*Draft Regulations laid before Parliament under section 257(2) of the Companies Act 1985, for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 2005 No.

# COMPANIES

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

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|---|---|
| *Made - - - -* | *2005* |
| *Coming into force - -* | *2005* |

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

## PART 1

## General

**Citation, commencement and interpretation**

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

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

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

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

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

(b) regulations 15 to 18 have effect as respects annual accounts, directors' reports and operating and financial reviews prepared for companies' financial years which begin on or after 1st April 2006.

(5) In these Regulations, "the 1985 Act" means the Companies Act 1985.

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

# PART 2

## Directors' report

### Duty to prepare directors' report

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

*"Directors' report*

**Duty to prepare directors' report**

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

(a) the business review specified in section 234ZZB, and

(b) if section 234ZA applies to the report, the statement as to disclosure of information to auditors required by that section.

(2) For a financial year in which—

(a) the company is a parent company, and

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

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

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

(4) In the case of a quoted company, a directors' report need not contain any information included in the operating and financial review for that financial year (see section 234AA).

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

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

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

is guilty of an offence and liable to a fine.

**Directors' report: general requirements**

**234ZZA.**—(1) The directors' report for a financial year must state–

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

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

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

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

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

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

(4) In Schedule 7–

Part 1 relates to matters of a general nature, including changes in asset values, directors' shareholdings and other interests and contributions for political and charitable purposes;

Part 2 relates to the acquisition by a company of its own shares or a charge on them;

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

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

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

**Directors' report: business review**

**234ZZB.**—(1) The directors' report for a financial year must contain–

(a) a fair review of the business of the company, and

(b) a description of the principal risks and uncertainties facing the company.

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

(a) the development and performance of the business of the company during the financial year, and

(b) the position of the company at the end of that year,

consistent with the size and complexity of the business.

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

(a) analysis using financial key performance indicators, and

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

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

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

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

**Auditors' report on directors' report**

**3.** In section 235 of the 1985 Act (auditors' report)(**3**), for subsection (3) substitute–

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

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

**Special provision for small companies**

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

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

**Special provision for medium-sized companies**

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

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

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

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

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

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

(a) section 246(4) and (5)(b) and section 246A(2A) (provisions relating to directors' report) apply;

(b) the other provisions of sections 246 and 246A do not apply.

(1B) A company is ineligible if—

(a) it is a public company,

(b) it has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on one or more regulated activities, or

(c) it carries on an insurance market activity."

**Amendments to Schedule 7**

**7.**—(1) Schedule 7 to the 1985 Act (matters to be dealt with in directors' report) is amended as follows.

(2) In paragraph 1 (asset values)(**7**)—

(a) in sub-paragraph (2) omit "or of any of its subsidiary undertakings", and

(b) after that sub-paragraph insert—

(**4**) Section 246 was substituted by regulation 2(1) of S.I. 1997/220, and amended by regulation 6(1) of S.I. 1997/570, by regulation 8(1) of S.I. 2000/1430 and by regulations 3 and 13(2) of, and paragraph 12 of Schedule 1 to, S.I. 2004/2947.
(**5**) Section 246A was inserted by regulation 3 of S.I. 1997/220, and amended by regulation 3 of, and paragraph 13 of Schedule 1 to, S.I. 2004/2947.
(**6**) Section 247A was inserted by regulation 4 of S.I. 1997/220, and amended by article 11 of S.I. 2001/3649.
(**7**) Paragraph 1 of Schedule 7 was amended by regulations 14(4)(a) and 15(3) of S.I. 1996/189.

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

(3) In paragraph 5A (use of financial instruments)(**8**)—

(a) in sub-paragraph (1) omit—

(i) "and by its subsidiary undertakings", and

(ii) "and its subsidiary undertakings included in the consolidation" in each place where it occurs, and

(b) after that sub-paragraph insert—

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

(4) In paragraph 6 (miscellaneous matters)(**9**)—

(a) make the existing provision sub-paragraph (1),

(b) in that sub-paragraph omit—

(i) in paragraph (a), "or any of its subsidiary undertakings",

(ii) in paragraph (b), "and of its subsidiary undertakings", and

(iii) in paragraph (c), "and its subsidiary undertakings", and

(c) after that sub-paragraph insert—

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

# PART 3

## Operating and financial reviews

### Duty to prepare operating and financial review

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

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

**Duty to prepare operating and financial review**

**234AA.**—(1) The directors of a quoted company shall for each financial year prepare an operating and financial review.

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

(**8**) Paragraph 5A was inserted by regulation 13(1) of S.I. 2004/ 2947.
(**9**) Paragraph 6 was amended by section 8(2) of, and paragraph 2(2) of Schedule 5 to, the Companies Act 1989, and by regulations 3 and 8(a) of S.I. 1992/3178.
(**10**) Section 234A was inserted by section 8(1) of the Companies Act 1989.