

BIS | Department for Business
Innovation & Skills

**THE FUTURE OF NARRATIVE
REPORTING**

**A new structure for Narrative
Reporting in the UK**

OCTOBER 2012

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Ministerial Foreword



Annual reports are shareholders' key tool for holding companies to account. Without transparent and useable reports shareholders cannot do this, and the effects may be widely felt.

This paper sets out the detail of our package to reenergise reporting. It recognises and encourages the best in reporting, of which there are many examples, and without stifling innovation, guides others in the right direction, through regulation, best practice and guidance.

The regulations create a separate strategic report to replace the business review. They remove some reporting obligations from all companies and will require quoted companies to make some additional ones. Overall there is no net burden to companies from these changes.

This work is part of the Government's wider agenda to improve the transparency and corporate governance of our companies. At the same time that these regulations take effect, changes to pay reporting will make it easier for shareholders to understand exactly what directors are earning and how this supports company performance. Shareholders will be given the powerful tool of a binding vote on pay policy and on a company's approach to exit payments.

Later this year the Government will publish its response to John Kay's review of equity markets which called for reform of markets to ensure they fulfil their core purposes: supporting corporate performance and providing returns to investors. John Kay called for the restoration of trust and confidence in the investment chain, and to realign incentives throughout the investment chain. Getting reporting right is an important step on the way to achieving this.

I would like to thank all the people and organisations who have helped shape this package through their contributions to our consultations¹, workshops and through informal discussions. Together we have developed a range of measures that are strongly supported.

Now I would like to hear if you have any comments on the draft regulations, at annex A. This paper provides a commentary on these regulations. Please send any comments on the regulations to narrativereporting@bis.gsi.gov.uk by 15 November.

A handwritten signature in black ink that reads "Jo Swinson".

¹ In 2010 <http://www.bis.gov.uk/Consultations/the-future-of-narrative-reporting-a-consultation>
And 2011 <http://www.bis.gov.uk/Consultations/future-of-narrative-reporting-further-consultation?cat=closedawaitingresponse>

Summary of proposals

The draft regulations will require companies to produce a strategic report. This will be similar to the business review, but quoted companies (those incorporated in the UK and listed on certain UK, EU or US markets) will be required to report, to the extent necessary for an understanding of the business, on their strategy, their business model, and any human rights issues. Quoted companies will also be asked to report on the number of men and women on their board, in executive committees and in the organisation as a whole.

At the moment some companies choose to produce a summary financial statement (SFS) which they can send instead of the whole report to shareholders who have elected to receive it. In the future companies will be able to send, to shareholders who agree, only the strategic report. Shareholders' previous election to receive the SFS will in future apply to the strategic report.

The draft regulations also remove several reporting requirements from all or some companies. This is covered in more detail in the section on simplification, but essentially we intend to remove from the business review, the requirement for companies to include information about essential contractual arrangements. From the directors' report we plan to remove the following reporting requirements which have either been superseded, are already required elsewhere or do not provide meaningful information:

- Information about any essential contractual or other arrangements
- Information about the principal activities of the company in the course of the year
- Information about asset values
- Information about charitable donations
- The requirement for private companies to give information about the acquisition of their own shares
- Information about the policy and practice of payment to creditors.

Following support through our consultation exercise, the Financial Reporting Council (FRC) consulted this year on requiring the annual report to set out how long the current auditor has been in place and when a tender was last conducted.

An important aspect of the package will be to provide new guidance for the strategic report. We are working with the FRC who aim to consult on the style of draft guidance early next year.

The 2011 consultation suggested some other changes that could be made to the regime. Annex B outlines these, and the reasons we have decided not to pursue these ideas.

The regulations will come into force in October 2013. This means that companies with reporting years ending after October next year will be expected to prepare their annual report in line with the new regulations.

An impact assessment and Regulatory Policy Committee opinion have been published alongside this paper.

Commentary on the Regulations

Regulation 3 - a separate strategic report

Under the Companies Act 2006 the business review is an element of the directors' report. However responses to the consultation show that generally, companies do not want to report in this way, and shareholders do not want reports to be structured in this way. It is the business review that people want to see first. Although this is established in practice it is not helpful that this is not clear in law. Regulation 3 creates new section 414A which is the requirement for directors to prepare a strategic report, replacing the business review and putting the strategic information at the front, separate from the directors' report.

For quoted companies, the strategic report will also include some additional reporting requirements to those required by the business review. New section 414C sets out what should be in the strategic report. It essentially replicates section 417 of the Companies Act 2006, but also includes the following requirements which were not in the enhanced business review:

Strategy and business model - The strategic report will require quoted companies to report on their strategy and their business model. Both of these should already be covered by those companies subject to the FRC's Corporate Governance Code, which is the majority of quoted companies. It is also made clear in the FRC's guidance which sets out reporting best practice, that strategy and business model should be covered. Almost all quoted companies already do this. Section 414C(4)(a) and (b) cover this.

Human rights issues - At the moment quoted companies are asked to report, to the extent necessary for an understanding of the development, performance or position of the company's business, on environmental, employee and social and community issues. The 2011 consultation asked if it should be made explicit that looking at relevant social and community issues should include a consideration of human rights. A majority of those who commented on this proposal in the 2011 consultation supported it. Section 414C(4)(d)(iii) covers this.

Diversity in the board and beyond - In 2011 Lord Davies published his report looking at women on boards in the UK. This report made several recommendations, including that quoted companies should be required to disclose the number of women on the board, in senior executive positions and in the whole organisation. We consulted on this in the 2011 consultation on narrative reporting, and around three quarters of those who responded to this question supported the proposal. Section 414C(5) and (6) covers this and in particular, in order to identify 'senior executive positions' it uses the concept of "a person who has authority and responsibility for planning, directing and controlling the activities of a company and is an employee of that company".

Apart from the additions discussed above, section 414C is different from section 417 in that the provisions currently at section 417(5) (c) and (11) covering essential arrangements have been removed. At the moment large and medium companies must report on their essential contractual, or other type of, arrangements, in order to identify whether they would be at risk from a failure of these arrangements. In responses to the consultation we carried out in 2011 it was suggested that this requirement would be covered by the consideration of principal risks that is also required.

The other parts of Regulation 3 ensure that all the Companies Act 2006 provisions that applied to the business review will apply to the strategic report in the future.

Regulation 4 – small companies exemption

Section 414B creates the small companies exemption for the strategic report. Regulation 4 amends section 415A(2) of the existing Act to remove the exemption from the business review, since this is no longer needed as there is no longer a requirement to produce a business review.

Regulation 5 – principal activities of the company

Large and medium companies are required to report on the principal activities of the company (under section 416(1)(b) and section 416(2) CA 2006). In response to the 2011 consultation, some stakeholders pointed out that the requirement we are introducing to report on business model replaces this for large quoted companies and that for other companies the information can be found in the articles of association. Regulation 5 removes this requirement from the Companies Act 2006.

Regulation 6 – business review

This removes section 417, covering the contents of the business review, from the Companies Act. This is replaced by section 414C through Regulation 3 as discussed above.

Regulation 7, 8 and 9 – summary financial statements

Currently companies are able to ask shareholders if they would like to receive summary financial statements instead of the annual report. Although the two documents are quite different, the consultation received a high-level of support for the proposal to replace summary statements with the strategic report. Shareholders who have elected to receive the summary financial statements would in the future automatically receive the strategic report, and as now would retain the right to ask for the full report.

Regulations 10 and 11 - simplification

In addition to the repeals provided by Regulations 4 and 5 to the Companies Act 2006, we propose to remove the following requirements from secondary instruments.

The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (schedule 7)

The Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (schedule 5)

Asset values - This required companies to note in their narrative reports any differences between the value of land they own, as noted in the balance sheet and directors' view of the value of that land. This information is now required to be included in financial reports and so is no longer needed in narrative reports.

Charitable donations - This requires companies to report on any charitable donations they have made above £2000 and the purpose of these donations.

Acquisition of own shares by private companies - This requirement implemented an element of an EU Directive that imposed an obligation on public companies to disclose certain information if they have in the course of the year acquired their own shares. In the UK the implementation on this went beyond what was required by the Directive, in imposing the requirement on private companies too. We intend to remove the requirement on private companies.

Policy and practice of payment to creditors - Successive governments have attached a great deal of importance to prompt payment to creditors by business. However, we understand that the information this requirement provides is not considered useful for either creditors or shareholders so are removing this requirement.

In the 2011 consultation we identified several areas of possible overlap between company law and listing rule requirements. Following consultation we have identified that there is little scope to make alterations to the company law requirements, since they are derived from EU law. Details are given in annex C.

Schedule

The schedule ensures that all the Companies Act 2006 provisions that applied to the business review will apply to the strategic report in the future. In particular, paragraph 13 covers safe-harbour provisions. This should give companies greater confidence to make forward looking statements

Annex A: Draft Regulations

Draft Regulations laid before Parliament under section 473(3) and 1290 of the Companies Act 2006 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No. XXXX

COMPANIES

The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013

Laid before Parliament

Coming into force - -

1st October 2013

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 416, 468, 473(2) and 1292(1) and (4) of the Companies Act 2006⁽²⁾.

In accordance with section 473(3) and 1290 of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013.

(2) Subject to paragraph (3), these Regulations come into force on 1st October 2013 and have effect in relation to financial years ending on or after that date.

(3) The amendment to section 426 of the Companies Act 2006 made by regulation 7 comes into force on the making of these Regulations for the purposes only of the exercise of the power in that section to make regulations.

Amendments to Part 15 of the Companies Act 2006

2. Part 15 (accounts) of the Companies Act 2006 is amended as follows.

3. Before Chapter 5 (directors' report) insert—

⁽²⁾ 2006 c.46.

“CHAPTER 4A
STRATEGIC REPORT

414A Duty to prepare strategic report

(1) The directors of a company must prepare a strategic report for each financial year of the company.

(2) Subsection (1) does not apply if the company is entitled to the small companies exemption.

(3) For a financial year in which—

- (a) the company is a parent company, and
- (b) the directors of the company prepare group accounts,

the strategic report must be a consolidated report (a “group strategic report”) relating to the undertakings included in the consolidation.

(4) A group strategic report may, where appropriate, give greater emphasis to the matters that are significant to the undertakings included in the consolidation, taken as a whole.

(5) In the case of failure to comply with the requirement to prepare a strategic report, an offence is committed by every person who—

- (a) was a director of the company immediately before the end of the period for filing accounts and reports for the financial year in question, and
- (b) failed to take all reasonable steps for securing compliance with that requirement.

(6) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

414B Strategic report: small companies exemption

A company is entitled to small companies exemption in relation to the strategic report for a financial year if—

- (a) it is entitled to prepare accounts for the year in accordance with the small companies regime, or
- (b) it would be so entitled but for being or having been a member of an ineligible group.

414C Contents of strategic report

(1) The purpose of the strategic report is to inform members of the company and help them assess how the directors have performed their duty under section 172 (duty to promote the success of the company).

(2) The strategic report must contain—

- (a) a fair review of the company’s business, and
- (b) a description of the principal risks and uncertainties facing the company.

(3) The review required is a balanced and comprehensive analysis of—

- (a) the development and performance of the company’s business during the financial year, and
- (b) the position of the company’s business at the end of that year,

consistent with the size and complexity of the business.

(4) In the case of a quoted company the strategic report must, to the extent necessary for an understanding of the development, performance or position of the company’s business, include—

- (a) a description of the company's strategy,
- (b) a description of the company's business model,
- (c) the main trends and factors likely to affect the future development, performance and position of the company's business, and
- (d) information about—
 - (i) environmental matters (including the impact of the company's business on the environment),
 - (ii) the company's employees, and
 - (iii) social, community and human rights issues, including information about any policies of the company in relation to those matters and the effectiveness of those policies.

If the report does not contain information of each kind mentioned in paragraphs (d)(i), (ii) and (iii), it must state which of those kinds of information it does not contain.

(5) In the case of a quoted company, the strategic report must contain a breakdown showing—

- (a) the number of persons of each sex who are directors of the company;
- (b) the number of persons of each sex who are managers of the company (other than persons falling within paragraph (a)); and
- (c) the number of persons of each sex who are employees of the company.

(6) In subsection (5), “manager” means a person who has responsibility for planning, directing or controlling the activities of the company and is an employee of the company.

(7) The report must, to the extent necessary for an understanding of the development, performance or position of the company's business, 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.

(8) In subsection (7), “key performance indicators” means factors by reference to which the development, performance or position of the company's business can be measured effectively.

(9) Where a company qualifies as medium-sized in relation to a financial year (see sections 465 to 467), the strategic report for the year need not comply with the requirements of subsection (7) so far as they relate to non-financial information.

(10) The report must, where appropriate, include references to, and additional explanations of, amounts included in the company's annual accounts.

(11) In relation to a group strategic report this section has effect as if the references to the company were references to the undertakings included in the consolidation.

(12) Nothing in this section requires the disclosure of information about impending developments or 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.

414D Contents of strategic report: statement as to disclosure to auditors

(1) This section applies to a company unless—

- (a) it is exempt for the financial year in question from the requirements of Part 16 as to audit of accounts, and
- (b) the directors take advantage of that exemption.

(2) The strategic report must contain a statement to the effect that, in the case of each of the persons who are directors at the time the report is approved—

- (a) so far as the director is aware, there is no relevant audit information of which the company's auditor is unaware, and
 - (b) he has taken all the steps that he ought to have taken as a director in order to make himself aware of any relevant audit information and to establish that the company's auditor is aware of that information.
- (3) "Relevant audit information" means information needed by the company's auditor in connection with preparing his report.
- (4) A director is regarded as having taken all the steps that he ought to have taken as a director in order to do the things mentioned in subsection (2)(b) if he has—
- (a) made such enquiries of his fellow directors and of the company's auditors for that purpose, and
 - (b) taken such other steps (if any) for that purpose,
- as are required by his duty as a director of the company to exercise reasonable care, skill and diligence.
- (5) Where a strategic report containing the statement required by this section is approved but the statement is false, every director of the company who—
- (a) knew that the statement was false, or was reckless as to whether it was false, and
 - (b) failed to take reasonable steps to prevent the report from being approved,
- commits an offence.
- (6) A person guilty of an offence under subsection (5) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

414E Approval and signing of strategic report

- (1) The strategic report must be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.
- (2) If a strategic report is approved that does not comply with the requirements of this Act, 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 reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the report from being approved,
- commits an offence.
- (3) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum."
- 4.** In section 415A(2) (provisions to which small companies exemption for directors' report is relevant)—
- (a) after "dividend)," insert "and", and
 - (b) omit "section 417 (contents of report: business review), and".
- 5.**—(1) Section 416 (content of directors' report: general) is amended as follows.
- (2) In subsection (1) omit paragraph (b) and the "and" immediately preceding that paragraph.
 - (3) Omit subsection (2).

6. Omit section 417 (contents of directors' report: business review).

7.—(1) Section 426 (option to provide summary financial statement) is amended as follows.

(2) In the cross-heading before the section and in the heading to the section for “summary financial statement” substitute “strategic report only”

(3) In subsection (1) for “summary financial statement” substitute “copy of the strategic report”.

(4) Omit subsection (4).

8. Omit sections 427 (form and contents of summary financial statement: unquoted companies) and 428 (form and contents of summary financial statement: quoted companies).

9. In section 429 (summary financial statements: offences)—

(a) in the heading for “Summary financial statement” substitute “Strategic report”;

(b) in subsection (1) omit “427 or 428,” and for “any of those sections” substitute “that section”.

Amendments to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008

10.—(1) The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008⁽³⁾ are amended as follows.

(2) In regulation 10(2) (directors' report: structure of Schedule 7) omit the words “,and Part 5 relates to the company's policy and practice on the payment of creditors”.

(3) In Schedule 7 (matters to be dealt with in directors' report) –

(a) omit paragraphs 2 (asset values), 5 (charitable donations) and 12 (policy and practice on payment of creditors);

(b) in paragraph 8 (company acquiring own shares), in the opening words of that paragraph, before “company” insert “public”.

Amendments to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008

11.—(1) Schedule 5 to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008⁽⁴⁾ (matters to be dealt with in directors' report) is amended as follows.

(2) Omit paragraph 4 (charitable donations).

(3) In paragraph 6(1) (company acquiring own shares), in the opening words of that paragraph, before “company” insert “public”.

Consequential amendments

12. The Schedule (consequential amendments) has effect.

⁽³⁾ S.I. 2008/410.
⁽⁴⁾ S.I. 2008/409.

Consequential amendments

Companies Act 2006

1. The Companies Act 2006 is amended as follows.
2. In section 146(4) (nomination of person to receive information rights) for the words “summary financial statement” substitute “strategic report only”.
3. In section 423(6) (duty to circulate copies of annual accounts and reports) for the words “summary financial statement” substitute “strategic report only”.
4. In section 431(1) (right of member or debenture holder to copies of accounts and reports: unquoted companies)—
 - (a) at the end of paragraph (a) insert—

“(aa) the strategic report (if any) for the financial year,”;
 - (b) in paragraph (c) after “that report” insert “and the strategic report (where applicable)”.
5. In section 432(1) (right of member or debenture holder to copies of accounts and reports: unquoted companies)—
 - (a) at the end of paragraph (b) insert—

“(ba) the last strategic report (if any) for the financial year,”; and
 - (b) in paragraph (d) before “and on the directors’ report” insert “, on the strategic report (where this is covered by the auditor’s report)”.
6. In section 433 (name of signatory to be stated in published copies of accounts and reports)—
 - (a) in subsection (2)—
 - (i) omit the “and” at the end of paragraph (a), and,
 - (ii) after paragraph (a) insert—

“(aa) the strategic report, and”;
 - (b) in subsection (3)—
 - (i) omit the “and” at the end of paragraph (b), and,
 - (ii) after paragraph (b) insert—

“(ba) the strategic report, and”.
7. In section 434 (requirements in connection with publication of statutory accounts) omit subsection (6).
8. In section 435 (requirements in connection with publication of non-statutory accounts) omit subsection (7).
9. In section 445 (filing obligations of medium-sized companies)—
 - (a) in subsection (1)
 - (i) omit the “and” at the end of paragraph (a), and,
 - (ii) after paragraph (a) insert—

“(aa) the strategic report, and”;
 - (b) in subsection (2), after “(and on” insert “the strategic report and”;
 - (c) in subsection (5), before “and directors’ report”, insert “, strategic report”.

- 10.** In section 446 (filing obligations of unquoted companies)—
- (a) in subsection (1), at the end of paragraph (a) insert—
“(aa) the strategic report,”;
 - (b) in subsection (2), before “the directors’ report” insert “the strategic report (where this is covered by the auditor’s report)”;
 - (c) in subsection (3), before “and, directors’ report” insert “and, strategic report,”.
- 11.** In section 447 (filing obligations of quoted companies)—
- (a) in subsection (1), at the end of paragraph (b) insert—
“(ba) the strategic report,”;
 - (b) in subsection (2), before “the directors’ report” insert “, the strategic report (where this is covered by the auditor’s report)”;
 - (c) in subsection (3), before “and, the directors’ report” insert “and, the strategic report”.
- 12.** In section 454 (voluntary revision of accounts etc)—
- (a) in subsection (1) for paragraph (c) substitute—
“(c) a strategic report of the company,”;
 - (b) in subsection (3) for paragraph (c) substitute—
“(c) a revised strategic report of the company.”; and
 - (c) in subsection (4)—
 - (i) in paragraph (a), for “, report or statement” substitute “or report”;
 - (ii) in paragraph (b), for “, report or statement” substitute “or report”; and
 - (iii) in paragraph (c) for “summary financial statement” substitute “strategic report”.
- 13.** In section 455 (Secretary of State’s notice in respect of accounts or reports)—
- (a) in subsection (1) in each of paragraphs (a) and (b) for “or directors’ report” substitute “, strategic report or directors’ report”; and
 - (b) in subsection (5), for “ and revised directors’ reports” substitute “, revised strategic reports and revised directors’ reports”.
- 14.** In section 456 (application to court in respect of defective accounts or reports)—
- (a) in subsection (1) before “or a directors’ report” insert “or a strategic report”;
 - (b) in subsection (3)(b), after “remuneration report,” insert “strategic report,” and omit for “or summary financial statement”;
 - (c) in subsection (4)—
 - (i) before “directors’ report” insert “strategic report or”; and
 - (ii) omit paragraph (b); and
 - (d) in subsection (8), for “and revised directors’ reports” substitute “, revised strategic reports and revised directors’ reports”.
- 15.** In section 457 (other persons authorised to apply to the court), in subsection (1), in each of paragraphs (a) and (b), for “and directors’ reports” substitute “, strategic reports and directors’ reports”.
- 16.** In section 459 (power of authorised person to require documents, information and explanations), in subsection (1) for “or directors’ report comply” substitute “, strategic report or directors’ report complies”.
- 17.** In section 463 (liability for false or misleading statements in reports), in subsection (1)—
- (a) before paragraph (a) insert—
“(za) the strategic report, and”; and

(b) omit paragraph (c) and the “and” immediately preceding that paragraph.

18. In section 471 (meaning of annual accounts and reports)—

(a) in subsection (2)—

(i) at the end of paragraph (a) insert—

“(aa) the strategic report (if any)” and,

(ii) in paragraph (c) before “and the directors’ report” insert “, the strategic report (where this is covered by the auditors’ report)”;

(b) in subsection (3)—

(i) at the end of paragraph (b) insert—

“(ba) the strategic report (if any)”;

(ii) in paragraph (c) before “and on the directors’ report” insert “, on the strategic report (where this is covered by the auditors’ report)”.

19. In section 493 (disclosure of terms of audit appointment), in subsection (2)(c)(ii) before “the directors’ report” insert “the strategic report or”.

20. In section 494 (disclosure of services provided by auditor or associates and related remuneration), in subsection (4)(b) before “the directors’ report” insert “the strategic report or”.

21. In section 496 (auditor’s report on directors’ report)—

(a) in the heading before “directors’ report” insert “strategic report and”; and

(b) before “the directors’ report” insert “the strategic report (if any) and”.

22. In section 498 (duties of auditor) in subsection (5)(b) for “in preparing the directors’ report” substitute “in accordance with section 414A(2)”.

23. In section 837 (justification of distribution by reference to accounts: requirements where last annual accounts used), in subsection (1)(b) for “summary financial statement” substitute “strategic report” and for “that statement” substitute “that report”.

24. In section 1049 (accounts and reports: general) in subsection (1)(a) before “and directors’ report” insert “and strategic report”.

25. In section 1050 (accounts and reports: credit or financial institutions) in subsection (3)(a), before “directors’ report” insert “and strategic report”;

26. In Schedule 8 (definitions) omit the entry for “summary financial statement”.

Postal Services Act 2000

27. In section 77 of the Postal Services Act 2000 after subsection (2) insert—

“(2A) A company to which this section applies shall send to the Secretary of State a copy of the report prepared by its directors under section 414A of the Companies Act 2006 as soon as practicable after the report has been approved and signed under section 414C of that Act.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Companies Act 2006 (c.46) (“the Act”) to insert new sections which provide for the preparation by companies of a strategic report. The Regulations also amend the requirements for the contents of the directors’ report set out in Schedule 7 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (S.I. 2008/410) and in Schedule 5 to the Small Companies and Groups (Accounts and Directors’ Report) Regulations 2008 (S.I. 2008/409).

Regulation 3 inserts a new Chapter 4A into Part 15 of the Act. New section 414A requires companies (other than those eligible for the small companies regime for accounts) to prepare a strategic report. New section 414B prescribes the content of that report, including a requirement to provide information regarding the employment of women within the company. New sections 414C and 414D require the directors to make a statement regarding disclosure of certain matters to auditors and that the report shall be approved by the directors and signed by one of them.

Regulation 4 amends section 416 (content of directors’ report) of the Act to omit the need for a statement by the company of its principal activities in the course of the year.

Regulation 5 repeals section 417 (contents of directors’ report: business review) of the Act. It will no longer be a requirement for a business review to be prepared as part of the directors’ report.

Regulation 6 removes the option to send a summary financial statement to those who are entitled to receive a full set of accounts and reports and substitutes the option to send a copy of the strategic report only.

Regulations 9 and 10 amend the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (S.I. 2008/410) and the Small Companies and Groups (Accounts and Directors’ Report) Regulations 2008 (S.I. 2008/409) regulations which prescribe the contents of the directors’ report to remove certain items of information from the report, and limit the need to provide information on a company’s purchase of its own shares to public companies.

Annex B: Earlier proposals

Earlier proposals we are not taking forward through regulation

The 2011 consultation suggested some changes to the regime, which the Government has decided not to carry out following the consultation and the workshops that were held after the consultation.

- We proposed creating an Annual Director's Statement through producing a template for on-line material. There was support for this in the consultation, but much debate there and in the workshops that followed the consultation, about the best format for it and how worthwhile it would be. In particular there were concerns that whatever was agreed might then fix reports in-time, which would then be unable to develop with technology. We will continue to work with the industry to see if it is possible to design a template for this information, but to avoid stifling innovation we will not be making any legislative changes.
- The 2011 consultation also proposed requiring each director of the company to sign-off the strategic report, but there was almost no support for this. Some pointed out that all the directors are already collectively responsible for the whole annual report.
- Increasing the level of audit or assurance that applies to reporting. As described in the rationale for intervention section, there was very little support for this in the consultation responses.
- In 2011 we consulted on removing a requirement on companies that employ more than 250 people to report on how they involve employees, through giving them information, consulting them and through share schemes. However, given the importance the Government attaches to encouraging employee engagement, we have decided not to remove this requirement.

Annex C: Overlap with the Listing Rules

Overlap with the listing rules

In the 2011 consultation we identified several areas of possible overlap between company law and other requirements, particularly the listing rules. Following consultation we have identified that there is little scope to rectify these issues through company law as the company law requirements are implementing EU law.

The FSA are considering whether there is any scope for changing, subject to the required consultation processes, any of the requirements mentioned below that are not directly implementing European obligations.

In the 2011 consultation we outlined four specific areas:

Disclosure of material related party transactions

The Listing Rules (LR) require disclosure where one of the following percentage ratios exceeds 0.25%: gross assets, profits, consideration (based on market cap), or gross capital. IFRS requires disclosure where the transaction is material, in isolation or in aggregate, to the company or the individual and so disclosure is necessary for a users understanding; IAS 24 may be a broader scope as it may include senior executives who are not directors.

Long term incentive schemes

The Department has carried out extensive work to make pay reports clearer and more transparent so it is easier for shareholders to understand exactly what directors are earning and how this supports company performance.

In June we published regulations setting out what companies must report on directors' pay, simplifying the current regulations. We are working with the FSA and UKLA as the proposals develop to minimise any overlap between the Listing Rules and the new regulations on pay reporting.

Contracts of significance

The Listing Rules (LR 9.8.4 (10)) require information relating to any contracts to which the issuer or subsidiary is a party and a director is materially interested; or between the issuer, or a subsidiary, and a controlling shareholder. The Large and Medium Accounts and Reports Regulations (SI 2008/410 – schedule 7 13 (2) (j)) require disclosure of any significant agreements that take effect, alter or terminate on a change of control. The company law requirements here implement the Takeovers Directive and there is no scope to amend them.

Information disclosed to the company by major shareholders

The Listing Rules (9.8.6 R (2)) require a statement of the positions of major shareholders, as stated to the company during the year, as at the end of the financial period. This gives a 'snapshot' at the end of the year in question. The Disclosure and Transparency Rules (DTR 5) – require information regarding adjustments in holdings to be notified to the issuer, and then the market, by investors. The Large and Medium Accounts and Reports Regulations (SI 2008/410 – schedule 7 13 (2) (c)) require details of significant holdings in company by identity, size and nature. The company law requirements here implement the Takeovers Directive and there is no scope to amend them.

Other areas considered

Consultation responses suggested several other areas for removal or simplification. Some of these have been taken on board and are included above, but many of them cannot be changed since they are implementing European obligations (for instance, all of Part 6 of schedule 7 of the Large and Medium Accounts and Reports Regulations (SI 2008/410 – schedule 7 13 (2) (a) – (k)) implement the Takeovers Directive).

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