended by S.R. 2004 No. 496 and S.R. 2005 No. 56

as if the references to revised accounts, reports or reviews were references to further revised accounts, reports or reviews.”.

Persons authorised to apply to court in connection with defective reports and reviews

16. In paragraph (1) of Article 253C of the 1986 Order (other persons authorised to apply to court)(a) –

- (a) in sub-paragraph (a), for “the accounting requirements of this Order” substitute “the requirements of this Order relating to accounts, directors’ reports and operating and financial reviews”; and
- (b) in sub-paragraph (b), for “annual accounts of companies” substitute “companies’ annual accounts, directors’ reports and operating and financial reviews”.

PART VI

MINOR AND CONSEQUENTIAL AMENDMENTS

17. The Schedule makes minor and consequential amendments.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 2nd March 2005.

(L.S.)

M. Bohill

A senior officer of the Department of Enterprise, Trade and Investment

(a) Article 253C was inserted into the 1989 Order by Article 14 of the Companies (Northern Ireland) Order 1990, and amended by S.R. 2004 No. 496

MINOR AND CONSEQUENTIAL AMENDMENTS

1. The following minor and consequential amendments to the 1986 Order have effect.
2. In paragraph (1A) of Article 246 (persons entitled to receive copies of accounts and reports)(a) –
 - (a) after sub-paragraph (b) insert –

“(ba) (in the case of a quoted company) the operating and financial review for that financial year.”;
 - (b) for sub-paragraph (d) substitute –

“(d) the auditors’ report on those accounts and that directors’ report and (in the case of a quoted company) on that operating and financial review and the auditable part of that directors’ remuneration report.”.
3. In paragraph (1) of Article 247 (right to demand copies of accounts and reports)(a) –
 - (a) after sub-paragraph (b) insert –

“(ba) (in the case of a quoted company) the last operating and financial review.”; and
 - (b) for sub-paragraph (d) substitute –

“(d) the auditors’ report on those accounts and that directors’ report and (in the case of a quoted company) on that operating and financial review and the auditable part of that directors’ remuneration report.”.
4. In paragraph (1) of Article 249 (accounts and reports to be laid before company in general meeting)(b) –
 - (a) after sub-paragraph (b) insert –

“(ba) (in the case of a quoted company) the operating and financial review.”; and
 - (b) for sub-paragraph (d) substitute –

“(d) the auditors’ report on those accounts and that directors’ report and (in the case of a quoted company) on that operating and financial review and the auditable part of that directors’ remuneration report.”.
5. In paragraph (1) of Article 250 (accounts and reports to be delivered to the registrar)(b) –
 - (a) after sub-paragraph (b) insert –

“(ba) (in the case of a quoted company) the operating and financial review.”;
 - (b) for sub-paragraph (d) substitute –

“(d) the auditors’ report on those accounts and that directors’ report and (in the case of a quoted company) on that operating and financial review and the auditable part of that directors’ remuneration report.”.
6. In the Table in Article 270A (defined expressions)(c), at the appropriate place insert –

“directors’ report	Article 242”
“group directors’ report	Article 242”
“group operating and financial review	Article 242AA”
“operating and financial review	Article 242AA”
7. In Schedule 23 (table of punishment of offences under the 1986 Order), after the entry for Article 242A(4)(d) insert –

-
- (a) Articles 246 and 247 were inserted into the 1986 Order by Article 12 of the Companies (Northern Ireland) Order 1990 in place of existing Articles of those numbers, and amended by S.R. 2003 No. 3 and S.R. 2005 No. 56
 - (b) Articles 249 and 250 were inserted into the 1986 Order by Article 13 of the Companies (Northern Ireland) Order 1990 in place of existing Articles of those numbers, and amended by S.R. 2005 No. 56
 - (c) Article 270A was inserted into the 1986 Order by Article 24 of the Companies (Northern Ireland) Order 1990, and amended by S.R. 1992 No. 258, S.R. 1994 No. 428, S.R. 1995 No. 128, S.R. 1997 No. 314, S.R. 1997 No. 436, S.R. 2003 No. 3, S.R. 2004 No. 263, S.R. 2004 No. 496 and S.R. 2005 No. 56
 - (d) The entry for Article 242A(4) was inserted by Article 25 of, and paragraph 27 of Schedule 10 to, the Companies (Northern Ireland) Order 1990

“242AA(5)	Non-compliance with Part VIII as to operating and financial review and its content; directors individually liable	1. On indictment 2. Summary	A fine The statutory maximum
242AB(4)	Laying, circulating or delivering operating and financial review without required signature	Summary	Level 3 on the standard scale”.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend Part VIII of the Companies (Northern Ireland) Order 1986 (“the 1986 Order”) on accounts and audit in order to –

- introduce a new requirement for directors of quoted companies to prepare operating and financial reviews (“OFRs”) for financial years;
- implement requirements relating to the directors’ report in articles 1.14, 1.17 (in part) and 2.10 of Directive 2003/51/EC of the European Parliament and of the Council of 18th June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings (Official Journal No. L178/16 of 17th July 2003) (“the Accounts Modernisation Directive”);
- make minor and consequential amendments to Part VIII.

Part I (regulation 1) is introductory. It includes provision applying the amendments to the 1986 Order made by Parts II, III, IV and VI to companies’ financial years beginning on or after 1st April 2005. The amendments in Part V (revision of defective reports and reviews) are to apply in respect of annual accounts, directors’ reports and OFRs for companies’ financial years beginning on or after 1st April 2006, save that the amendments to Article 253 of the 1986 Order in regulation 13, which permit quoted companies voluntarily to revise their OFRs, will apply from 1st April 2005.

Part II (regulations 2 to 7) replaces Article 242 of, and amends Schedule 7 to, the 1986 Order, inserts new Articles 242ZZA and 242ZZB, in order to provide for further disclosures in the directors’ report in implementation of Articles 1.14, 1.17 (in part) and 2.10 of the Accounts Modernisation Directive. New Article 242 contains a re-worded offence of failing to comply with the 1986 Order’s requirements in respect of the preparation and content of the directors’ report.

Regulation 3 implements the second part of Article 1.17 of the Accounts Modernisation Directive, requiring auditors to report on whether information in the directors’ report is consistent with the annual accounts.

The existing exemption for small companies in Article 254(4)(a) of the 1986 Order from the requirement to give a fair review in the directors’ report is applied to the enhanced disclosure requirements (regulation 4). Medium-sized companies are exempted from making the disclosures concerning non-financial information (regulation 5 amending Article 254A of the 1986 Order). Small and medium-sized companies will not be prevented from taking advantage of these exemptions even if they are part of an ineligible group (regulation 6 amending Article 255A of the 1986 Order).

Part III (regulations 8 to 10) introduces a new requirement in Article 242AA for quoted companies to prepare an OFR complying with the requirements of new Schedule 7ZA to the 1986 Order inserted by regulation 9. A quoted company is defined in Article 270 of the 1986 Order as a company whose equity share capital has been included in the official list in accordance with the provisions of Part VI of the Financial Services and Markets Act 2000 (c. 8), is officially listed in an EEA State, or is admitted to dealing on either the New York Stock Exchange or the exchange known as Nasdaq.

Failure to comply with the requirements of the 1986 Order concerning the preparation and contents of the OFR will constitute a criminal offence (Article 242AA(5)). New Article 242AB imposes a criminal penalty for failure to comply with requirements in that Article for the approval and signature of the OFR.

Regulation 10 inserts a new paragraph (3A) into Article 243 of the 1986 Order to provide for a review by a quoted company's auditors of the OFR.

Part IV (regulations 11 and 12) amends the regulation-making power for summary financial statements in Article 259 of the 1986 Order to make provision concerning the operating and financial review and the amended directors' report. Regulation 12 makes transitional provision for regulations made under Article 259 before the date on which these Regulations come into operation.

Part V (regulations 13 to 16) amends Articles 253 to 253C of the 1986 Order to provide for the voluntary revision by the directors of a defective OFR, and for the compulsory revision of defective directors' reports and OFRs by application to the court by the Department or a person authorised by it.

Part VI (regulation 17 and the Schedule) makes minor and consequential amendments to Part VIII of the 1986 Order resulting from the introduction of the OFR.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from the Department of Enterprise, Trade and Investment, Company Law Branch, Londonderry House, 21-27 Chichester Street, Belfast BT1 4JB.

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