

# **ENTERPRISE AND REGULATORY REFORM BILL**

## **Amendments on Directors' Remuneration**

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### **EXPLANATORY NOTES**

#### **INTRODUCTION**

1. These Explanatory Notes relate to proposed amendments to the Enterprise and Regulatory Reform Bill ("the Bill") on the matter of directors' remuneration. They have been prepared by the Department for Business, Innovation and Skills in order to assist the reader in understanding the amendments. They are not, and are not meant to be, a comprehensive description of every amendment. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

#### **SUMMARY**

2. The main purpose of the new clauses is to require a shareholder resolution on a company's directors' remuneration policy and to require that any remuneration payments and payments for loss of office are consistent with this policy, or else separately approved by shareholders. The clauses make changes to Part 10 and Part 15 of the Companies Act 2006 ("CA 2006"). As is the case with the existing measures on directors' remuneration, the clauses will apply to all 'quoted companies', as defined in section 385 of the CA 2006.

#### **TERRITORIAL EXTENT AND APPLICATION**

3. In Wales, company law is reserved; as it is in Scotland, with a very small number of specific policy exceptions (directors' remuneration is not one of them). In Northern Ireland, company law is devolved but the Northern Ireland Executive has elected to have the Companies Act 2006 apply in Northern Ireland also, so the provisions on directors' remuneration will apply in Northern Ireland if the Northern Ireland Assembly wishes to support their inclusion in a Legislative Consent Motion. The Northern Ireland Executive is considering this issue.

#### **COMMENCEMENT**

4. The intention is to commence the measures by order on 1 October 2013. New clause 8 (NC8) includes transitional provisions which clarify precisely how the new clauses are intended to take effect.

## **EXPLANATION OF CLAUSES**

### ***Amendment 56: Removal of clause 57***

5. This amendment has been included to give notice that the Government does not intend to seek to have clause 57 included in the Bill (in the form in which it leaves Public Bill Committee). The clause would repeal section 439(5) of the CA 2006, which currently prevents the statutory requirement for a resolution on the directors' remuneration report having the effect of making a person's entitlement to remuneration contingent on the outcome of the shareholder resolution.

6. In light of the proposed new clauses which introduce a shareholder resolution on remuneration policy and place new restrictions on payments to directors, clause 57 is no longer necessary.

### ***New clause 5 (NC5): Payments to directors: members' approval of directors' remuneration policy***

7. *Subsection (1)* inserts a new subsection (2A) into section 421 (*Content of directors' remuneration report*) of the CA 2006 and requires that, in making regulations on the required content of a directors' remuneration report, the Secretary of State must specify that the company's policy on remuneration of directors must be in a separate part of the report.

8. *Subsection (2)* inserts a new section 422A which makes it possible for a company to revise the directors' remuneration policy part of the directors' remuneration report. Section 422A(5) applies certain provisions in the CA 2006 to the revised report, as they apply to a directors' remuneration report.

9. *Subsection (4)* proposes a new section 439A to be inserted into the CA 2006 alongside the existing requirement under section 439 (*Quoted companies: members' approval of directors' remuneration report*) to put the directors' remuneration report to a shareholder resolution at every accounts meeting. This new section provides for a separate shareholder resolution on the directors' remuneration policy part of the directors' remuneration report.

10. Section 439A(1) requires companies to put the directors' remuneration policy to a shareholder resolution at an accounts or other general meeting in the first financial year commencing after the provisions come into force, and at least every three financial years thereafter.

11. Section 439A(2) has the effect of requiring companies to put the directors' remuneration policy to a shareholder resolution at the accounts meeting if, at the last accounts meeting, the shareholder resolution on the directors' remuneration report put forward under section 439 of the CA 2006 was not passed; and if, at that last accounts meeting or other general meeting held since, there was no shareholder resolution on

the directors' remuneration policy under section 439A.

12. Section 439A(5) applies subsections (2) to (4) of existing section 439 of the CA 2006 to section 439A, therefore requiring: notice to be given in any manner permitted for the service on the member of notice of the meeting; for the business of the meeting to include the resolution; and for the existing directors to ensure the resolution is put to the vote of the meeting.

***New clause 6 (NC6): Payments to directors of quoted companies***

13. NC6 makes provision about the effect of the shareholder resolution on the directors' remuneration policy created by NC5. It inserts a new Chapter 4A into the part of the CA 2006 which deals with payments to directors.

14. Proposed section 226A defines the type of remuneration payments to directors and payments for directors' loss of office, to which the rest of the Chapter applies.

15. Proposed sections 226B and 226C place restrictions on the remuneration payments and payments for loss of office that can be made to directors of quoted companies. All such payments to directors will need to be consistent with the directors' remuneration policy of the company of which the person is a director. Alternatively, payments will need to be approved by a separate shareholder resolution.

16. Proposed section 226D specifies the process by which a company must approve a remuneration payment or payment for loss of office as part of a separate shareholder resolution under section 226B(1)(b) or 226C(1)(b). The details of any proposed payment, including an explanation of how it is inconsistent with the approved directors' remuneration policy, will need to be set out in a memorandum made available to shareholders.

17. Proposed section 226E clarifies the consequences of making payments which are not either consistent with the last directors' remuneration policy to have been approved by shareholders, or approved by a specific shareholder resolution. In doing so, it makes provision comparable to existing section 222 of the CA 2006 (*Payments made without approval: civil consequences*) relating to the consequences of making unapproved payments to directors.

18. Section 226E, subsection (1), will mean that any legal obligation, such as a contract with a director, which gives rise to a payment to a director which would be deemed unauthorised under section 226B or 226C, is unenforceable.

19. Certain transactions such as substantial property transactions, loans and certain credit transactions require approval by a resolution of members under Chapter 4 of Part 10 of the CA 2006. Section 226F has been included because of the possibility that a transaction dealt with in Chapter 4 might also be regarded as a remuneration payment or loss of office payment for the purposes of Chapter 4A. In a case where

approval under Chapter 4 and approval under section 226B(1)(b) or 226C(1)(b) would otherwise be required, section 226F(2) ensures that approval under Chapter 4 is sufficient for both purposes. The company will not be required to seek approval through two separate resolutions.

***New clause 7 (NC7): Directors' remuneration: minor and consequential amendments***

20. *Subsection (3)* would amend section 190 of the CA 2006 to preserve the existing position that transactions relating to payments for loss of office to directors of quoted companies are not subject to the requirements of Chapter 4 relating to substantial property transactions.

21. *Subsection (4)* disapplies existing provisions on payments for loss of office in sections 216 to 222 (inclusive) of the CA 2006 for those companies (i.e. quoted companies falling within section 385) that will in future be required to comply with the proposed new clauses on the directors' remuneration policy and payments to directors. Sections 216 to 222 (inclusive) of the CA 2006 will continue to apply to all other types of companies.

22. *Subsection (6)* inserts two new subsections into the existing section 430 of the CA 2006 (*Quoted companies: annual accounts and reports to be made available on website*). The first, proposed subsection (2A), requires that any revised directors' remuneration policy (as revised under proposed new section 422A) is to be made available on the company's website in the same manner as other reports and accounts. The second, proposed subsection (2B), requires that companies publish, in a similar manner, details of payments for loss of office made to departing directors. Subsections (7) – (9) make further minor amendments to section 430 to clarify the process by which information under sections 430(2A) and 430(2B) must be made available.

23. *Subsection (10)* amends existing section 440 of the CA 2006 (*Quoted companies: offences in connection with procedure for approval*) so as to preserve the criminal offences that are committed where there is a failure to comply with the requirements about giving notices, and putting resolutions to the vote, in relation to directors' remuneration reports (including the part of the report containing the directors' remuneration policy).

***New clause 8 (NC8): Directors' remuneration reports and payments to directors: transitional provision***

24. *Subsection (1)* will mean that the requirement, under proposed section 439A(2), to bring forward a resolution on the directors' remuneration policy in the event that the last resolution on the directors' remuneration report (at an accounts meeting where the directors' remuneration policy was not also put to a resolution) was not passed shall not apply until after the first time a company has put forward a

*These notes refer to amendments to the Enterprise and Regulatory Reform Bill  
as tabled on the 27 of June 2012*

resolution on the directors' remuneration policy under section 439A(1)(a).

25. *Subsection (2)* will mean that the restrictions on payments to directors contained in proposed new Chapter 4A will not apply to a payment made by a company until the earlier of the end of the financial year which begins after the provision comes into force or the date on which the company's first directors' remuneration policy approved under section 439A takes effect.

26. *Subsection (3)* excludes from Chapter 4A payments required to be made to directors under agreements entered into, or under other obligations arising, before 27 June 2012.

27. *Subsection (4)* has the effect of treating agreements entered into, or other obligations arising, before 27 June 2012 but which are modified or renewed on or after that date, as having been made on the date of the modification or renewal. The effect of this is that if an agreement is changed or renewed after that date, a requirement to make payment under that agreement will be subject to the restrictions in Chapter 4A.

28. *Subsection (5)* will mean that sections 216 to 222 of the CA 2006 will continue to apply to payments for loss of office which are, for the reasons set out in subsections (2) and (3), not covered by the proposed new Chapter 4A.