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STATUTORY INSTRUMENTS

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**1990 No. 593**

**The Companies (Northern Ireland) Order 1990**

**PART II**

**COMPANY ACCOUNTS**

*Provisions applying to companies generally*

**Accounting records**

**4.** The following Articles are inserted in Part VIII of the 1986 Order at the beginning of Chapter I (provisions applying to companies generally)—

*“Accounting records*

**Duty to keep accounting records**

**229.**—(1) Every company shall keep accounting records which are sufficient to show and explain the company’s transactions and are such as to—

- (a) disclose with reasonable accuracy, at any time, the financial position of the company at that time, and
- (b) enable the directors to ensure that any balance sheet and profit and loss account prepared under this Part complies with the requirements of this Order.

(2) The accounting records shall in particular contain—

- (a) entries from day to day of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure takes place, and
- (b) a record of the assets and liabilities of the company.

(3) If the company’s business involves dealing in goods, the accounting records shall contain—

- (a) statements of stock held by the company at the end of each financial year of the company,
- (b) all statements of stocktakings from which any such statement of stock as is mentioned in sub-paragraph (a) has been or is to be prepared, and
- (c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.

(4) A parent company which has a subsidiary undertaking in relation to which the above requirements do not apply shall take reasonable steps to secure that the undertaking keeps such accounting records as to enable the directors of the parent company to ensure that

any balance sheet and profit and loss account prepared under this Part complies with the requirements of this Order.

(5) If a company fails to comply with any provision of this Article, every officer of the company who is in default is guilty of an offence unless he shows that he acted honestly and that in the circumstances in which the company's business was carried on the default was excusable.

(6) A person guilty of an offence under this Article is liable to imprisonment or a fine, or both.

### **Where and for how long records to be kept**

**230.**—(1) A company's accounting records shall be kept at its registered office or such other place as the directors think fit, and shall at all times be open to inspection by the company's officers.

(2) If accounting records are kept at a place outside Northern Ireland, accounts and returns with respect to the business dealt with in the accounting records so kept shall be sent to, and kept at, a place in Northern Ireland, and shall at all times be open to such inspection.

(3) The accounts and returns to be sent to Northern Ireland shall be such as to—

- (a) disclose with reasonable accuracy the financial position of the business in question at intervals of not more than 6 months; and
- (b) enable the directors to ensure that the company's balance sheet and profit and loss account comply with the requirements of this Order.

(4) If a company fails to comply with any provision of paragraphs (1) to (3), every officer of the company who is in default is guilty of an offence, and liable to imprisonment or a fine or both, unless he shows that he acted honestly and that in the circumstances in which the company's business was carried on the default was excusable.

(5) Accounting records which a company is required by Article 229 to keep shall be preserved by it—

- (a) in the case of a private company, for 3 years from the date on which they are made, and
- (b) in the case of a public company, for 6 years from the date on which they are made.

This is subject to any provision contained in rules made under Article 359 of the Insolvency (Northern Ireland) Order 1989(1) (insolvency rules).

(6) An officer of a company is guilty of an offence, and liable to imprisonment or a fine or both, if he fails to take all reasonable steps for securing compliance by the company with paragraph (5) or intentionally causes any default by the company under that paragraph.

(7) Until the coming into operation of Article 359 of the Insolvency (Northern Ireland) Order 1989, paragraph (5) shall have effect with the substitution of "Article 613 (winding-up rules)" for "Article 359 of the Insolvency (Northern Ireland) Order 1989 (insolvency rules)."

### **A company's financial year and accounting reference periods**

5. The following Articles are inserted in Part VIII of the 1986 Order—

*“A company’s financial year and accounting reference periods*

**A company’s financial year**

**231.**—(1) A company’s “financial year” is determined as follows.

(2) Its first financial year begins with the first day of its first accounting reference period and ends with the last day of that period or such other date, not more than 7 days before or after the end of that period, as the directors may determine.

(3) Subsequent financial years begin with the day immediately following the end of the company’s previous financial year and end with the last day of its next accounting reference period or such other date, not more than 7 days before or after the end of that period, as the directors may determine.

(4) In relation to an undertaking which is not a company, references in this Order to its financial year are to any period in respect of which a profit and loss account of the undertaking is required to be made up (by its constitution or by the law under which it is established), whether that period is a year or not.

(5) The directors of a parent company shall secure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiary undertakings coincides with the company’s own financial year.

**Accounting reference periods and accounting reference date**

**232.**—(1) A company’s accounting reference periods are determined according to its accounting reference date.

(2) A company may, at any time before the end of the period of 9 months beginning with the date of its incorporation, by notice in the prescribed form given to the registrar specify its accounting reference date, that is, the date on which its accounting reference period ends in each calendar year.

(3) Failing such notice, a company’s accounting reference date is—

- (a) in the case of a company incorporated before the coming into operation of Article 5 of the Companies (Northern Ireland) Order 1990, 31st March;
- (b) in the case of a company incorporated after the coming into operation of that Article, the last day of the month in which the anniversary of its incorporation falls.

(4) A company’s first accounting reference period is the period of more than 6 months, but not more than 18 months, beginning with the date of its incorporation and ending with its accounting reference date.

(5) Its subsequent accounting reference periods are successive periods of 12 months beginning immediately after the end of the previous accounting reference period and ending with its accounting reference date.

(6) This Article has effect subject to the provisions of Article 233 relating to the alteration of accounting reference dates and the consequences of such alteration.

**Alteration of accounting reference date**

**233.**—(1) A company may by notice in the prescribed form given to the registrar specify a new accounting reference date having effect in relation to the company’s current accounting reference period and subsequent periods.

(2) A company may by notice in the prescribed form given to the registrar specify a new accounting reference date having effect in relation to the company's previous accounting reference period and subsequent periods if—

- (a) the company is a subsidiary undertaking or parent undertaking of another company and the new accounting reference date coincides with the accounting reference date of that other company, or
- (b) an administration order under Part III of the Insolvency (Northern Ireland) Order 1989<sup>(2)</sup> is in force.

A company's "previous accounting reference period" means that immediately preceding its current accounting reference period.

- (3) The notice shall state whether the current or previous accounting reference period—
- (a) is to be shortened, so as to come to an end on the first occasion on which the new accounting reference date falls or fell after the beginning of the period, or
  - (b) is to be extended, so as to come to an end on the second occasion on which that date falls or fell after the beginning of the period.

(4) A notice under paragraph (1) stating that the current accounting reference period is to be extended is ineffective, except as mentioned below, if given less than 5 years after the end of an earlier accounting reference period of the company which was extended by virtue of this Article.

This paragraph does not apply—

- (a) to a notice given by a company which is a subsidiary undertaking or parent undertaking of another company and the new accounting reference date coincides with that of the other company, or
- (b) where an administration order is in force under Part III of the Insolvency (Northern Ireland) Order 1989,

or where the Department directs that it should not apply, which it may do with respect to a notice which has been given or which may be given.

(5) A notice under paragraph (2)(a) may not be given if the period allowed for laying and delivering accounts and reports in relation to the previous accounting reference period has already expired.

(6) An accounting reference period may not in any case, unless an administration order is in force under Part III of the Insolvency (Northern Ireland) Order 1989<sup>(3)</sup>, be extended so as to exceed 18 months and a notice under this Article is ineffective if the current or previous accounting reference period as extended in accordance with the notice would exceed that limit."

### **Individual company accounts**

6.—(1) The following Article is inserted in Part VIII of the 1986 Order—

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*“Annual accounts*

**Duty to prepare individual company accounts**

**234.**—(1) The directors of every company shall prepare for each financial year of the company—

- (a) a balance sheet as at the last day of the year, and
- (b) a profit and loss account.

Those accounts are referred to in this Part as the company’s “individual accounts”.

(2) The balance sheet shall give a true and fair view of the state of affairs of the company as at the end of the financial year; and the profit and loss account shall give a true and fair view of the profit or loss of the company for the financial year.

(3) A company’s individual accounts shall comply with the provisions of Schedule 4 as to the form and content of the balance sheet and profit and loss account and additional information to be provided by way of notes to the accounts.

(4) Where compliance with the provisions of that Schedule, and the other provisions of this Order as to the matters to be included in a company’s individual accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information shall be given in the accounts or in a note to them.

(5) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors shall depart from that provision to the extent necessary to give a true and fair view.

Particulars of any such departure, the reasons for it and its effect shall be given in a note to the accounts.”.

(2) Schedule 4 to the 1986 Order (form and content of company accounts) is amended in accordance with Schedule 1 to this Order.

**Group accounts**

7.—(1) The following Article is inserted in Part VIII of the 1986 Order—

**“Duty to prepare group accounts**

**235.**—(1) If at the end of a financial year a company is a parent company the directors shall, as well as preparing individual accounts for the year, prepare group accounts.

(2) Group accounts shall be consolidated accounts comprising—

- (a) a consolidated balance sheet dealing with the state of affairs of the parent company and its subsidiary undertakings, and
- (b) a consolidated profit and loss account dealing with the profit or loss of the parent company and its subsidiary undertakings.

(3) The accounts shall give a true and fair view of the state of affairs as at the end of the financial year, and the profit or loss for the financial year, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.

(4) A company’s group accounts shall comply with the provisions of Schedule 4A as to the form and content of the consolidated balance sheet and consolidated profit and loss account and additional information to be provided by way of notes to the accounts.

(5) Where compliance with the provisions of that Schedule, and the other provisions of this Order, as to the matters to be included in a company’s group accounts or in notes to

those accounts, would not be sufficient to give a true and fair view, the necessary additional information shall be given in the accounts or in a note to them.

(6) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors shall depart from that provision to the extent necessary to give a true and fair view.

Particulars of any such departure, the reasons for it and its effect shall be given in a note to the accounts.”.

(2) Schedule 2 to this Order (form and content of group accounts) is inserted after Schedule 4 to the 1986 Order, as Schedule 4A.

(3) The following Articles are inserted in Part VIII of the 1986 Order—

**“Exemption for parent companies included in accounts of larger group**

**236.**—(1) A company is exempt from the requirement to prepare group accounts if it is itself a subsidiary undertaking and its immediate parent undertaking is established under the law of a member State of the European Economic Community, in the following cases—

- (a) where the company is a wholly-owned subsidiary of that parent undertaking;
- (b) where that parent undertaking holds more than 50 per cent. of the shares in the company and notice requesting the preparation of group accounts has not been served on the company by shareholders holding in aggregate—
  - (i) more than half of the remaining shares in the company, or
  - (ii) 5 per cent. of the total shares in the company.

Such notice must be served not later than 6 months after the end of the financial year before that to which it relates.

(2) Exemption is conditional upon compliance with all of the following conditions—

- (a) that the company is included in consolidated accounts for a larger group drawn up to the same date, or to an earlier date in the same financial year, by a parent undertaking established under the law of a member State of the European Economic Community;
- (b) that those accounts are drawn up and audited, and that parent undertaking’s annual report is drawn up, according to that law, in accordance with the provisions of the Seventh Directive (83/349/EEC);
- (c) that the company discloses in its individual accounts that it is exempt from the obligation to prepare and deliver group accounts;
- (d) that the company states in its individual accounts the name of the parent undertaking which draws up the group accounts referred to above and—
  - (i) if it is incorporated outside Northern Ireland, the country in which it is incorporated, and
  - (ii) if it is unincorporated, the address of its principal place of business;
- (e) that the company delivers to the registrar, within the period allowed for delivering its individual accounts, copies of those group accounts and of the parent undertaking’s annual report, together with the auditors’ report on them; and
- (f) that if any document comprised in accounts and reports delivered in accordance with sub-paragraph (e) is in a language other than English, there is annexed to the copy of that document delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

(3) The exemption does not apply to a company any of whose securities are listed on a stock exchange in any member State of the European Economic Community.

(4) Shares held by directors of a company for the purpose of complying with any share qualification requirement shall be disregarded in determining for the purposes of paragraph (1)

(a) whether the company is a wholly-owned subsidiary.

(5) For the purposes of paragraph (1)(b) shares held by a wholly-owned subsidiary of the parent undertaking, or held on behalf of the parent undertaking or a wholly-owned subsidiary, shall be attributed to the parent undertaking.

(6) In paragraph (3) “securities” includes—

(a) shares and stock,

(b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness,

(c) warrants or other instruments entitling the holder to subscribe for securities falling within sub-paragraph (a) or (b), and

(d) certificates or other instruments which confer—

(i) property rights in respect of a security falling within sub-paragraph (a), (b) or (c),

(ii) any right to acquire, dispose of, underwrite or convert a security, being a right to which the holder would be entitled if he held any such security to which the certificate or other instrument relates, or

(iii) a contractual right (other than an option) to acquire any such security otherwise than by subscription.

### **Subsidiary undertakings included in the consolidation**

**237.**—(1) Subject to the exceptions authorised or required by this Article, all the subsidiary undertakings of the parent company shall be included in the consolidation.

(2) A subsidiary undertaking may be excluded from consolidation if its inclusion is not material for the purpose of giving a true and fair view; but two or more undertakings may be excluded only if they are not material taken together.

(3) In addition, a subsidiary undertaking may be excluded from consolidation where—

(a) severe long-term restrictions substantially hinder the exercise of the rights of the parent company over the assets or management of that undertaking, or

(b) the information necessary for the preparation of group accounts cannot be obtained without disproportionate expense or undue delay, or

(c) the interest of the parent company is held exclusively with a view to subsequent resale and the undertaking has not previously been included in consolidated group accounts prepared by the parent company.

The reference in sub-paragraph (a) to the rights of the parent company and the reference in sub-paragraph (c) to the interest of the parent company are, respectively, to rights and interests held by or attributed to the company for the purposes of Article 266 (definition of “parent undertaking”) in the absence of which it would not be the parent company.

(4) Where the activities of one or more subsidiary undertakings are so different from those of other undertakings to be included in the consolidation that their inclusion would be incompatible with the obligation to give a true and fair view, those undertakings shall be excluded from consolidation.

This paragraph does not apply merely because some of the undertakings are industrial, some commercial and some provide services, or because they carry on industrial or commercial activities involving different products or provide different services.

(5) Where all the subsidiary undertakings of a parent company fall within the above exclusions, no group accounts are required.”.

(4) The following Article is inserted in Part VIII of the 1986 Order—

**“Treatment of individual profit and loss account where group accounts prepared**

**238.**—(1) The following provisions apply with respect to the individual profit and loss account of a parent company where—

- (a) the company is required to prepare and does prepare group accounts in accordance with this Order, and
- (b) the notes to the company’s individual balance sheet show the company’s profit or loss for the financial year determined in accordance with this Order.

(2) The profit and loss account need not contain the information specified in paragraphs 52 to 57 of Schedule 4 (information supplementing the profit and loss account).

(3) The profit and loss account must be approved in accordance with Article 241(1) (approval by board of directors) but may be omitted from the company’s annual accounts for the purposes of the other provisions below in this Chapter.

(4) The exemption conferred by this Article is conditional upon its being disclosed in the company’s annual accounts that the exemption applies.”.

**Additional disclosure required in notes to accounts**

**8.**—(1) The following Article is inserted in Part VIII of the 1986 Order—

**“Disclosure required in notes to accounts: related undertakings**

**239.**—(1) The information specified in Schedule 5 shall be given in notes to a company’s annual accounts.

(2) Where the company is not required to prepare group accounts, the information specified in Part I of that Schedule shall be given; and where the company is required to prepare group accounts, the information specified in Part II of that Schedule shall be given.

(3) The information required by Schedule 5 need not be disclosed with respect to an undertaking which—

- (a) is established under the law of a country outside the United Kingdom, or
- (b) carries on business outside the United Kingdom,

if in the opinion of the directors of the company the disclosure would be seriously prejudicial to the business of that undertaking, or to the business of the company or any of its subsidiary undertakings, and the Department agrees that the information need not be disclosed.

This paragraph does not apply in relation to the information required under paragraph 5(2), 6 or 20 of that Schedule.

(4) Where advantage is taken of paragraph (3), that fact shall be stated in a note to the company’s annual accounts.

(5) If the directors of the company are of the opinion that the number of undertakings in respect of which the company is required to disclose information under any provision of

Schedule 5 is such that compliance with that provision would result in information of excessive length being given, the information need only be given in respect of—

- (a) the undertakings whose results or financial position, in the opinion of the directors, principally affected the figures shown in the company's annual accounts, and
- (b) undertakings excluded from consolidation under Article 237(3) or (4).

This paragraph does not apply in relation to the information required under paragraph 10 or 29 of that Schedule.

(6) If advantage is taken of paragraph (5)—

- (a) there shall be included in the notes to the company's annual accounts a statement that the information is given only with respect to such undertakings as are mentioned in that paragraph, and
- (b) the full information (both that which is disclosed in the notes to the accounts and that which is not) shall be annexed to the company's next annual return.

For this purpose the "next annual return" means that next delivered to the registrar after the accounts in question have been approved under Article 241.

(7) If a company fails to comply with paragraph (6)(b), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine."

(2) Schedule 3 to this Order (disclosure of information: related undertakings) is substituted for Schedule 5 to the 1986 Order.

(3) The following Article is inserted in Part VIII of the 1986 Order—

**"Disclosure required in notes to accounts: emoluments and other benefits of directors and others**

**240.**—(1) The information specified in Schedule 6 shall be given in notes to a company's annual accounts.

(2) In that Schedule—

Part I relates to the emoluments of directors (including emoluments waived), pensions of directors and past directors, compensation for loss of office to directors and past directors and sums paid to third parties in respect of directors' services,

Part II relates to loans, quasi-loans and other dealings in favour of directors and connected persons, and

Part III relates to transactions, arrangements and agreements made by the company or a subsidiary undertaking for officers of the company other than directors.

(3) It is the duty of any director of a company, and any person who is or has at any time in the preceding 5 years been an officer of the company, to give notice to the company of such matters relating to himself as may be necessary for the purposes of Part I of Schedule 6.

(4) A person who makes default in complying with paragraph (3) commits an offence and is liable to a fine."

(4) Schedule 6 to the 1986 Order is amended in accordance with Schedule 4 to this Order.

**Approval and signing of accounts**

9. The following Article is inserted in Part VIII of the 1986 Order—

*“Approval and signing of accounts***Approval and signing of accounts**

**241.**—(1) A company’s annual accounts shall be approved by the board of directors and signed on behalf of the board by a director of the company.

(2) The signature shall be on the company’s balance sheet.

(3) Every copy of the balance sheet which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the name of the person who signed the balance sheet on behalf of the board.

(4) The copy of the company’s balance sheet which is delivered to the registrar shall be signed on behalf of the board by a director of the company.

(5) If annual accounts are approved which do not comply with the requirements of this Order, every director of the company who is party to their approval and who knows that they do not comply or is reckless as to whether they comply is guilty of an offence and liable to a fine.

For this purpose every director of the company at the time the accounts are approved shall be taken to be a party to their approval unless he shows that he took all reasonable steps to prevent their being approved.

(6) If a copy of the balance sheet—

(a) is laid before the company, or otherwise circulated, published or issued, without the balance sheet 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.”.

**Directors' report**

**10.**—(1) The following Articles are inserted in Part VIII of the 1986 Order—

*“Directors' report***Duty to prepare directors' report**

**242.**—(1) The directors of a company shall for each financial year prepare a report—

(a) containing a fair review of the development of the business of the company and its subsidiary undertakings during the financial year and of their position at the end of it, and

(b) stating the amount (if any) which they recommend should be paid as dividend and the amount (if any) which they propose to carry to reserves.

(2) The report shall state the names of the persons who, at any time during the financial year, were directors of the company, and the principal activities of the company and its subsidiary undertakings in the course of the year and any significant change in those activities in the year.

(3) The report shall 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,  
Part IV relates to the health, safety and welfare at work of the company's employees, and  
Part V relates to the involvement of employees in the affairs, policy and performance of the company.

(5) In the case of any failure to comply with the provisions of this Part as to the preparation of a directors' report and the contents of the report, every person who was a director of the company immediately before the end of the period for laying and delivering accounts and reports for the financial year in question is guilty of an offence and liable to a fine.

(6) In proceedings against a person for an offence under this Article it is a defence for him to prove that he took all reasonable steps for securing compliance with the requirements in question.

#### **Approval and signing of directors' report**

**242A.**—(1) The directors' report shall 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 directors' report which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the name of the person who signed it on behalf of the board.

(3) The copy of the directors' report which is delivered to the registrar shall be signed on behalf of the board by a director or the secretary of the company.

(4) If a copy of the directors' report—

(a) is laid before the company, or otherwise circulated, published or issued, without the report 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.”.

(2) Schedule 7 to the 1986 Order (matters to be included in directors' report) is amended in accordance with Schedule 5 to this Order.

#### **Auditors' report**

**11.** The following Articles are inserted in Part VIII of the 1986 Order—

##### *“Auditors' report*

#### **Auditors' report**

**243.**—(1) A company's auditors shall make a report to the company's members on all annual accounts of the company of which copies are to be laid before the company in general meeting during their tenure of office.

(2) The auditors' report shall state whether in the auditors' opinion the annual accounts have been properly prepared in accordance with this Order, and in particular whether a true and fair view is given—

- (a) in the case of an individual balance sheet, of the state of affairs of the company as at the end of the financial year,
  - (b) in the case of an individual profit and loss account, of the profit or loss of the company for the financial year,
  - (c) in the case of group accounts, of the state of affairs as at the end of the financial year, and the profit or loss for the financial year, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.
- (3) The auditors shall consider whether the information given in the directors' report for the financial year for which the annual accounts are prepared is consistent with those accounts; and if they are of opinion that it is not they shall state that fact in their report.

### **Signature of auditors' report**

**244.**—(1) The auditors' report shall state the names of the auditors and be signed by them.

(2) Every copy of the auditors' report which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the names of the auditors.

(3) The copy of the auditors' report which is delivered to the registrar shall state the names of the auditors and be signed by them.

(4) If a copy of the auditors' report—

- (a) is laid before the company, or otherwise circulated, published or issued, without the required statement of the auditors' names, or
- (b) is delivered to the registrar without the required statement of the auditors' names or 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.

(5) References in this Article to signature by the auditors are, where the office of auditor is held by a body corporate or partnership, to signature in the name of the body corporate or partnership by a person authorised to sign on its behalf.

### **Duties of auditors**

**245.**—(1) A company's auditors shall, in preparing their report, carry out such investigations as will enable them to form an opinion as to—

- (a) whether proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them, and
- (b) whether the company's individual accounts are in agreement with the accounting records and returns.

(2) If the auditors are of opinion that proper accounting records have not been kept, or that proper returns adequate for their audit have not been received from branches not visited by them, or if the company's individual accounts are not in agreement with the accounting records and returns, the auditors shall state that fact in their report.

(3) If the auditors fail to obtain all the information and explanations which, to the best of their knowledge and belief, are necessary for the purposes of their audit, they shall state that fact in their report.

(4) If the requirements of Schedule 6 (disclosure of information: emoluments and other benefits of directors and others) are not complied with in the annual accounts, the auditors shall include in their report, so far as they are reasonably able to do so, a statement giving the required particulars.”.

### **Publication of accounts and reports**

12. The following Articles are inserted in Part VIII of the 1986 Order—

#### *“Publication of accounts and reports*

##### **Persons entitled to receive copies of accounts and reports**

**246.**—(1) A copy of the company’s annual accounts, together with a copy of the directors' report for that financial year and of the auditors' report on those accounts, shall be sent to—

- (a) every member of the company,
- (b) every holder of the company’s debentures, and
- (c) every person who is entitled to receive notice of general meetings,

not less than 21 days before the date of the meeting at which copies of those documents are to be laid in accordance with Article 249.

(2) Copies need not be sent—

- (a) to a person who is not entitled to receive notices of general meetings and of whose address the company is unaware, or
- (b) to more than one of the joint holders of shares or debentures none of whom is entitled to receive such notices, or
- (c) in the case of joint holders of shares or debentures some of whom are, and some not, entitled to receive such notices, to those who are not so entitled.

(3) In the case of a company not having a share capital, copies need not be sent to anyone who is not entitled to receive notices of general meetings of the company.

(4) If copies are sent less than 21 days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(5) If default is made in complying with this Article, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(6) Where copies are sent out under this Article over a period of days, references elsewhere in this Order to the day on which copies are sent out shall be construed as references to the last day of that period.

##### **Right to demand copies of accounts and reports**

**247.**—(1) Any member of a company and any holder of a company’s debentures is entitled to be furnished, on demand and without charge, with a copy of the company’s last annual accounts and directors' report and a copy of the auditors' report on those accounts.

(2) The entitlement under this Article is to a single copy of those documents, but that is in addition to any copy to which a person may be entitled under Article 246.

(3) If a demand under this Article is not complied with within 7 days, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(4) If in proceedings for such an offence the issue arises whether a person had already been furnished with a copy of the relevant document under this Article, it is for the defendant to prove that he had.

#### **Requirements in connection with publication of accounts**

**248.**—(1) If a company publishes any of its statutory accounts, they must be accompanied by the relevant auditors' report under Article 243.

(2) A company which is required to prepare group accounts for a financial year shall not publish its statutory individual accounts for that year without also publishing with them its statutory group accounts.

(3) If a company publishes non-statutory accounts, it shall publish with them a statement indicating—

- (a) that they are not the company's statutory accounts,
- (b) whether statutory accounts dealing with any financial year with which the non-statutory accounts purport to deal have been delivered to the registrar,
- (c) whether the company's auditors have made a report under Article 243 on the statutory accounts for any such financial year, and
- (d) whether any report so made was qualified or contained a statement under Article 245(2) or (3) (accounting records or returns inadequate, accounts not agreeing with records and returns or failure to obtain necessary information and explanations);

and it shall not publish with the non-statutory accounts any auditors' report under Article 243.

(4) For the purposes of this Article a company shall be regarded as publishing a document if it publishes, issues or circulates it or otherwise makes it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.

(5) References in this Article to a company's statutory accounts are to its individual or group accounts for a financial year as required to be delivered to the registrar under Article 250; and references to the publication by a company of "non-statutory accounts" are to the publication of—

- (a) any balance sheet or profit and loss account relating to, or purporting to deal with, a financial year of the company, or
- (b) an account in any form purporting to be a balance sheet or profit and loss account for the group consisting of the company and its subsidiary undertakings relating to, or purporting to deal with, a financial year of the company,

otherwise than as part of the company's statutory accounts.

(6) A company which contravenes any provision of this Article, and any officer of it who is in default, is guilty of an offence and liable to a fine."

#### **Laying and delivering of accounts and reports**

**13.** The following Articles are inserted in Part VIII of the 1986 Order—

*“Laying and delivering of accounts and reports*

**Accounts and reports to be laid before company in general meeting**

**249.**—(1) The directors of a company shall in respect of each financial year lay before the company in general meeting copies of the company’s annual accounts, the directors' report and the auditors' report on those accounts.

(2) If the requirements of paragraph (1) are not complied with before the end of the period allowed for laying and delivering accounts and reports, every person who immediately before the end of that period was a director of the company is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(3) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period.

(4) It is not a defence to prove that the documents in question were not in fact prepared as required by this Part.

**Accounts and reports to be delivered to the registrar**

**250.**—(1) The directors of a company shall in respect of each financial year deliver to the registrar a copy of the company’s annual accounts together with a copy of the directors' report for that year and a copy of the auditors' report on those accounts.

If any document comprised in those accounts or reports is in a language other than English, the directors shall annex to the copy of that document delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

(2) If the requirements of paragraph (1) are not complied with before the end of the period allowed for laying and delivering accounts and reports, every person who immediately before the end of that period was a director of the company is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

(3) Further, if the directors of the company fail to make good the default within 14 days after the service of a notice on them requiring compliance, the court may on the application of any member or creditor of the company or of the registrar, make an order directing the directors (or any of them) to make good the default within such time as may be specified in the order.

The court’s order may provide that all costs of and incidental to the application shall be borne by the directors.

(4) It is a defence for a person charged with an offence under this Article to prove that he took all reasonable steps for securing that the requirements of paragraph (1) would be complied with before the end of the period allowed for laying and delivering accounts and reports.

(5) It is not a defence in any proceedings under this Article to prove that the documents in question were not in fact prepared as required by this Part.

**Civil penalty for failure to deliver accounts**

**250A.**—(1) Where the requirements of Article 250(1) are not complied with before the end of the period allowed for laying and delivering accounts and reports, the company is liable to a civil penalty.

This is in addition to any liability of the directors under Article 250.

(2) The amount of the penalty is determined by reference to the length of the period between the end of the period allowed for laying and delivering accounts and reports and the day on which the requirements are complied with, and whether the company is a public or private company, as follows:—

Length of period	Public company	Private company
Not more than 3 months.	£500	£100
More than 3 months but not more than 6 months.	£1,000	£250
More than 6 months but not more than 12 months.	£2,000	£500
More than 12 months.	£5,000	£1,000

(3) The penalty may be recovered by the registrar and shall be paid by him into the Consolidated Fund.

(4) It is not a defence in proceedings under this Article to prove that the documents in question were not in fact prepared as required by this Part.

#### **Accounts of subsidiary undertakings to be appended in certain cases**

**251.**—(1) The following provisions apply where at the end of the financial year a parent company has as a subsidiary undertaking—

- (a) a body corporate incorporated outside Northern Ireland which does not have an established place of business in Northern Ireland, or
- (b) an unincorporated undertaking,

which is excluded from consolidation in accordance with Article 237(4) (undertaking with activities different from the undertakings included in the consolidation).

(2) There shall be appended to the copy of the company's annual accounts delivered to the registrar in accordance with Article 250 a copy of the undertaking's latest individual accounts and, if it is a parent undertaking, its latest group accounts.

If the accounts appended are required by law to be audited, a copy of the auditors' report shall also be appended.

(3) The accounts must be for a period ending not more than 12 months before the end of the financial year for which the parent company's accounts are made up.

(4) If any document required to be appended is in a language other than English, the directors shall annex to the copy of that document delivered a translation of it into English, certified in the prescribed manner to be a correct translation.

(5) The above requirements are subject to the following qualifications—

- (a) an undertaking is not required to prepare for the purposes of this Article accounts which would not otherwise be prepared, and if no accounts satisfying the above requirements are prepared none need be appended;
- (b) a document need not be appended if it would not otherwise be required to be published, or made available for public inspection, anywhere in the world, but in that case the reason for not appending it shall be stated in a note to the company's accounts;
- (c) where an undertaking and all its subsidiary undertakings are excluded from consolidation in accordance with Article 237(4), the accounts of such of the

subsidiary undertakings of that undertaking as are included in its consolidated group accounts need not be appended.

(6) Paragraphs (2) to (4) of Article 250 (penalties, &c. in case of default) apply in relation to the requirements of this Article as they apply in relation to the requirements of paragraph (1) of that Article.

#### **Period allowed for laying and delivering accounts and reports**

**252.**—(1) The period allowed for laying and delivering accounts and reports is—

- (a) for a private company, 10 months after the end of the relevant accounting reference period, and
- (b) for a public company, 7 months after the end of that period.

This is subject to the following provisions of this Article.

(2) If the relevant accounting reference period is the company's first and is a period of more than 12 months, the period allowed is—

- (a) 10 months or 7 months, as the case may be, from the first anniversary of the incorporation of the company, or
- (b) 3 months from the end of the accounting reference period,

whichever last expires.

(3) Where a company carries on business, or has interests, outside the United Kingdom, the Channel Islands and the Isle of Man, the directors may, in respect of any financial year, give to the registrar before the end of the period allowed by paragraph (1) or (2) a notice in the prescribed form—

- (a) stating that the company so carries on business or has such interests, and
- (b) claiming a 3 month extension of the period allowed for laying and delivering accounts and reports;

and upon such a notice being given the period is extended accordingly.

(4) If the relevant accounting period is treated as shortened by virtue of a notice given by the company under Article 233 (alteration of accounting reference date), the period allowed for laying and delivering accounts is that applicable in accordance with the above provisions or 3 months from the date of the notice under that Article, whichever last expires.

(5) If for any special reason the Department thinks fit it may, on an application made before the expiry of the period otherwise allowed, by notice in writing to a company extend that period by such further period as may be specified in the notice.

(6) In this Article “the relevant accounting reference period” means the accounting reference period by reference to which the financial year for the accounts in question was determined.”.

#### **Remedies for failure to comply with accounting requirements**

**14.** The following Articles are inserted in Part VIII of the 1986 Order—

*“Revision of defective accounts and reports*

**Voluntary revision of annual accounts or directors' report**

**253.**—(1) If it appears to the directors of a company that any annual accounts of the company, or any directors' report, did not comply with the requirements of this Order, they may prepare revised accounts or a revised report.

(2) Where copies of the previous accounts or report have been laid before the company in general meeting or delivered to the registrar, the revisions shall be confined to—

- (a) the correction of those respects in which the previous accounts or report did not comply with the requirements of this Order, and
- (b) the making of any necessary consequential alterations.

(3) The Department may make provision by regulations as to the application of the provisions of this Order in relation to revised annual accounts or a revised directors' report.

(4) The regulations may, in particular—

- (a) make different provision according to whether the previous accounts or report are replaced or are supplemented by a document indicating the corrections to be made;
- (b) make provision with respect to the functions of the company's auditors in relation to the revised accounts or report;
- (c) require the directors to take such steps as may be specified in the regulations where the previous accounts or report have been—
  - (i) sent out to members and others under Article 246(1),
  - (ii) laid before the company in general meeting, or
  - (iii) delivered to the registrar,

or where a summary financial statement based on the previous accounts or report has been sent to members under Article 259;

- (d) apply the provisions of this Order (including those creating criminal offences) subject to such additions, exceptions and modifications as are specified in the regulations.

**Department's notice in respect of annual accounts**

**253A.**—(1) Where copies of a company's annual accounts have been sent out under Article 246, or a copy of a company's annual accounts has been laid before the company in general meeting or delivered to the registrar, and it appears to the Department that there is, or may be, a question whether the accounts 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.

(2) The notice shall specify a period of not less than one month for the directors to give the Department an explanation of the accounts or prepare revised accounts.

(3) If at the end of the specified period, or such longer period as it may allow, it appears to the Department that no satisfactory explanation of the accounts has been given and that the accounts have not been revised so as to comply with the requirements of this Order, it may if it thinks fit apply to the court.

(4) The provisions of this Article apply equally to revised annual accounts, in which case the references to revised accounts shall be read as references to further revised accounts.

### **Application to court in respect of defective accounts**

**253B.**—(1) An application may be made to the court—

- (a) by the Department, after having complied with Article 253A, or
- (b) by a person authorised by the Department for the purposes of this Article,

for a declaration that the annual accounts of a company do not comply with the requirements of this Order and for an order requiring the directors of the company to prepare revised accounts.

(2) Notice of the application, together with a general statement of the matters at issue in the proceedings, shall be given by the applicant to the registrar for registration.

(3) If the court orders the preparation of revised accounts, it may give directions with respect to—

- (a) the auditing of the accounts,
- (b) the revision of any directors' report or summary financial statement, and
- (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 accounts,

and such other matters as the court thinks fit.

(4) If the court finds that the accounts did not comply with the requirements of this Order it may order that all or part of—

- (a) the costs of and incidental to the application, and
- (b) any reasonable expenses incurred by the company in connection with or in consequence of the preparation of revised accounts,

shall be borne by such of the directors as were party to the approval of the defective accounts.

For this purpose every director of the company at the time the accounts were approved shall be taken to have been a party to their approval unless he shows that he took all reasonable steps to prevent their being approved.

(5) Where the court makes an order under paragraph (4) it shall have regard to whether the directors party to the approval of the defective accounts knew or ought to have known that the accounts did not comply with the requirements of this Order, and it may exclude one or more directors from the order or order the payment of different amounts by different directors.

(6) On the conclusion of proceedings on an application under this Article, the applicant shall give to the registrar for registration an office copy of the court order or, as the case may be, notice that the application has failed or been withdrawn.

(7) The provisions of this Article apply equally to revised annual accounts, in which case the references to revised accounts shall be read as references to further revised accounts.

### **Other persons authorised to apply to court**

**253C.**—(1) The Department may authorise for the purposes of Article 253B any person appearing to it—

- (a) to have an interest in, and to have satisfactory procedures directed to securing, compliance by companies with the accounting requirements of this Order,
- (b) to have satisfactory procedures for receiving and investigating complaints about the annual accounts of companies, and
- (c) otherwise to be a fit and proper person to be authorised.

(2) A person may be authorised generally or in respect of particular classes of case, and different persons may be authorised in respect of different classes of case.

(3) The Department may refuse to authorise a person if it considers that its authorisation is unnecessary having regard to the fact that there are one or more other persons who have been or are likely to be authorised.

(4) Authorisation shall be by order made subject to negative resolution.

(5) Where authorisation is revoked, the revoking order may make such provision as the Department thinks fit with respect to pending proceedings.

(6) Neither a person authorised under this Article, nor any officer, servant or member of the governing body of such a person, shall be liable in damages for anything done or purporting to be done for the purposes of or in connection with—

- (a) the taking of steps to discover whether there are grounds for an application to the court,
- (b) the determination whether or not to make such an application, or
- (c) the publication of its reasons for any such decision,

unless the act or omission is shown to have been in bad faith.”.