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STATUTORY INSTRUMENTS

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**2005 No. 1011**

**COMPANIES**

**The Companies Act 1985 (Operating and Financial  
Review and Directors' Report etc.) Regulations 2005**

*Made* - - - - 21st March 2005

*Coming into force* - - 22nd March 2005

The Secretary of State, in exercise of the powers conferred upon her by section 257 of the Companies Act 1985(1) and of all other powers enabling her in that behalf, hereby makes the following Regulations of which a draft has been laid before Parliament in accordance with section 257(2) of that Act and approved by resolution of each House of Parliament:

**PART 1**

**General**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Companies Act 1985 (Operating and Financial Review and Directors' Report etc.) Regulations 2005.

(2) These Regulations come into force on the day after the day on which they are made.

(3) Parts 2, 3, 4 and 6 of these Regulations have effect as respects companies' financial years which begin on or after 1st April 2005.

(4) Part 5 of these Regulations has effect as follows —

(a) regulation 14 has effect from 1st April 2005, and

(b) regulations 15 to 18 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 1985 Act” means the Companies Act 1985.

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(1) 1985 c. 6; section 257 was substituted by section 20 of the Companies Act 1989 (c. 40), and amended by section 13 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).

## PART 2

### Directors' report

#### Duty to prepare directors' report

2. For section 234 of the 1985 Act (duty to prepare directors' report)(2) substitute—

#### “Directors' report

##### **234. Duty to prepare directors' report**

(1) The directors of a company shall for each financial year prepare a report (a “directors' report”) complying with the general requirements of section 234ZZA and containing—

- (a) the business review specified in section 234ZZB, and
- (b) if section 234ZA applies to the report, the statement as to disclosure of information to auditors required by that section.

(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 section 234AA).

(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.

##### **234ZZA. Directors' report: general requirements**

(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) Section 234 was substituted by section 8(1) of the Companies Act 1989, and amended by regulation 5 of S.I. 1996/189, by regulation 2 of S.I. 1997/571, and by section 9(2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004. Section 234ZA was inserted by section 9(3) of the Companies (Audit, Investigations and Community Enterprise) Act 2004.

(2) In relation to a group directors' report subsection (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 1 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 2 relates to the acquisition by a company of its own shares or a charge on them;

Part 3 relates to the employment, training and advancement of disabled persons;

Part 5 relates to the involvement of employees in the affairs, policy and performance of the company;

Part 6 relates to the company's policy and practice on the payment of creditors.

#### **234ZZB. Directors' report: business review**

(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 section, “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 section 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 section 235 of the 1985 Act (auditors' report)(3), for subsection (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.”

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(3) Section 235 was substituted by section 9 of the Companies Act 1989, and amended by regulation 4 of S.I. 2002/1986 and by regulation 6 of S.I. 2004/2947.

**Special provision for small companies**

4. For paragraph (a) of section 246(4) of the 1985 Act (exemptions for small companies from disclosures in directors' report)(4) substitute—

“(a) sections 234ZZA(1)(c) (directors' report: amount to be paid as dividend) and 234ZZB (directors' report: business review);”.

**Special provision for medium-sized companies**

5. After subsection (2) of section 246A of the 1985 Act (special provisions for medium-sized companies)(5) insert—

“(2A) The directors' report for the year need not comply with the requirements of section 234ZZB(3) (business review to include analysis using key performance indicators) so far as they relate to non-financial information.”

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

6. In section 247A of the 1985 Act (cases in which special provisions in sections 246 and 246A do not apply)(6), for subsection (1) substitute—

“(1) If a company is, or was at any time within the financial year to which the accounts relate, an ineligible company, sections 246 and 246A do not apply.

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

- (a) section 246(4) and (5)(b) and section 246A(2A) (provisions relating to directors' report) apply;
- (b) the other provisions of sections 246 and 246A do not apply.

(1B) A company is ineligible if—

- (a) it is a public company,
- (b) it has permission under Part 4 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 1985 Act (matters to be dealt with in directors' report) is amended as follows.

(2) In paragraph 1 (asset values)(7)—

- (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 of its subsidiary undertakings included in the consolidation.”

(4) Section 246 was substituted by regulation 2(1) of S.I. 1997/220, and amended by regulation 6(1) of S.I. 1997/570, by regulation 8(1) of S.I. 2000/1430 and by regulations 3 and 13(2) of, and paragraph 12 of Schedule 1 to, S.I. 2004/2947.

(5) Section 246A was inserted by regulation 3 of S.I. 1997/220, and amended by regulation 3 of, and paragraph 13 of Schedule 1 to, S.I. 2004/2947.

(6) Section 247A was inserted by regulation 4 of S.I. 1997/220, and amended by article 11 of S.I. 2001/3649.

(7) Paragraph 1 of Schedule 7 was amended by regulations 14(4)(a) and 15(3) of S.I. 1996/189.

- (3) In paragraph 5A (use of financial instruments)(8)—
- (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)(9)—
- (a) make the existing provision sub-paragraph (1),
  - (b) in that sub-paragraph omit—
    - (i) in paragraph (a), “or any of its subsidiary undertakings”,
    - (ii) in paragraph (b), “and of its subsidiary undertakings”, and
    - (iii) in paragraph (c), “and its subsidiary undertakings”, and
  - (c) after that sub-paragraph insert—

“(2) In relation to a group directors' report paragraphs (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.”

## PART 3

### Operating and financial reviews

#### **Duty to prepare operating and financial review**

8. After section 234A of the 1985 Act (approval and signing of directors' report)(10), insert—

**“Quoted companies: operating and financial review**

Duty to prepare operating and financial review

**234AA**

(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 (objective and contents of operating and financial review), 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—

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(8) Paragraph 5A was inserted by regulation 13(1) of S.I. 2004/ 2947.

(9) Paragraph 6 was amended by section 8(2) of, and paragraph 2(2) of Schedule 5 to, the Companies Act 1989, and by regulations 3 and 8(a) of S.I. 1992/3178.

(10) Section 234A was inserted by section 8(1) of the Companies Act 1989.

- (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**

**234AB.**—(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 section 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 section,

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

#### **Objective and contents of operating and financial review**

9. After Schedule 7 to the 1985 Act insert—

##### “SCHEDULE 7ZA

##### Operating and financial review

##### *Review objective*

1. An operating and financial review must be 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 the 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 sub-paragraph (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's 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.

*Compliance with standards*

8. The review must—
- (a) state whether it has been prepared in accordance with relevant reporting standards, and
  - (b) contain particulars of, and reasons for, any departure from such standards.

*Application of Schedule to group operating and financial review*

9. 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 section 235 of the 1985 Act (auditors' report), after subsection (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.”

**Reporting standards for operating and financial reviews**

11. After section 256 of the 1985 Act (accounting standards)(11) insert—

“Reporting standards

**256A**

(1) In this Part, “reporting standards” means statements of standard reporting practice which—

- (a) relate to operating and financial reviews, and
- (b) are issued by a body or bodies specified in an order made by the Secretary of State in accordance with section 257(4B).

(2) References in this Part to relevant reporting standards, in relation to a company's operating and financial review, are to such standards as are, in accordance with their terms, applicable to the company's circumstances and to the review.

(3) Where or to the extent that the directors of a company have complied with a reporting standard, they are presumed (unless the contrary is proved) to have complied with the corresponding requirements of this Part relating to the contents of an operating and financial review.”

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(11) Section 256 was substituted by section 19 of the Companies Act 1989.



## PART 4

### Summary financial statements

#### Summary financial statements

**12.**—(1) Section 251 of the 1985 Act (summary financial statements)(**12**) is amended as follows.

(2) In subsection (1)—

(a) for “section 238(1)” substitute “section 238(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 section and regulations made under it.”

(3) In subsection (2), for “section 238(1)” substitute “section 238(1A)”.

(4) After subsection (2) insert—

“(2ZA) A quoted company that—

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

(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 section 238(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 subsection (2C)(a), for “directors’ report” substitute “directors’ remuneration report”.

(6) In subsection (2D)—

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

(b) for paragraph (a) substitute—

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

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

(7) For subsection (3) substitute—

“(3) The summary financial statement must—

(a) be in such form, and

(b) contain such information,

as the Secretary of State 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 section or regulations made under it prevents a company from including in its summary financial statement additional information derived from the

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**(12)** Section 251 was substituted by section 15 of the Companies Act 1989, and amended by regulation 3 of S.I. 1992/3003, by article 14 of S.I. 2000/3373, by article 15 of S.I. 2001/3649, by regulation 8 of S.I. 2002/1986, and by regulation 11 of S.I. 2004/2947.

company's annual accounts, directors' remuneration report, directors' report or operating and financial review.”

- (8) In subsection (4)—
- (a) in paragraph (a) omit “, the directors' report”;
  - (b) after 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 section 238(1A);
    - (ac) (in the case of a quoted company to which subsection (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 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 paragraph (c) insert—
    - “(ca) state whether, in that report, the auditors' statements under—
      - (i) section 235(3) (whether directors' report is consistent with accounts), and
      - (ii) (in the case of a quoted company) under section 235(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**

**13.** As respects companies' financial years beginning on or after 1st April 2005, regulations made by the Secretary of State under section 251 of the 1985 Act before the date on which these Regulations come into force 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 section 251 as amended by these Regulations.

## PART 5

### Revision of defective reports and reviews

#### Voluntary revision of defective reports and reviews

**14.**—(1) Section 245 of the 1985 Act (voluntary revision of defective accounts, statements and reports)(**13**) is amended as follows.

(2) In subsection (1)—

(a) after “directors' report” insert “, operating and financial review”, and

(b) for “revised statement or report” substitute “revised statement, report or review”.

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

(4) In subsection (3), after “ a revised directors' report” insert “, a revised operating and financial review”.

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

(6) In paragraph (c) of subsection (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”.

#### Secretary of State's notice in respect of reports and reviews

**15.**—(1) Section 245A of the 1985 Act (Secretary of State's notice in respect of annual accounts)(**14**) is amended as follows.

(2) For subsection (1) substitute—

“(1) Where—

(a) copies of a company's annual accounts, directors' report or operating and financial review have been sent out under section 238, 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,

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

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

(4) In subsection (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 Act,

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(**13**) Section 245 was substituted by section 12 of the Companies Act 1989, and amended by regulation 4 of, and paragraph 2 in Part 1 of Schedule 1 to, S.I. [1994/1935](#), by regulation 10(9) of S.I. [2002/1986](#) and by regulations 3 and 10 of, and paragraph 11 of Schedule 1 to, S.I. [2004/2947](#).

(**14**) Section 245A was inserted by section 12 of the Companies Act 1989, and amended by regulation 3 of, and paragraph 11 of Schedule 1 to, S.I. [2004/2947](#).

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

(5) For subsection (4) substitute—

“(4) The provisions of this section 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**

**16.**—(1) Section 245B of the 1985 Act (application to court in respect of defective accounts)(15) is amended as follows.

(2) In subsection (1)—

- (a) after “comply” insert “, or a directors' report or operating and financial review does not comply,”; and
- (b) at the end insert “or a revised report or review”.

(3) After subsection (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 subsection (4)—

- (a) after “that the accounts” insert “, report or review”;
- (b) in 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 subsection (5), after “accounts” (in both places) insert “, report or review”.

(6) For subsection (7) substitute—

“(7) The provisions of this section 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.”

(15) Section 245B was inserted by section 12 of the Companies Act 1989, and amended by regulation 10 of S.I. 2002/1986 and by regulation 3 of, and paragraph 11 of Schedule 1 to, S.I. 2004/2947.

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

17. In subsection (1) of section 245C of the 1985 Act (other persons authorised to apply to court)(16)—

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

### **Power of person authorised to require documents, information and explanations**

18. In subsection (1) of section 245F of the 1985 Act (power of person authorised to require documents, information and explanations)(17) for “annual accounts of a company” substitute “ a company’s annual accounts, directors' report or operating and financial review”.

## **PART 6**

### **Minor and consequential amendments**

19. The Schedule to these Regulations makes minor and consequential amendments.

21st March 2005

*Jacqui Smith*  
Minister for Industry and the Regions and  
Deputy Minister for Women and Equality  
Department of Trade and Industry

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(16) Section 245C was inserted by section 12 of the Companies Act 1989, and amended by sections 10 and 64 of, and Schedule 8 to, the Companies (Audit, Investigations and Community Enterprise) Act 2004 and by regulation 3 of, and paragraph 11 of Schedule 1 to, S.I. 2004/2947.

(17) Section 245F was inserted by section 12 of the Companies (Audit, Investigations and Community Enterprise) Act 2004.

## SCHEDULE

Regulation 19

## MINOR AND CONSEQUENTIAL AMENDMENTS

1. The following minor and consequential amendments to the 1985 Act have effect.
2. In subsection (1A) of section 238 (persons entitled to receive copies of accounts and reports)(**18**)—
  - (a) after paragraph (b) insert—
 

“(ba) (in the case of a quoted company) the operating and financial review for that financial year.”;
  - (b) for 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 subsection (1) of section 239 (right to demand copies of accounts and reports)(**19**)—
  - (a) after paragraph (b) insert—
 

“(ba) (in the case of a quoted company) the last operating and financial review.”; and
  - (b) for 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 subsection (1) of section 241 (accounts and reports to be laid before company in general meeting)(**20**)—
  - (a) after paragraph (b) insert—
 

“(ba) (in the case of a quoted company) the operating and financial review.”; and
  - (b) for 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 subsection (1) of section 242 (accounts and reports to be delivered to the registrar)(**21**)—
  - (a) after paragraph (b) insert—
 

“(ba) (in the case of a quoted company) the operating and financial review.”;
  - (b) for 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.”; and
  - (c) after paragraph (d) insert—
 

“If any document comprised in those accounts or reports is in a language other than English then, subject to section 710B(6) (delivery of certain Welsh documents without a

(18) Section 238 was substituted by section 10 of the Companies Act 1989, and amended by article 12 of S.I. 2000/3373, and by regulation 10(4) of S.I. 2002/1986.

(19) Section 239 was substituted by section 10 of the Companies Act 1989, and amended by article 13 of S.I. 2000/3373 and by regulation 10(6) of S.I. 2002/1986.

(20) Section 241 was substituted by section 11 of the Companies Act 1989, and amended by regulation 10(7) of S.I. 2002/1986.

(21) Section 242 was substituted by section 11 of the Companies Act 1989, and amended by sections 30(1) and (4) and 35(1) of, and Schedule 2 to, the Welsh Language Act 1993 (c. 38), and by regulation 10(8) of S.I. 2002/1986.

translation), the directors must annex to the copy of that document delivered a translation of it into English, certified in the prescribed manner to be a correct translation.”

6. In subsection (1) of section 245F (power of person authorised to require documents, information and explanations) after “requirements of this Act” insert “(or, where applicable, of Article 4 of the IAS Regulation)”.

7. In the Table in section 262A (defined expressions)(22), at the appropriate places insert—

“directors' report	section 23”
“group directors' report	section 234”
“group operating and financial review	section 234AA”
“operating and financial review	section 234AA”
“reporting standards and relevant reporting standards	section 256A”

8. In Schedule 24 (table of punishment of offences under the 1985 Act), after the entry for section 234A(4)(23) insert—

“234AA(5)	Non-compliance with Part 7 as to operating and financial review and its content; directors individually liable	1. On indictment 2. Summary	A fine The statutory maximum
234AB(4)	Laying, circulating or delivering operating and financial review without required signature	Summary	Level 3 on the standard scale”.

(22) Section 262A was inserted by section 22 of the Companies Act 1989, and amended by regulation 6 of, and paragraph 3 of Schedule 2 to, S.I. 1991/2705, by regulation 5 of, and paragraph 5 of Schedule 2 to, S.I. 1993/3246, by regulation 4(2) of S.I. 1994/233, by regulation 4 of, and paragraph 3 of Schedule 1 to, S.I. 1994/1935, by regulation 12(2) of S.I. 1996/189, by regulation 7 of S.I. 1997/220, by regulation 4(4) of S.I. 1997/2306, by article 16(2) of S.I. 2000/3373, by regulation 10 of S.I. 2002/1986, and by regulation 3 of, and paragraph 21 of Schedule 1 to, S.I. 2004/2947.

(23) The entry for section 234A(4) was inserted by section 23 of, and paragraph 24 of Schedule 10 to, the Companies Act 1989.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend Part 7 of the Companies Act 1985 (“the 1985 Act”) 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 7.

Part 1 of the Regulations (regulation 1) is introductory. It includes provision applying the amendments to the 1985 Act made by Parts 2, 3, 4 and 6 of the Regulations to companies' financial years beginning on or after 1st April 2005. The amendments in Part 5 of the Regulations (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 section 245 of the 1985 Act in regulation 14, which permit quoted companies voluntarily to revise their OFRs, will apply from 1st April 2005.

Part 2 of the Regulations (regulations 2 to 7) replaces section 234 of the 1985 Act, inserts new sections 234ZZA and 234ZZB, and amends Schedule 7 to the 1985 Act 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 section 234 contains a re-worded offence of failing to comply with the 1985 Act'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 section 246(4)(a) of the 1985 Act 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 section 246A of the 1985 Act). 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 section 247A of the 1985 Act).

Part 3 of the Regulations (regulations 8 to 11) introduces a new requirement in section 234AA for quoted companies to prepare an OFR complying with the requirements of new Schedule 7ZA to the 1985 Act inserted by regulation 9. A quoted company is defined in section 262 of the 1985 Act as a company whose equity share capital has been included in the official list in accordance with the provisions of Part 6 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 1985 Act concerning the preparation and contents of the OFR will constitute a criminal offence (section 234AA(5)). New section 234AB imposes a



criminal penalty for failure to comply with requirements in that section for the approval and signature of the OFR.

Regulation 10 inserts a new subsection (3A) into section 235 of the 1985 Act to provide for a review by a quoted company's auditors of the OFR.

Regulation 11 inserts a new section 256A into the 1985 Act providing that directors who comply with a reporting standard for the OFR issued by a body or bodies specified in an order made by the Secretary of State are presumed (unless the contrary is proved) to have complied with the provisions of the 1985 Act relating to the contents of an OFR.

Part 4 of the Regulations (regulations 12 and 13) amends the regulation-making power for summary financial statements in section 251 of the 1985 Act to make provision concerning the operating and financial review and the amended directors' report. Regulation 13 makes transitional provision for regulations made under section 251 before the date on which these Regulations come into force.

Part 5 of the Regulations (regulations 14 to 18) amends sections 245 to 245C and 245F of the 1985 Act 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 Secretary of State or a person authorised by her.

Part 6 of the Regulations (regulation 19 and the Schedule) makes minor and consequential amendments to Part 7 resulting from the introduction of the OFR. Paragraph 5(c) of the Schedule reinstates the second paragraph of section 242(1) of the 1985 Act which was omitted in error by regulation 10(8) of the Directors' Remuneration Report Regulations 2002 (S.I.2002/1986). Paragraph 6 makes a minor amendment to section 245F of the 1985 Act (inserted by section 12 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)) to take account of EC Regulation No.1606/2002 of the European Parliament and of the Council of 19th July 2002 on the application of international accounting standards (Official Journal No. L243/1 of 11th September 2002).

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from the Department of Trade and Industry, Corporate Law and Governance Directorate, Elizabeth House, 39 York Road, London SE1 7LJ (it is also available electronically at [www.dti.gov.uk/cld](http://www.dti.gov.uk/cld)). A copy has also been placed in the libraries of both Houses of Parliament.