

1994 No. 133**COMPANIES****PARTNERSHIPS****Partnerships and Unlimited Companies (Accounts)
Regulations (Northern Ireland) 1994**

Made 30th March 1994

Coming into operation 12th May 1994

The Department of Economic Development, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the drawing up, auditing and publication of accounts by partnerships, limited partnerships and unlimited companies, in exercise of the powers conferred on it by the said section 2(2) and of every power enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Partnerships and Unlimited Companies (Accounts) Regulations (Northern Ireland) 1994 and shall come into operation on 12th May 1994.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

(2) In these Regulations—

“the 1986 Order” means the Companies (Northern Ireland) Order 1986(d);

“the accounts”, in relation to a qualifying partnership, means the annual accounts, the annual report and the auditors’ report required by regulation 4;

“dealt with on a consolidated basis” means dealt with by the method of full consolidation, the method of proportional consolidation or the equity method of accounting;

(a) S.I. 1991 755.

(b) 1972 c. 68; section 2 is subject to Schedule 2 to that Act and is to be read with S.I. 1984/703 (N.I. 3) and S.R. 1984 No. 253.

(c) 1954 c. 33 (N.I.)

(d) S.I. 1986/1032 (N.I. 6); Part VIII of that Order dealing with accounts and audit has been substantially amended by the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5))

“financial year”, in relation to a qualifying partnership, means any period of not more than 18 months in respect of which a profit and loss account of the partnership is required to be made up by or in accordance with its constitution or, failing any such requirement, each period of 12 months beginning on 31st March;

“the Fourth Directive” means the Fourth Council Directive (78/660/EEC) of 25th July 1978 on the annual accounts of certain types of companies(a), as amended;

“general partner” has the same meaning as in the Limited Partnerships Act 1907(b);

“limited company” means a company limited by shares or limited by guarantee;

“limited partnership” means a partnership formed in accordance with the Limited Partnerships Act 1907;

“qualifying company” has the meaning given by regulation 9;

“qualifying partnership” has the meaning given by regulation 3;

“the Seventh Directive” means the Seventh Council Directive (83/349/EEC) of 13th June 1983 on consolidated accounts(c), as amended;

and other expressions shall have the meanings ascribed to them by the 1986 Order.

(3) Any reference in these Regulations to the members of a qualifying partnership shall be construed, in relation to a limited partnership, as a reference to its general partner or partners.

Qualifying partnerships

3.—(1) A partnership which is governed by the laws of Northern Ireland is a qualifying partnership for the purposes of these Regulations if each of its members is—

(a) a limited company, or

(b) an unlimited company, or a Scottish firm, each of whose members is a limited company.

(2) Where the members of a qualifying partnership include—

(a) an unlimited company, or a Scottish firm, each of whose members is a limited company, or

(b) a member of another partnership each of whose members is—

(i) a limited company, or

(a) O.J. No. L222 of 14.8.1978, pages 11 to 31. Relevant amendments to the Fourth Directive have been made by — (i) the Seventh Council Directive (83/349/EEC) of 13th June 1983 on consolidated accounts (O.J. No. L193 of 18.7.1983, pages 1 to 17); and (ii) Council Directive (90/604/EEC) of 8th November 1990 on small and medium-sized companies (O.J. No. L317 of 16.11.90, pages 57 to 59)

(b) 1907 c. 24 (7 Edw 7)

(c) O.J. No. L193 of 18.7.1983, pages 1 to 17. Relevant amendments to the Seventh Directive have been made by Council Directive (90/604/EEC) of 8th November 1990 on small and medium-sized companies (O.J. No. L317 of 16.11.1990, pages 57 to 59)

- (ii) an unlimited company, or a Scottish firm, each of whose members is a limited company,

any reference in regulations 4 to 8 to the members of the qualifying partnership includes a reference to the members of that company, firm or other partnership.

(3) The requirements of regulations 4 to 8 shall apply without regard to any change in the members of a qualifying partnership which does not result in it ceasing to be such a partnership.

(4) Any reference in paragraph (1) or (2) to a limited company, an unlimited company, or another partnership includes a reference to any comparable undertaking incorporated in or formed under the law of any country or territory outside Northern Ireland and any reference in those paragraphs to a Scottish firm includes a reference to any comparable undertaking formed under the law of any country or territory outside the United Kingdom.

Preparation of accounts of qualifying partnerships

4.—(1) Subject to regulation 7, the persons who are members of a qualifying partnership at the end of any financial year of the partnership shall, in respect of that year—

- (a) prepare the like annual accounts and annual report, and
- (b) cause to be prepared such an auditors' report,

as would be required under Part VIII of the 1986 Order (accounts and audit) if the partnership were a company formed and registered under that Order.

(2) The accounts required by this regulation—

- (a) shall be prepared within a period of 10 months beginning immediately after the end of the financial year, and
- (b) shall state that they are prepared under this regulation.

(3) The Schedule (which makes certain modifications and adaptations for the purposes of this regulation) shall have effect.

Delivery of accounts of qualifying partnerships to registrar etc.

5.—(1) Subject to regulation 7, each limited company which is a member of a qualifying partnership at the end of any financial year of the partnership shall append to the copy of its annual accounts which is next delivered to the registrar in accordance with Article 250 of the 1986 Order (a) a copy of the accounts of the partnership prepared for that year under regulation 4.

(2) Subject to regulation 7, a limited company which is a member of a qualifying partnership shall supply to any person upon request—

- (a) the name of each member which is to deliver, or has delivered, a copy of the latest accounts of the partnership to the registrar under paragraph (1), and

(a) Article 250 was substituted by Article 13 of the Companies (Northern Ireland) Order 1990

- (b) the name of each member incorporated in a member State other than the United Kingdom which is to publish, or has published, the latest accounts of the partnership in accordance with the provisions of the Fourth or Seventh Directive.

Publication of accounts of qualifying partnerships at head office

6.—(1) Subject to paragraph (2) and regulation 7, this regulation applies where a qualifying partnership's head office is in Northern Ireland and each of its members is—

- (a) an undertaking comparable to a limited company which is incorporated in a country or territory outside the United Kingdom, or
- (b) an undertaking comparable to an unlimited company or partnership—
 - (i) which is incorporated in or formed under the law of such a country or territory, and
 - (ii) each of whose members is such an undertaking as is mentioned in sub-paragraph (a).

(2) Paragraph (1) does not apply where any member of a qualifying partnership is—

- (a) an undertaking comparable to a limited company which is incorporated in a member State other than the United Kingdom, or
- (b) an undertaking comparable to an unlimited company or partnership—
 - (i) which is incorporated in or formed under the law of such a State, and
 - (ii) each of whose members is such an undertaking as is mentioned in sub-paragraph (a),

and (in either case) the latest accounts of the qualifying partnership have been or are to be appended to the accounts of any member of the partnership and published under the law of that State and in accordance with the provisions of the Fourth or Seventh Directive.

(3) The members of the qualifying partnership—

- (a) shall make the latest accounts of the partnership available for inspection by any person, without charge and during business hours, at the head office of the partnership, and
- (b) if any document comprised in those accounts is in a language other than English, shall annex to that document a translation of it into English, certified in accordance with regulation 5 of the Companies (Forms) (Amendment) Regulations (Northern Ireland) 1990(a) to be a correct translation.

(4) A member of the qualifying partnership shall supply to any person upon request—

- (a) a copy of the accounts required by paragraph (3)(a) to be made available for inspection, and

(b) a copy of any translation required by paragraph 3(b) to be annexed to any document comprised in those accounts,
at a price not exceeding the administrative cost of making the copy.

Exemption from regulations 4 to 6 where accounts consolidated

7.—(1) The members of a qualifying partnership are exempt from the requirements of regulations 4 to 6 if the partnership is dealt with on a consolidated basis in group accounts prepared by—

- (a) a member of the partnership which is established under the law of a member State, or
 - (b) a parent undertaking of such a member which is so established,
- and (in either case) the conditions mentioned in paragraph (2) are complied with.

(2) The conditions are—

- (a) that the group accounts are prepared and audited under the law of the member State concerned in accordance with the provisions of the Seventh Directive, and
- (b) the notes to those accounts disclose that advantage has been taken of the exemption conferred by this regulation.

(3) Where advantage is taken of the exemption conferred by this regulation, any member of the qualifying partnership which is a limited company must disclose on request the name of at least one member or parent undertaking in whose group accounts the partnership has been or is to be dealt with on a consolidated basis.

Penalties for non-compliance with regulations 4 to 6

8.—(1) If, in respect of a financial year of a qualifying partnership, the requirements of paragraph (1) of regulation 4 are not complied with within the period referred to in paragraph (2) of that regulation, every person who was a member of the partnership at the end of that year is guilty of an offence and liable on summary conviction to a fine not exceeding £2,000.

(2) If the accounts of a qualifying partnership—

- (a) a copy of which is delivered to the registrar under regulation 5, or
- (b) which are made available for inspection under regulation 6,

do not comply with the requirements of regulation 4(1), every person who, at the time when the copy was so delivered or (as the case may be) the accounts were first made available for inspection, was a member of the partnership is guilty of an offence and liable on summary conviction to a fine not exceeding £2,000.

(3) If a member of a qualifying partnership fails to comply with regulation 5, 6 or 7(3), that member is guilty of an offence and liable on summary conviction to a fine not exceeding £2,000.

(4) It is a defence for a person charged with an offence under this regulation to show that he took all reasonable steps for securing that the requirements in question would be complied with.

- (5) The following provisions of the 1986 Order(a), namely
- (a) Article 679 (summary proceedings),
 - (b) Article 680A (offences by bodies corporate), and
 - (c) Article 680B (criminal proceedings against unincorporated bodies),
- shall apply to an offence under this regulation.

Qualifying companies

9.—(1) An unlimited company incorporated in Northern Ireland is a qualifying company for the purposes of these Regulations if each of its members is—

- (a) a limited company, or
- (b) another unlimited company, or a Scottish firm, each of whose members is a limited company.

(2) Any reference in paragraph (1) to a limited company or another unlimited company includes a reference to any comparable undertaking incorporated in or formed under the law of any country or territory outside Northern Ireland and any reference in that paragraph to a Scottish firm includes a reference to any comparable undertaking formed under the law of any country or territory outside the United Kingdom.

Delivery of accounts of qualifying companies to registrar

10. In Article 262(3) of the 1986 Order(b) (exemption from requirement to deliver accounts and reports for certain unlimited companies), for the words “if the company is a banking company or the parent company of a banking group or if” there shall be substituted the words “if—

- (a) the company is a banking company or the parent company of a banking group, or
- (b) the company is a qualifying company within the meaning of the Partnerships and Unlimited Companies (Accounts) Regulations (Northern Ireland) 1994, or
- (c) ”.

Notes to company accounts of membership of qualifying partnerships or companies

11.—(1) In Article 239(3) of the 1986 Order(c) (disclosure required in notes to accounts) for the words “paragraph 5(2), 6 or 20” there shall be substituted the words “paragraph 5(2), 6, 9A, 20 or 28A”.

(2) After paragraph 9 of Schedule 5 to that Order(d) (disclosure of information related undertakings) there shall be inserted the following paragraph—

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- (a) Articles 680A and 680B were inserted by Article 20(1) of the Companies (No. 2) (Northern Ireland) Order 1990, S.I. 1990/1504 (N.I. 10)
 - (b) Article 262(3) was substituted by Article 19 of the Companies (Northern Ireland) Order 1990 and was amended by regulation 6 of, and paragraph 1 of Schedule 2 to the Companies (1986 Order) (Bank Accounts) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 258)
 - (c) Article 239 was substituted by Article 8 of the Companies (Northern Ireland) Order 1990
 - (d) Schedule 5 was substituted by Article 8(2) of, and Schedule 3 to, the Companies (Northern Ireland) Order 1990

“Membership of certain undertakings

9A.—(1) The information required by this paragraph shall be given where at the end of the financial year the company is a member of a qualifying undertaking.

(2) There shall be stated—

(a) the name and legal form of the undertaking, and

(b) the address of the undertaking’s registered office (whether in or outside Northern Ireland) or, if it does not have such an office, its head office (whether in or outside Northern Ireland).

(3) Information otherwise required by sub-paragraph (2) need not be given if it is not material.

(4) In this paragraph—

“member”, “qualifying company” and “qualifying partnership” have the same meanings as in the Partnerships and Unlimited Companies (Accounts) Regulations (Northern Ireland) 1994.

“qualifying undertaking” means a qualifying partnership or a qualifying company.”.

(3) After paragraph 28 of that Schedule there shall be inserted the following paragraph—

“Parent company’s or group’s membership of certain undertakings

28A.—(1) The information required by this paragraph shall be given where at the end of the financial year the parent company or group is a member of a qualifying undertaking.

(2) There shall be stated—

(a) the name and legal form of the undertaking, and

(b) the address of the undertaking’s registered office (whether in or outside Northern Ireland) or, if it does not have such an office, its head office (whether in or outside Northern Ireland).

(3) Information otherwise required by sub-paragraph (2) need not be given if it is not material.

(4) In this paragraph—

“member”, “qualifying company” and “qualifying partnership” have the same meanings as in the Partnerships and Unlimited Companies (Accounts) Regulations (Northern Ireland) 1994.

“qualifying undertaking” means a qualifying partnership or a qualifying company.”.

Transitional provisions

12.—(1) The members of a qualifying partnership need not prepare accounts in accordance with regulation 4 for a financial year commencing before 23rd December 1994.

(2) Where advantage is taken of the exemption conferred by paragraph (1), regulations 5 and 6 shall not apply, and the amendments to the 1986 Order effected by regulation 11 shall be treated as not having been made.

Sealed with the Official Seal of the Department of Economic
Development on 30th March 1994.

(L.S.)

A. L. Brown

Assistant Secretary

Modifications and Adaptations for purposes of Regulation 4

1.—(1) Accounts prepared under regulation 4 shall comply with the requirements of Part VIII of the 1986 Order as to the content of accounts subject to the following, namely—

- (a) the provisions of Article 267(2) and (3) of that Order(a) (meaning of “undertaking” and related expressions).
- (b) the omission of the provisions mentioned in paragraph 2(1), and
- (c) any necessary modifications to take account of the fact that partnerships are unincorporated.

(2) For the purposes of the provisions of Part VIII of the 1986 Order as applied to accounts so prepared, these Regulations shall be regarded as part of the requirements of that Order.

2.—(1) The provisions referred to in paragraph 1(1)(b) are—

- (a) in Part I of Schedule 4 to the 1986 Order, paragraph 3(6) and, in paragraph 3(2), the words from “adopted” to the end;
- (b) in Part II of that Schedule, paragraph 20;
- (c) in Part III of that Schedule, paragraphs 36A(b), 41, 43, 44, 45(c), 50(3)(b), 51(2)(d), 53(e) and 54;
- (d) in Schedule 4A to that Order(f), paragraphs 13(3) to (5), 14 and 15;
- (e) in Schedule 5 to that Order(g), paragraphs 4, 5, 10, 12, 18, 19 and 29.
- (f) in Schedule 6 to that Order(h), paragraphs 2 to 6, 8 and 9; and
- (g) Schedule 7 to that Order(i), except paragraph 6.

(2) Sub-paragraph (1) shall not be construed as affecting the requirement to give a true and fair view under Articles 234 and 235 of the 1986 Order(j).

3. Part III of the Companies (Northern Ireland) Order 1990 (eligibility for appointment as auditors) shall apply to auditors appointed for the purposes of regulation 4 as if qualifying partnerships were companies formed and registered under the 1986 Order, subject to any necessary modifications to take account of the fact that partnerships are unincorporated.

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- (a) Article 267 was substituted by Article 24 of the Companies (Northern Ireland) Order 1990
 - (b) Paragraph 36A was inserted by Article 6(2) of, and paragraph 7 of Schedule 1 to, the Companies (Northern Ireland) Order 1990
 - (c) Paragraph 45 was amended by section 212(2) of, and paragraph 38 of Schedule 16 to, the Financial Services Act 1986 (c. 60)
 - (d) Paragraph 51(2) was amended by Article 6(2) of, and paragraph 9 of Schedule 1 to, the Companies (Northern Ireland) Order 1990
 - (e) Paragraph 53 was amended by Article 113 of, and Schedule 6 to, the Companies (No. 2) (Northern Ireland) Order 1990
 - (f) Schedule 4A was inserted by Article 7(2) of, and Schedule 2 to, the Companies (Northern Ireland) Order 1990
 - (g) Schedule 5 was substituted by Article 8(2) of, and Schedule 3 to, the Companies (Northern Ireland) Order 1990
 - (h) Schedule 6 was amended by Article 8(4) of, and Schedule 4 to, the Companies (Northern Ireland) Order 1990
 - (i) Schedule 7 was amended by Article 10(2) of, and Schedule 5 to, the Companies (Northern Ireland) Order 1990
 - (j) Articles 234 and 235 were substituted by Articles 6 and 7 of the Companies (Northern Ireland) Order 1990

EXPLANATORY NOTE

(This note is not part of the Regulations.)

1. These Regulations implement Council Directive 90/605/EEC (Official Journal No. L317 of 16.11.1990, pages 60 to 62) which amends Directive 78/660/EEC on annual accounts (O.J. No. L222 of 14.8.1978, pages 11 to 31) (the Fourth EC Company Law Directive) and Directive 83/349/EEC on consolidated accounts (O.J. No. L193 of 18.7.1983, pages 1 to 17) (the Seventh EC Company Law Directive) as regards the scope of those Directives.

2. The scope of application of the Regulations is set out in regulations 3 (qualifying partnerships) and 9 (qualifying companies). They apply, in effect, to partnerships, limited partnerships and unlimited companies all of whose members having unlimited liability are limited companies.

3. Members of a qualifying partnership (general partners in the case of limited partnerships) are required by regulation 4 to prepare accounts and a directors' report, and to obtain an auditors' report on such accounts, in accordance with the provisions of Part VIII of the Companies (Northern Ireland) Order 1986 (the 1986 Order), subject to certain modifications set out in the Schedule to the Regulations. The Schedule disapplies requirements of Part VIII which do not derive from the European Community Directives on accounts.

4. Regulations 5 and 6 contain requirements about the publication of accounts prepared under the Regulations by members of qualifying partnerships.

5. Regulation 7 provides an exemption from the Regulations where the partnership has been dealt with in consolidated group accounts prepared by a member of the partnership established under the law of a member State of the EEC (or a parent of such a member), by the method of full or proportional consolidation or by the equity method of accounting.

6. Regulation 8 imposes criminal penalties for failure to comply with the Regulations.

7. Regulation 10 requires that unlimited companies which are qualifying companies deliver their accounts to the registrar of companies (they are already required to prepare accounts under Part VIII of the 1986 Order).

8. Regulation 11 imposes additional disclosure requirements in the notes to the accounts of companies which are members of qualifying partnerships or qualifying companies.

9. Regulation 12 permits the members of a qualifying partnership not to prepare accounts and a directors' report (and obtain an auditor's report on the accounts) under the Regulations for financial years commencing on a date prior to 23rd December 1994.