EXPLANATORY MEMORANDUM TO THE COMPANIES (1986 ORDER) (INTERNATIONAL ACCOUNTING STANDARDS AND OTHER ACCOUNTING AMENDMENTS) (NORTHERN IRELAND) REGULATIONS 2004

2004 No. 496

1.1 This explanatory memorandum has been prepared by the Department of Enterprise, Trade and Investment and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the House of Lords Select Committee on the Merits of Statutory Instruments.

2. DESCRIPTION

2.1 These Regulations amend the Companies (Northern Ireland) Order 1986 (the 1986 Order) to:

- permit companies to choose to use International Accounting Standards (IAS) rather than domestic accounting requirements;
- ensure that the use of IAS is fully accommodated within the 1986 Order; and
- update accounting requirements in certain areas.

3. Matters of special interest to the Select Committee

3.1 The Government was required to implement the Fair Value Directive, one of the Directives being implemented by this statutory rule, by 1 January 2004[1]. Paragraphs 4.8 – 4.10 below explain why there has been a delay in implementation. The Government has undertaken to the European Commission to implement the Fair Value Directive by 1 January 2005.

[1] The EC documents referred to in this memorandum are on the EC Commission's web site at http://europa.eu.int/comm/internal_market/accounting/index_en.htm.

3.2 Articles 1.14, 1.17 (part) and 2.10 of the Modernisation Directive amend the requirements regarding the annual report. These are being dealt with separately. There are some similarities between these provisions and the Government's proposals for a statutory Operating and Financial Review (OFR). Therefore, these particular amendments from the Modernisation Directive are being taken forward with the OFR proposals which it is intended to implement early next year.

4. LEGISLATIVE BACKGROUND

4.1 This statutory rule is being made to implement two separate pieces of European legislation:

- Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions, OJ L283/28 of 27 October 2001 (the "Fair Value Directive").

- Directive 2003/51/EC of the European Parliament and of the Council of 18 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, OJ L178/16 of 17 July 2003 (the "Modernisation Directive"), with the exception of Articles relating to the directors' report.

4.2 The statutory rule also makes provision to ensure the effective application in Northern Ireland of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of International Accounting Standards, OJ L243/1 of the 11 September 2002 (the "IAS Regulation"), and implements Member State options in that Directive.

4.3 The IAS Regulation requires companies governed by the law of a Member State, whose securities are admitted to trading on a regulated market in any Member State in the EU ("publicly traded companies") to prepare their consolidated accounts on the basis of accounting standards issued by the International Accounting Standards Board (IASB) that are adopted by the European Commission.

4.4 The IAS Regulation applies directly to those companies caught by it and strictly speaking does not need to be implemented in domestic legislation. However, certain changes to the 1986 Order are necessary to ensure that it is fully effective. The IAS Regulation also permits Member States to extend use of IAS to the individual accounts of publicly traded companies and to the individual and consolidated accounts of other companies.

4.5 The Modernisation Directive amends the four EU Directives that form the basis of European accounting requirements:

- the Fourth and Seventh Directives on the annual and consolidated accounts of companies;

- the Bank Accounts Directive on the annual and consolidated accounts of banks; and

- the Insurance Accounts Directive on the annual and consolidated accounts of insurance companies.

It will enable companies to follow modern, more transparent accounting practices that are consistent with International Accounting Standards (IAS).

4.6 The Fair Value Directive amends the accounting directives to permit certain financial instruments to be recorded at fair value (essentially current market value), in line with international accounting practices.

4.7 Additional amendments are being made to the 1986 Order to change the requirements on disclosure of information about dividends and to make minor changes to reporting and filing requirements.

4.8 The IAS Regulation and the Modernisation Directive must be implemented by 1 January 2005. The Fair Value Directive has an implementation date of 1 January 2004, but the Government decided to defer implementation for one year in response to concerns raised by consultees over implementation for 2004, in particular because of the further far-reaching changes to company accounting taking effect on 1 January 2005 under the IAS Regulation.

4.9 Most of the requirements of the Fair Value Directive will not apply to accounts prepared in accordance with IAS. The Government decided that it would be undesirable to introduce accounting changes in law that would in some cases only apply for a year.

4.10 Further, the Government considered that the new legislative provisions should preferably be supported by accounting standards. The relevant international standard (IAS 39) has been undergoing substantial revision, which has prevented the UK's Accounting Standards Board from implementing a UK standard based on it. The Government was persuaded by the arguments of consultees that it was advisable to defer implementation until the accounting standards were more settled.

4.11 As a general rule when transposing this EU Legislation the Government has followed the wording of the Directives as closely as possible. Transposition Notes for the IAS Regulation, Modernisation Directive and Fair Value Directive are attached at Annexes A1, A2 and A3 respectively.

5. EXTENT

5.1 This rule applies to Northern Ireland only. The corresponding Great Britain Regulations are the Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947).

6. EUROPEAN CONVENTION ON HUMAN RIGHTS

6.1 Barry Gardiner, MP, Minister for Enterprise, Trade and Investment, has made the following statement under section 19(1)(a) of the Human Rights Act 1998 (c.42):

"In my view, the provisions of the Companies (1986 Order) (International Accounting Standards and Other Accounting Amendments) Regulations (Northern Ireland) 2004 are compatible with the Convention rights".

7. POLICY BACKGROUND

IAS Regulation

7.1 During 1999, the European Commission published a communication on *"Financial Services: Implementing the Framework for Financial Markets: Action Plan"*. In March 2000, Ministers of Member States at the Lisbon European Council concluded that, in order to accelerate completion of the internal market for financial services, steps should be taken to enhance the comparability of companies' financial statements by 2005. The IAS Regulation is the main result of this decision.

7.2 The IAS Regulation introduces important changes in the way certain companies across the EU prepare their financial statements. It will apply directly to the consolidated accounts of EU publicly traded companies. The Government welcomes the adoption of the Regulation and strongly supports the European move to use IAS. Global markets require high quality globally agreed accounting standards to work more effectively. For publicly traded companies, adherence to global accounting standards should help to reduce the cost of capital by making their accounts more accessible to potential investors across the EU and worldwide. For potential investors, creditors and other users of financial statements, global standards provide a single means by which to compare performance and prospects on a like-for-like basis. Global standards should also help to promote financial stability.

7.3 The Government has therefore decided that publicly traded companies should also be permitted to use IAS for their individual accounts, and that all other companies should be permitted to use IAS for their individual and/or consolidated accounts. The use of IAS is extended on a permissive rather than mandatory basis because of the potential burden it could impose. In particular, IAS do not as yet offer a simplified regime for smaller companies comparable to that provided by the UK system. Also, IAS are in a state of transition and their impact on companies' profits (and tax liabilities) is therefore uncertain at present. However, the ultimate aim is to have a single accounting regime, which will provide greater consistency and transparency. The position will be reviewed around 2008 to see if the time is right to move to mandatory use of IAS.

The Modernisation Directive

7.4 The Modernisation Directive is designed to:

- remove conflicts between the accounting directives and IAS in existence at the time it was drawn up; and

- ensure that optional accounting treatments currently available under IAS in existence at 1 May 2002 are available to EU companies which continue to have the accounting directives as the basis of their accounts (i.e. those companies which will not prepare their accounts in accordance with the IAS Regulation).

7.5 In general, the Modernisation Directive amendments are technical amendments to existing accounting requirements. The Government's general approach to implementing the Modernisation Directive is to facilitate greater convergence between UK accounting standards and IAS, without imposing unnecessary burdens.

Fair Value Directive

7.6 The Fair Value Directive amended the accounting directives to permit certain financial instruments to be recorded at fair value in accordance with IAS 32 (*Financial Instruments: Disclosure and Presentation*) and IAS 39 (*Financial Instruments: Recognition and Measurement*). Member States have options on how far they extend the use of fair value accounting, and whether this is on a permissive or mandatory basis. The Government is permitting all companies to use fair value accounting for certain financial instruments in both their annual and consolidated accounts. As stated in the June 2003 Fair Value Accounting consultation document on implementing the Fair Value Directive, the Government believes a flexible, enabling approach is appropriate at this time.

Dividends

7.7 This amendment has the same objectives as the Modernisation Directive amendments: to bring accounting requirements into line with international requirements. It is a technical amendment, which requires information on dividends to be disclosed in slightly more detail and in a different location within financial statements.

Further amendments to the 1986 Order on reporting and filing requirements

Repeal of the current 3-month extension for laying and delivering accounts for all companies that have interests outside the United Kingdom

7.8 Article 252(3) of the 1986 Order currently allows, subject to notice, an automatic 3-month extension for companies with business or interests outside the UK of the period allowed for laying accounts and reports before the company in general meeting, and delivering them to the registrar of companies. This automatic extension was introduced in 1976; it is no longer justifiable in an era of rapid global communications.

7.9 Any company that anticipates real difficulty in meeting the reduced deadline may apply for a discretionary extension to be granted under Article 252(5). Under this provision the Department of Enterprise, Trade and Investment may grant extensions where there are special reasons for a likely delay in the timely laying and filing of accounts. Unlike the automatic extension under Article 252(3), this option is open to all companies, not only those with business or interests outside the UK. The amendment will therefore put all companies on an equal footing.

Voluntary revision of summary financial statements

7.10 Article 253 of the 1986 Order allows companies to issue voluntary revisions to their annual accounts or directors' report (for example to correct errors). It will be amended to extend voluntary revision to summary financial statements, which the 1986 Order does not currently specifically permit. However, there is nothing to stop companies voluntarily revising their summary financial statements outside of the 1986 Order. The amendment is therefore essentially a tidying-up measure to clarify existing practice.

Summary Financial Statements

7.11 Article 259 of the 1986 Order allows listed public companies to provide summary financial statements to their shareholders, in such cases as may be specified by the Department of Enterprise, Trade and Investment. This provision is being extended to allow the Department to permit any company to provide summary financial statements.

8. IMPACT

8.1 Transposition Notes are attached to this Explanatory Memorandum as follows:

- IAS Regulation — Annex A1
- Modernisation Directive — Annex A2
- Fair Value Directive — Annex A3

8.2 There is no impact on the public sector as this statutory rule only applies to companies.

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ANNEX A1

TRANSPOSITION NOTES – INTERNATIONAL ACCOUNTING STANDARDS REGULATION

THE COMPANIES (1986 ORDER) (INTERNATIONAL ACCOUNTING STANDARDS AND OTHER ACCOUNTING AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2004 (S.R. 2004 No. 496)

Introduction

1. The Companies (1986 Order) (International Accounting Standards and Other Accounting Amendments) Regulations (Northern Ireland) 2004 amend the Companies (Northern Ireland) Order 1986 ("the 1986 Order") in order:

   - to ensure the effective application of Regulation (EC) No.1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards ("the IAS Regulation")[1].

   - to exercise options conferred by Article 5 of the IAS Regulation.

2. Under Article 4 of the IAS Regulation, companies governed by the law of a Member State, whose securities are admitted to trading on a regulated market in any Member State ("publicly traded companies"), will be required to prepare their consolidated accounts on the basis of international accounting standards issued by the International Accounting Standards Board (IASB) that are adopted by the European Commission. This will apply to financial years commencing on or after 1 January 2005 and is directly applicable in the UK.

3. Under Article 5 of the IAS Regulation, Member States may extend use of adopted IAS on a permissive or a mandatory basis to the individual accounts of companies subject to Article 4, and to the individual and consolidated accounts of other companies. Following public consultation[2], the Government decided that UK companies would be permitted to choose whether to prepare their accounts using adopted IAS or continue to prepare their accounts in accordance with the 1986 Order and UK Generally Accepted Accounting Practice (UKGAAP).

Transposition Details: The IAS Regulation

4. Responsibility for measures taken to give full effect to the IAS Regulation and to implement the options in it lies with the Secretary of State for Trade and Industry and, in Northern Ireland, the Department of Enterprise, Trade and Investment.

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[1] O.J. No. L243/1 of 11th September 2002.

[2] "International Accounting Standards", 30 August 2002.

Article		
5	Article 5(a) provides that Member States may permit or require the companies governed by Article 4 to prepare their individual accounts in accordance with adopted IAS. Article 5(b) provides that Member States may permit or require other companies to prepare their consolidated accounts and/or their individual accounts in accordance with adopted IAS.	Part 2 of the Regulations inserts new Articles 234 and 234A into the Companies (Northern Ireland) Order 1986 permitting companies to prepare individual accounts in accordance with adopted IAS. New Article 234B requires disclosure in the notes to the accounts where individual accounts are prepared in accordance with adopted IAS. Part 2 of the Regulations also inserts new Articles 235 and 235A permitting companies not governed by Article 4 of the IAS Regulation to prepare group accounts in accordance with adopted IAS. New Article 235B requires disclosure in the notes to the accounts where group accounts are prepared in accordance with adopted IAS. New section 235C makes provision for consistency of accounts within a group. Regulation 3 of, and Schedule 1 to, the Regulations make consequential amendments to the 1986 Order to ensure the full effectiveness of Article 4 and of the exercise of the Member State options in Article 5

ANNEX A2

TRANSPOSITION NOTES – THE MODERNISATION DIRECTIVE

THE COMPANIES (1986 ORDER) (INTERNATIONAL ACCOUNTING STANDARDS AND OTHER ACCOUNTING AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2004 (S.R. 2004 No. 496)

Introduction

1. The Companies (1986 Order) (International Accounting Standards and Other Accounting Amendments) Regulations (Northern Ireland) 2004 ("the 2004 Regulations") implement Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Council 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 ("the Modernisation Directive"), with the exception of Articles 1.14, 1.17 (in part) and 2.10. The 2004 Regulations also give full effect to, and implement certain Member State options in, the IAS Regulation[1] and implement the Fair Value Directive[2].

2. These transposition notes deal with the implementation of the Modernisation Directive. The implementation of the Fair Value Directive and the IAS Regulation by the 2004 Regulations are the subject of separate transposition notes. Articles 1.14, 1.17(in part) and 2.10 of the Modernisation Directive making changes to the directors' report will be implemented in separate regulations which will introduce a related report - the Operating and Financial Review.

3. European Union (EU) accounting requirements are based primarily on four Accounting Directives; the Fourth[3] and Seventh[4] Directives on the annual and consolidated accounts of companies: the Directive on the annual and consolidated

[1] Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L243/1 of 11 September 2002).
[2] Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as banks and other financial institutions (OJ L283/28 of 27 October 2001).
[3] Fourth Council Directive of 25 July 1978 (78/660/EEC) on the annual accounts of certain types of companies (OJ L222/11 of 14.8.1978).
[4] Seventh Council Directive of 13 June 1983 (83/349/EEC) on consolidated accounts (OJ L193/1 of 18.7.1983).

accounts of banks and other financial institutions[5] ("the Bank Accounts Directive"); and the Directive on the annual and consolidated accounts of insurance undertakings[6] ("the Insurance Accounts Directive").

4. The Modernisation Directive amends the Accounting Directives by removing conflicts between the Accounting Directives and international accounting standards ("IAS") in existence at the time it was drawn up, and ensuring that optional accounting treatments available under IAS in existence at 1 May 2002 are available to EU companies which continue to have the Accounting Directives as the basis of their accounts (ie those companies which will not prepare their accounts in accordance with the IAS Regulation). The Modernisation Directive also amends the Insurance Accounts Directive to allow Member States to permit or require insurance companies to account at fair value for some of their financial instruments. The provisions for building societies and for Lloyd's are the subject of separate regulations and separate transposition notes. Similar provisions on fair valuation for other companies are contained in the Fair Value Directive.

6. For Northern Ireland, the Accounting Directives have been transposed into national law by the Companies (Northern Ireland) Order 1986 ("the 1986 Order"). The transposition of the Modernisation Directive therefore takes the form of amendments to the 1986 Order. In particular, the 2004 Regulations amend Part VIII of the 1986 Order and its attendant Schedules - Schedules 4 (form and content of company accounts), 4A (form and content of group accounts), 8 (form and content of accounts prepared by small companies), 8A (form and content of abbreviated accounts of small companies delivered to Registrar), 9 (special provisions for banking companies and groups), and 9A (form and content of accounts of insurance companies and groups).

7. Responsibility for the measures described in this transposition note taken to implement the Modernisation Directive in Northern Ireland lies with the Department of Enterprise, Trade and Investment.

8. The Table below describes where the substantive amendments made by the Modernisation Directive are being implemented in the 2004 Regulations.

[5] Council Directive of 8 December 1986 (86/635/EEC) on the annual accounts and consolidated accounts of banks and other financial institutions. OJ L372/1 of 31 December 1986.
[6] Council Directive of 19 December 1991 (91/674/EEC) on the annual accounts and consolidated accounts of insurance undertakings. OJ L374/7 of 31 December 1991.

Article	Objective	Implementation
	Amendments to the Fourth Directive (78/660/EEC)	
1.1	A new subparagraph in Article 2(1) allows Member States to permit or require the inclusion of other statements in the annual accounts in addition to the profit and loss account, balance sheet and notes to the accounts.	Member State option not being exercised.
1.2	New paragraph 6 in Article 4 allows Member States to permit or require the presentation of amounts within items in the profit and loss account and balance sheet to have regard to the substance of the reported transaction or arrangement rather than its legal form. Such permission or requirement may be restricted to certain classes of company and/or to consolidated accounts as defined in the Seventh Directive.	Member State option being exercised as a requirement. Schedule 2, paragraph 3 inserts a new paragraph 5A into Schedule 4 (form and content of company accounts) to the 1986 Order. Schedule 3, paragraph 3 inserts a new paragraph 5A into Schedule 8 (form and content of accounts prepared by small companies) to the 1986 Order. Schedule 5, paragraph 3 inserts a new paragraph 8A into Schedule 9 (special provisions for banking companies and groups) to the 1986 Order. Schedule 6, paragraph 3 inserts a new paragraph 6A into Schedule 9A (form and content of insurance companies and groups) to the 1986 Order.
1.3, 1.6, 1.13 and 1.21	A new paragraph in Article 8 allows Member States to permit or require companies to adopt the presentation of the balance sheet set out in Article 10a (as inserted by Article 1.6) as an alternative to the layouts otherwise prescribed or permitted. New Article 10a allows Member States to permit or require companies, or certain classes of company, to present balance sheet items on the basis of a distinction between current and non-current items, as in IAS rather than as in Articles 9 and 10, provided that the information given is at least equivalent.	Member State option not being exercised.

1.4, 1.5, 1.7, 1.9 and 1.10	These Articles make changes in terminology relating to provisions to facilitate the application of IAS 37 *Provisions, contingent liabilities and contingent assets.*	Schedule 2, paragraphs 4, 5(2), 6(4), 7(2) and 8(4) amend Schedule 4 (form and content of company accounts) to the 1986 Order. Schedule 3, paragraphs 4, 5(2), 6(4) and 7(4) amend Schedule 8 (form and content of accounts prepared by small companies) to the 1986 Order. Schedule 4, paragraph 2 amends Schedule 8A (form and content of abbreviated accounts of small companies delivered to Registrar) to the 1986 Order. Schedule 5, paragraphs 4, 5, 8(4) and 9(4) amend Schedule 9 (special provisions for banking companies and groups) to the 1986 Order. Schedule 6, paragraphs 4, 5, 8(4) and 9(4) amend Schedule 9A (form and content of accounts of insurance companies and groups) to the 1986 Order. Consequential amendments are made in Schedule 7 paragraphs 2, 3, 8, 9 and 11.
1.8	A new paragraph in Article 22 allows Member States to permit or require all companies or any classes of company, to present a statement of their performance instead of the presentation of profit and loss items, provided the information given is at least equivalent.	Member State option not being exercised.
1.10	In Article 33(1)(c) "Revaluation of tangible fixed assets and financial fixed assets" is replaced with "Revaluation of fixed assets". This expands the scope of the fixed assets that can be revalued, in line with IAS.	Member State option not being exercised as Schedule 4 paragraph 31 to the 1986 Order already permits intangible fixed assets other than goodwill to be included at current cost.
1.12 and 1.23	Article 1.12 inserts new Articles 42e and 42f. New Article 42e allows Member States to permit or require for all companies or any classes of company, the valuation of specific categories of assets (other than financial instruments) at amounts determined by reference to their fair value. The permission or requirement can be restricted to consolidated accounts.	Schedule 2, paragraph 5(4) inserts new paragraphs 34D, 34E and 34F and paragraph 6(3) inserts new paragraph 45D into Schedule 4 (form and content of company accounts) to the 1986 Order. New paragraph 34D permits all companies to use fair valuation for investment property and living plants and animals in their individual and consolidated accounts. New paragraphs 34E and 34F deal with changes in the fair value of these assets. New paragraph 45D requires information about the use of fair value to be disclosed in a note to the accounts. Schedules 3 (paragraphs 5(4) and 6(3)), 5 (paragraphs 7 and 8(3)) and 6 (paragraphs 6, 7(1) and 8) make parallel

	Article 42f allows Member States to permit or require that any change in the fair value is included in the profit and loss account.	amendments to Schedules 8 (form and content of accounts prepared by small companies), 9 (special provisions for banking companies and groups) and 9A (form and content of accounts of insurance companies and groups) to the 1986 Order.
1.15, 1.16 and 1.18	The requirement in Article 48 for a statement in the published auditors' report of whether the accounts have been qualified or not reported on is deleted. The requirement in Article 49 regarding the disclosure of audit information when accounts are not published in full has been expanded. It must be disclosed whether the audit report was qualified, unqualified or adverse or whether no opinion was given. It must also be disclosed whether auditors have drawn attention in their report to any matter without qualifying the audit report. New Article 51a states what should be included in the auditors' report, incorporating deletions from the previous Articles. The most significant new requirement is that the auditor must identify the financial reporting framework used and say whether the accounts give a true and fair view in accordance with that framework.	Regulation 6 amends Article 243 of the 1986 Order, Regulation 7 amends Article 244 of the 1986 Order and Regulation 8 amends Article 248 of the 1986 Order to implement Articles 1.15, 1.16 and 1.18.
1.17 (first part)	The first part of new Article 51(1) requires that auditors of company accounts be approved by Member States to carry out statutory audits on the basis of the 8th Council Directive 84/253/EEC of 10.4. 1984.	Implemented by Part III of the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5)).
1.20	The Fourth Directive provides a number of	All public companies are already prevented from benefitting from these exemptions

	exemptions to lessen the burden of disclosure for companies below certain size criteria. New Article 53a provides that companies whose securities are admitted to trading on a regulated market of any Member State may no longer benefit from these exemptions.	by Articles 255A, 256 and 257B of the 1986 Order.
	Amendments to the Seventh Directive (83/349/EEC)	
2.1	The definition of "subsidiary undertaking" in Article 1.2 is amended to bring it into line with IAS 27 *Consolidated financial statements and accounting for investments in subsidiaries,*	Regulation 12 amends Article 266(4) of the 1986 Order to implement this requirement.
2.2, 2.4b , 2.5, 2.6 and 2.9	Article 14 is deleted. This provided for the exclusion of a subsidiary undertaking from the consolidated accounts of the parent if its activities were so incompatible with those of the parent that inclusion would fail to meet the requirement to give a true and fair view of the undertakings included in the consolidation taken as a whole.	Regulation 5(b) deletes Article 237(4) of the 1986 Order. Consequential amendments are made by Schedule 7 paragraphs 5, 6, 10 and 12.
2.3a and, 2.12	This replaces paragraph 4 of Article 6 to provide that a company whose securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Directive 93/22/EEC of 10 May 1993 on investment services in the securities field cannot be exempt from the requirement to prepare consolidated accounts. The amendment in Article 2.12 means that such companies cannot be exempt from publishing consolidated accounts.	No action necessary. Already encompassed by Article 256 of the 1986 Order.

2.3b and 2.4a	Delete spent provisions.	No action necessary.
2.4c	Article 2.4c amends Article 7 paragraph 3 by replacing the words "...companies the securities of which have been admitted to official listing on a stock exchange established in a Member State" with "...companies whose securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Directive 93/22/EEC". Such companies cannot be exempt from the requirement to prepare consolidated accounts.	Implemented by Schedule 7, paragraph 4. In addition regulation 4 adds a new Article 236A after Article 236 of the 1986 Order to implement Article 11 of the 7th Directive.
2.7	Adds a new subparagraph to Article 16(1) allowing Member States to permit or require the inclusion of other statements in the consolidated accounts in addition to the consolidated balance sheet, the consolidated profit and loss account and the notes to the accounts.	Member State option not being exercised.
2.11	This Article amends Article 37 in respect of the requirements on auditing of consolidated accounts in the same way that Articles 1.15 – 1.18 amend the requirements on individual accounts.	See Article 1.18 above.
	Amendments to the Bank Accounts Directive 86/635/EEC	
3.	This Article makes equivalent amendments to those made by Articles 1 and 2 of the Modernisation Directive to the 4th and 7th Directives.	Where amendments are required to be made for banking companies and groups, the notes against Articles 1 and 2 indicate this. For those banking undertakings not governed by the Companies Act 1985, implementation will be by means of the Bank Accounts Directive (Miscellaneous Banks) Regulations 1991 (to be amended following these Regulations).

	Amendments to the Insurance Accounts Directive 91/674/EEC	
4.1	This Article applies the bulk of Article 1 of the Modernisation Directive to the Insurance Accounts Directive. Article 4.1 inserts a new paragraph 1 into Directive 91/674/EEC on insurance company accounts. Among other things, this applies the fair value provisions in new Section 7a (Articles 42a to 42f) of Directive 78/660/EEC (inserted by Directive 2001/65/EEC) to insurance companies.	See the notes against Articles 1 and 2 above. See also the separate transposition notes for the fair value provisions. For those insurance undertakings not governed by the Companies Order, implementation will be by means of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations (Northern Ireland) 1994 (S.R. 1994 No. 429) (to be amended following these Regulations).
4.2 and 4.6	Article 4.2 replaces Article 4 with a new Article 4. New Article 4.1 applies the Insurance Accounts Directive to the association of underwriters known as Lloyd's and for the purposes of the Directive both Lloyd's and Lloyd's syndicates are deemed to be insurance undertakings. This is necessary as the Annex of provisions relating to Lloyd's has been deleted. New Article 4.2 is a derogation from Article 65(1) requiring Lloyd's to prepare aggregate accounts instead of consolidated accounts.	A requirement. This is to be the subject of separate transposition notes.
4.4	Article 46(5) is amended to allow Member States to permit or require insurance companies to use different valuation methods for different elements of an investment item. Article 46(6) provides that where such different valuation methods are applied, the notes to the accounts	Member State option not being exercised.

	are required to include a description of the methods used and the amount so determined.	
	When the Modernisation Directive comes into force.	
5	This Article requires Member States to implement the Modernisation Directive by 1 January 2005.	Regulation 1 provides for the 2004 Regulations to apply to financial years beginning on or after 1 January 2005.

TRANSPOSITION NOTES – THE FAIR VALUE DIRECTIVE

THE COMPANIES (1986 ORDER) (INTERNATIONAL ACCOUNTING STANDARDS AND OTHER ACCOUNTING AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2004 (S.R. 2004 No. 496)

Introduction

1. The Companies (1986 Order) (International Accounting Standards and Other Accounting Amendments) Regulations (Northern Ireland) 2004 implement **Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions (OJ L283/28, 27 October 2001)** ("the Fair Value Directive").

2. European Union (EU) accounting requirements are based primarily on four Accounting Directives: the Fourth[1] and Seventh[2] Directives on the annual and consolidated accounts of companies; the Directive on the annual and consolidated accounts of banks and other financial institutions[3] (the Bank Accounts Directive); and the Directive on the annual and consolidated accounts of insurance undertakings[4] (the Insurance Accounts Directive).

3. The Fair Value Directive was the first major amendment to the Accounting Directives. It is part of the EU's objective of enabling companies to use modern accounting practices that are consistent with International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS) (as future IAS will be called) issued by the International Accounting Standards Board (IASB). The amendments will allow fair value accounting (essentially current market value) to be used for certain financial instruments by all companies in their balance sheets. The use of fair value will result in regular changes in values, which will be dealt with in the profit and loss account (or in reserves in some cases). This will make financial statements more transparent, but may also lead to the balance sheets and reported profits of some companies being more volatile than at present. The Fair Value Directive also requires disclosure in the directors' report about a company's use of financial instruments, and requires information about fair valuation to be given in the notes to a company's accounts.

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[1] Fourth Council Directive of 25 July 1978 (78/660/EEC) based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJ L222/11 of 14 August 1978).
[2] Seventh Council Directive of 13 June 1983 (83/349/EEC) based on Article 54(3)(g) of the Treaty on consolidated accounts (OJ L193/1 of 18 July 1983).
[3] Council Directive of 8 December 1986 (86/635/EEC) on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L372/1 of 31 December 1986).
[4] Council Directive of 19 December 1991 (91/674/EEC) on the annual accounts and consolidated accounts of insurance undertakings (OJ L374/7 of 31 December 1991).

4. The Fair Value Directive amends the Fourth Directive, the Seventh Directive and the Bank Accounts Directive as regards the valuation rules for the annual and consolidated accounts of certain types of companies, banks and other financial institutions. It does not amend the Insurance Accounts Directive. Similar amendments were made to this Directive by the Modernisation Directive[5], which is also being transposed by these Regulations.

5. For Northern Ireland companies, the Accounting Directives have been transposed into national law by the Companies (Northern Ireland) Order 1986 ("the 1986 Order"). Amendments therefore need to be made to the 1986 Order to transpose the Fair Value Directive and those parts of the Modernisation Directive which amend the Insurance Accounts Directive regarding fair value accounting. This requires changes to Schedules 4, 7, 8, 8A, 9 and 9A to the 1986 Order. (The rest of the Modernisation Directive is also being transposed by the Regulations, and this is the subject of a separate transposition note.)

[5] Directive 2003/51/EC of the European Parliament and of the Council of 18 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 (OJ L178/16 of 17 July 2003).

Transposition Details: The Fair Value Directive

Responsibility for the measures taken to implement the Directive lies with the Secretary of State for Trade and Industry and, in Northern Ireland, the Department of Enterprise, Trade and Investment.

Articles	Objectives	Implementation
1.1	Article 1.1 inserts a new Section 7a comprising new Articles 42a to 42d into Directive 78/660/EEC on individual accounts.	Articles 1.1 and 1.2 are implemented by a series of amendments to Schedule 4 (individual accounts), Schedule 8 (small company accounts) and Schedule 9 (banking company accounts) to the 1986 Order. In general terms, the Regulations achieve these amendments as follows: • In respect of individual accounts, paragraphs 5(4), 6 and 8(2) of Schedule 2 to the Regulations insert new paragraphs 34A to 34F, 35A, 45A to 45D, 76A and 76B into Schedule 4 to the 1986 Order. These new paragraphs are collectively referred to below as the **"new Schedule 4 paragraphs"**. • In respect of small company accounts, paragraphs 5(4), 6 and 7(2) of Schedule 3 to the Regulations insert new paragraphs 34A to 34F, 35A, 42A to 42C, 52A and 52B into Schedule 8 to the 1986 Order. These new paragraphs are collectively referred to below as the **"new Schedule 8 paragraphs"**. • In respect of banking company accounts, paragraphs 7, 8 and 9(3) of Schedule 5 to the Regulations insert new paragraphs 44A to 44F, 50A, 58A to 58D, 82A and 82B into Schedule 9 (banking company accounts) to the 1986 Order. These new paragraphs are collectively referred to below as the **"new Schedule 9 paragraphs"**.
1.1	New Article 42a(1) requires Member States to permit or require all companies or any class of companies to use fair value accounting for their financial instruments, subject to certain restrictions. The permission or requirement may be restricted to consolidated accounts.	The first part of new Article 42a(1) is implemented: • in the new Schedule 4 paragraphs , by new paragraph 34A(1); • in the new Schedule 8 paragraphs, by new paragraph 34A(1); and • in the new Schedule 9 paragraphs, by new paragraph 44A(1). The second part of new Article 42a(1) is not being implemented, as the permission to use fair value accounting is not being restricted to consolidated accounts.

1.1	New Article 42a(2) provides that certain commodity-based contracts shall be considered to be derivative financial instruments (and thereby subject to this Directive) except in the circumstances defined.	New Article 42a(2) is implemented: • in the new Schedule 4 paragraphs, by new paragraphs 76A and 76B; • in the new Schedule 8 paragraphs, by new paragraphs 52A and 52B; and • in the new Schedule 9 paragraphs, by new paragraphs 82A and 82B.
1.1	New Article 42a(3) provides that fair value accounting shall only be used for liabilities that are part of a trading portfolio or derivative financial instruments.	New Article 42a(3) is implemented: • in the new Schedule 4 paragraphs, by new paragraph 34A(2); • in the new Schedule 8 paragraphs, by new paragraph 34A(2); and • in the new Schedule 9 paragraphs, by new paragraph 44A(2).
1.1	New Article 42a(4) provides that fair value accounting shall not be used for certain specified financial instruments.	New Article 42a(4) is implemented: • in the new Schedule 4 paragraphs, by new paragraph 34A(3); • in the new Schedule 8 paragraphs, by new paragraph 34A(3); and • in the new Schedule 9 paragraphs, by new paragraph 44A(3).
1.1	New Article 42a(5) confers an option on Member States to permit companies to value assets and liabilities in accordance with a fair value hedge accounting system.	New Article 42a(5) is implemented: • in the new Schedule 4 paragraphs, by new paragraph 34C; • in the new Schedule 8 paragraphs, by new paragraph 34C; and • in the new Schedule 9 paragraphs, by new paragraph 44C.
1.1	New Article 42b sets out how the fair value of a financial instrument should be determined.	New Article 42b is implemented: • in the new Schedule 4 paragraphs, by new paragraph 34B; • in the new Schedule 8 paragraphs, by new paragraph 34B; and • in the new Schedule 9 paragraphs, by new paragraph 44B.

1.1	New Article 42c(1) provides that changes in the value of financial instruments shall be included in the profit and loss account, except in certain specified circumstances where they shall be included in a fair value reserve.	New Article 42c(1) is implemented: • in the new Schedule 4 paragraphs, by new paragraph 34E, sub-paragraphs (1) to (3); • in the new Schedule 8 paragraphs, by new paragraph 34E,sub-paragraphs (1) to (3); and • in the new Schedule 9 paragraphs, by new paragraph 44E, sub-paragraphs (1) to (3).
1.1	New Article 42c(2) allows Member States to permit or require a change in the value of a specific type of financial instrument to be included in the fair value reserve.	New Article 42c(2) is implemented: • in the new Schedule 4 paragraphs, by new paragraph 34E, sub-paragraph (4); • in the new Schedule 8 paragraphs, by new paragraph 34E, sub-paragraph (4); and • in the new Schedule 9 paragraphs, by new paragraph 44E, sub-paragraph (4).
1.1	New Article 42c(3) provides that amounts shall be transferred from the fair value reserve when they are no longer necessary.	New Article 42c(3) is implemented: • in the new Schedule 4 paragraphs, by new paragraph 34F; • in the new Schedule 8 paragraphs, by new paragraph 34F; and • in the new Schedule 9 paragraphs, by new paragraph 44F.
1.1	New Article 42d requires that, where financial instruments have been valued in accordance with fair value, certain specified information has to be disclosed in the notes to the annual accounts.	New Article 42d is implemented: • in the new Schedule 4 paragraphs, by new paragraph 45A; • in the new Schedule 8 paragraphs, by new paragraph 42A; and • in the new Schedule 9 paragraphs, by new paragraph 58A.
1.2	This Article amends Article 43(1)(14)(a) and (b) of Directive 78/660/EEC. It requires the disclosure in the notes to the accounts of certain specified information about any derivative financial instruments that have not been valued at fair values and certain financial fixed assets.	Article 1.2 is implemented: • in the new Schedule 4 paragraphs, by new paragraphs 45B and 45C; • in the new Schedule 8 paragraphs, by new paragraph 45B (reflecting the amendment to Article 43(1)(14)(b) only); and • in the new Schedule 9 paragraphs, by new paragraphs 58B and 58C.

1.3	This Article amends Article 44(1) of Directive 78/660/EEC to allow Member States to exempt small companies from the requirement to disclose information about derivative financial instruments not valued at fair value.	Schedule 5, paragraph 7 implements Article 1.3 by not requiring small companies to make the disclosures required by Article 43(1)(14)(a).
1.4	This Article amends Article 46(2) of Directive 78/660/EEC by inserting a new requirement to disclose information in the directors' report about the company's financial risk management objectives and policies and its exposure to risk, in relation to its use of financial instruments.	Regulation 13(1) inserts a new paragraph 5A into Schedule 7 to the 1986 Order to implement Article 1.4. Small companies will be exempted from this requirement by regulation 13(2).
2.1 – 2.2	Articles 2.1 and 2.2 make corresponding amendments to Directive 83/349/EEC on consolidated accounts as are made by Articles 1.1 – 1.3 to Directive 78/660/EEC.	No specific amendments are required to implement these parts of Article 2 given the general provision in paragraph 1(1) of Schedule 4A to the 1986 Order that group accounts shall comply as far as practicable with the provisions on individual accounts as if the group were a single company.
2.3	This Article amends Article 36 of Directive 83/349/EEC by inserting a new requirement to disclose information in the directors' report about the company's financial risk management objectives and policies and its exposure to risk, in relation to its use of financial instruments.	Regulation 13 inserts a new paragraph 5A into Schedule 7 to the 1986 Order to implement Article 2.3.
3	Article 3 applies the provisions in Article 1 to Directive 86/635/EEC on the accounts of banks and other financial institutions.	The notes against Article 1 indicate how Article 3 is implemented in Schedule 9 to the 1986 Order. For those banking undertakings not governed by the Companies Act 1985, Article 3 will be implemented through the Bank Accounts Directive (Miscellaneous Banks) Regulations 1991 (to be amended following these Regulations).
4.1	This Article requires Member States to implement the Fair Value Directive by 1 January 2004.	These Regulations will apply to companies' financial years commencing on or after 1 January 2005.

Transposition Details: The Modernisation Directive (provisions relating to fair value)

Responsibility for the measures taken to implement the Directive lies with the Secretary of State for Trade and Industry and, in Northern Ireland, the Department of Enterprise, Trade and Investment.

Articles	Objectives	Implementation
4.1 and 4.5	Article 4.1 inserts a new paragraph 1 into Directive 91/674/EEC on insurance company accounts. Among other things, this applies the fair value provisions in new Section 7a (Articles 42a to 42f) of Directive 78/660/EEC (inserted by Directive 2001/65/EEC) to insurance companies. Article 4.5 inserts new Article 46a into Directive 91/674/EEC on insurance company accounts containing certain provisions specific to the circumstances of the fair valuation of insurance companies' assets and liabilities. Articles 4.5(1) and 4.5(2) are equivalent provisions to the bulk of Article 1.1 (inserting new Articles 42a-c) of the Fair Value Directive. They permit insurance companies to use fair value accounting for financial instruments (with the same exceptions) and set out the rules governing how fair value may be used.	Articles 4.1 and 4.5 are implemented by means of amendments to Schedule 9A to the 1986 Order (insurance company accounts). These amendments are made by Schedule 6 to the Regulations, which amends Schedule 9A to the 1986 Order by: • inserting a new paragraph 19A and deleting paragraph 20 (paragraph 6); • inserting a new section BA (paragraph 7); • inserting new paragraphs 65A to C (paragraph 8(3)); and • inserting new paragraphs 81A and 81B (paragraph 9(3)) to implement the fair value provisions for insurance companies. For those insurance undertakings not governed by the Companies Order, implementation will be by means of the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations (Northern Ireland) 1994 (S.R. 1994 No. 429) (to be amended following these Regulations).