



Department for  
Business, Energy  
& Industrial Strategy

# Corporate governance

The Companies (Directors' Remuneration  
Policy and Directors' Remuneration Report)  
Regulations 2019 – Frequently Asked  
Questions



**OGL**

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## Introduction

The purpose of this document is to help companies and interested stakeholders understand new reporting requirements in The Companies (Directors' Remuneration Policy and Directors' Remuneration Report) Regulations 2019, which implement Articles 9a and 9b of European Directive 2017/828/EC<sup>1</sup>, commonly known as the Revised Shareholder Rights Directive. The regulations were made on 22 May 2019 and apply to company reporting on financial years starting on or after 10 June 2019.

This document is intended as a factual explanation of the secondary legislation. It is not intended to be comprehensive and companies should not rely on it for legal guidance on how the requirements will affect them.

The department welcomes feedback on this document. Please send any comments to [corporategovernance@beis.gov.uk](mailto:corporategovernance@beis.gov.uk).

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<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L0828>

## A. Overview of the new company reporting regulations

1. These regulations implement Articles 9a and 9b of European Council Directive 2017/828/EC, commonly known as the revised Shareholder Rights Directive.
2. The original Shareholder Rights Directive, 2007/36/EC was transposed in the UK in 2009 (through the Companies (Shareholder Rights) Regulations 2009)<sup>2</sup> and provides for certain shareholder rights relating to voting and the receipt of company information, among other matters. The revised Directive adds to the original Directive by introducing a number of new provisions intended to strengthen shareholder rights further, including in respect of the reporting of directors' remuneration at traded companies<sup>3</sup> as contained in Articles 9a and 9b of the revised Directive. The other new elements contained within the revised Directive are:
  - new transparency requirements on asset managers and institutional investors regarding their investment strategy and engagement with investee companies;
  - new transparency requirements on 'proxy advisers' regarding the work they carry out to provide voting advice and information services to asset managers and institutional investors;
  - additional disclosure requirements on traded companies concerning related party transactions;
  - new provisions to enhance further the facilitation of shareholders' information and voting rights.
3. This FAQs document focuses on the implementation of Articles 9a and 9b of the revised Directive in UK law, through the Companies (Directors' Remuneration Policy and Directors' Remuneration Report) Regulations 2019<sup>4</sup>. Section G of the document provides further detail on the implementation of these other parts of the revised Directive.
4. Articles 9a and 9b introduce new reporting requirements covering, respectively, the Directors' Remuneration Policy and the Directors' Remuneration Report. Many of the requirements in these articles are already well-established in the UK's framework for the reporting of directors' remuneration under the Companies Act 2006. In particular, the UK framework already meets the core requirements in Articles 9a and 9b for public companies to produce remuneration policies and remuneration reports, each subject to a shareholder vote. The UK framework also already provides for many of the transparency provisions in Articles 9a and 9b around the potential and actual award of fixed and variable pay to directors.

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<sup>2</sup> [www.legislation.gov.uk/ukSI/2009/1632/contents/made](http://www.legislation.gov.uk/ukSI/2009/1632/contents/made)

<sup>3</sup> Section B below on 'Scope' sets out how these regulations address the Directive's application to 'traded companies' and the existing UK directors' remuneration reporting framework's application to 'quoted companies'.

<sup>4</sup> [www.legislation.gov.uk/ukSI/2019/970/contents/made](http://www.legislation.gov.uk/ukSI/2019/970/contents/made)

5. The requirements in Articles 9a and 9b that were **not** previously given effect in UK law, and which are introduced through the new regulations, are summarised below:

**A. Remuneration policy:**

- Certain additional detail to be provided on when shares indicatively awarded to directors may be granted or exercised, in particular by providing information on vesting periods, and on any holding or deferral periods;
- The policy must provide an indication of the duration of directors' service contracts;
- The policy must set out the decision-making process through which it has been determined, and highlight key changes compared to the previous policy;
- The company must put the date and results of the shareholder vote on the new policy on its website as soon as reasonably practicable;
- If the company loses the shareholder vote on the policy, it must bring a revised policy to another vote within a year.

**B. Remuneration report:**

- The report must compare the annual change of each director's pay to the annual change in average employee pay, over a rolling five year period;
  - The report must show the split of fixed and variable pay for each director, as two additional columns to the existing 'Single Figure' table;
  - The report must set out any changes made to share options granted or offered and the main conditions for the exercise of these rights including the exercise price and date, compared to the previous year;
  - The report must be freely available on the company's website for ten years;
  - Remuneration reports must not include any sensitive personal data, revealing racial or ethnic origin, political opinions or religious beliefs.
6. These new requirements are given effect by the new regulations principally through amendments to existing Schedule 8 of The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008, and to relevant sections of the Companies Act 2006.
7. In addition to introducing those requirements in Articles 9a and 9b of the Directive that are not already enacted in UK law, the regulations make some amendments to the Companies Act to ensure that the Directive's requirements are compatible with the UK's existing executive remuneration reporting framework, as summarised below.
- **Scope:** Section 430 and related sections of the Companies Act are amended to provide that the directors' remuneration policy and remuneration report requirements under the Act apply to both quoted companies and to traded companies whether quoted or unquoted. This is to ensure consistency between the UK's existing directors' remuneration reporting requirements under the Act, which apply to quoted companies, and the requirements of the Directive, which apply to traded companies.

- **Directors' remuneration payments:** Section 226B(1)(b) and related sections of the Companies Act are amended by the new regulations to provide that shareholder approval of proposed payments to directors that would otherwise be out-with the existing approved remuneration policy results in an amended, approved policy for the purpose of those payments. This is to ensure that the continuing use of the shareholder voting power under section 226B(1)(b) is consistent with the Directive's requirement that all payments to directors must be in accordance with an approved remuneration policy. Shareholders will only be approving the **amendment** to the policy. This will not be regarded as approval of a new policy the purposes of section 439A of the Companies Act.
8. Further detail on the above amendments is provided in Section B (scope) and Section F (procedural amendment) of this FAQs document.

## B. Scope

### Q. Which companies are covered by these Regulations?

The regulations apply to UK-registered quoted companies as defined in section 385<sup>5</sup> of the Companies Act, and to UK-registered traded companies as defined in section 360C<sup>6</sup> of the Companies Act. This means the Regulations apply to UK-incorporated companies whose shares are on the FCA's Official List<sup>7</sup>, listed in the European Economic Area or admitted to dealing on the New York Stock Exchange or Nasdaq (quoted companies) and/or are traded on a regulated market in the UK or the EEA (traded companies).

The regulations apply both to quoted and to traded companies, whether quoted or not, in order to comply with the scope of the UK's existing framework for the reporting of directors' remuneration under the Companies Act, which applies to quoted companies, and with the scope of the Directive, which applies to traded companies.

In practice, the vast majority of traded companies are also quoted. However, there is a small number of traded companies which are unquoted, because their shares are not listed on the Official List. These companies are primarily specialist investment firms which trade on the Specialist Fund Segment<sup>8</sup>, and whose shares are targeted mainly at institutional and other professional investors.

The regulations ensure that such unquoted traded companies are covered both by the new regulations and by the UK's pre-existing requirements of quoted companies for the reporting of directors' remuneration. The impact of this small extension of the UK's existing directors' remuneration reporting framework is not judged to be significant. Most, if not all, unquoted traded companies already report voluntarily to shareholders on directors' remuneration.

For the avoidance of doubt, these regulations do not apply to companies whose shares are traded on the Alternative Investment Market (AIM)<sup>9</sup>.

### Q. What about companies headquartered elsewhere in the European Union, but listed in the UK, who already voluntarily comply with the UK executive pay reporting regime?

Companies which are listed in the UK but incorporated elsewhere in the European Union are not covered by these regulations. Such companies will be covered by the laws of the Member State in which they are incorporated which implement Articles 9a and 9b of the Directive.

### Q. Which directors' remuneration must be reported under the regulations?

The UK's existing reporting framework for directors' remuneration applies to individuals who are, essentially, statutory directors, meaning they have been appointed to the company board through a legal process and are bound by the various obligations on directors set out in UK company law, (while allowing for modifications or omissions in respect of remuneration

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<sup>5</sup> [www.legislation.gov.uk/ukpga/2006/46/section/385](http://www.legislation.gov.uk/ukpga/2006/46/section/385)

<sup>6</sup> [www.legislation.gov.uk/ukpga/2006/46/section/360C](http://www.legislation.gov.uk/ukpga/2006/46/section/360C)

<sup>7</sup> <https://marketsecurities.fca.org.uk/officiallist>

<sup>8</sup> [www.londonstockexchange.com/companies-and-advisors/main-market/companies/sfs/about/about-the-specialist-fund-segment.htm](http://www.londonstockexchange.com/companies-and-advisors/main-market/companies/sfs/about/about-the-specialist-fund-segment.htm)

<sup>9</sup> This is because the Directive applies to companies who trade shares on a regulated market and AIM is not a regulated market under the terms of EC/2014/65 (MiFIDII). It is a prescribed market under the UK's Financial Services and Markets Act 2000.

requirements which are not applicable to non-executive directors, provided that this is explained)<sup>10</sup>.

The Directive extends further the definition of 'director' for the purposes of remuneration reporting to the persons carrying out the functions of Chief Executive Officers and (if the function exists) to Deputy Chief Executive Officers, (whatever their titles) **even if such individuals do not sit on the company board**.

The regulations implement this extended definition of director solely for the purposes of future reporting of directors' remuneration in the UK. The responsibilities<sup>11</sup> of a company's directors under existing UK law relating to directors' remuneration remain unchanged and are not extended as to apply to any CEO or deputy CEO who does not sit on the board.

**Q. Do the new regulations extend remuneration reporting to any other senior management roles?**

No. The regulations extend directors' remuneration reporting only to those persons not on the board of a UK registered quoted or traded company who occupy the roles of CEO or deputy CEO (however they are described within that company). Other senior management functions (e.g. Chief Risk Officer, Chief Operating Officer or Chief Commercial Officers), or individuals not on the board who have 'director' in their title (e.g. Director of Communications or Strategy Director) are not covered by these regulations.

**Q. Do the regulations extend to the directors of subsidiaries of UK-registered quoted and traded companies?**

No. The Regulations apply only to directors sitting on the boards of UK-registered quoted or traded companies (and also any CEO or deputy CEO of such companies who do not sit on the company board). They do not apply to the directors (or any non-director CEOs or deputy CEOs) of any private subsidiaries, unless any such individuals also sit on the board of the quoted or traded company (or are persons who clearly occupy the roles of CEO or deputy CEO of that quoted or traded company), in which case their remuneration must be reported, as is already the case under the existing framework.

**Q. Do the Regulations extend any other statutory directors' duties to CEOs or deputy CEOs who do not sit on the company board?**

No. The regulations only bring such individuals into the directors' remuneration reporting provisions under the Companies Act. No other existing statutory duties on directors are extended to such individuals by these regulations.

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<sup>10</sup> For example, investment companies made up only of non-executive directors which outsource their fund to a service provider would not be in a position to report an annual ratio of CEO to median employee pay.

<sup>11</sup> Specifically, paragraphs 2(2), 2(5), 3, 5(2), 6(1)(b), 10(3), 22(1), 23(c), 24(4), and 48 of Schedule 8 of the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 are not affected by the Directive's extended definition of director.

## C. Timing

Q. Why did you introduce these new Regulations on directors' remuneration reporting on 10 June 2019, mid-way through the financial year for many companies?

The new Regulations came into force on 10 June 2019, to meet the transposition date for Articles 9a and 9b contained in the Directive. However, as detailed below, there are a number of transitional provisions for companies covering the new requirements.

Q. When will companies be required to comply with the regulations' new requirements on the directors' remuneration **policy**?

The new requirements covering the preparation and content of the remuneration policy will apply to any new policy brought to shareholders for approval **on or after 10 June 2019**. Existing policies approved before 10 June 2019 will not be affected.

Accordingly, where a company already has an approved remuneration policy in place on 10 June 2019, that policy can continue until the end of its maximum three year period, or until any date before then on which a company may decide to bring forward a new policy to a shareholder vote.

Q. What about any **unquoted traded company** that had no approved remuneration policy in place prior to these regulations?

Unquoted traded companies which did **not** have in place on 10 June 2019 a shareholder-approved directors' remuneration policy must bring forward a policy to a shareholder vote no later than 1 January 2020, or earlier if they wish. A company could call an Extraordinary General Meeting, if an Annual General Meeting has already taken place in the relevant financial year.

In contrast, any unquoted traded companies which **did** have a shareholder-approved remuneration policy in place on 10 June 2019 may – like quoted companies - continue to rely on that remuneration policy until the end of its maximum three year period, unless they decide to bring forward a new policy before then.

Q. When will companies be required to comply with the regulations' new requirements covering the remuneration **report**?

The new requirements in the regulations will apply to remuneration reports for the financial years beginning **on or after 10 June 2019**. Accordingly, the first remuneration reports that will be required to include the new content will cover financial years ending on or after 9 June 2020.

For the avoidance of doubt, the requirement to publish remuneration reports which comply with the new regulations applies to the financial years of all quoted and traded companies' financial years beginning on or after 10 June 2019, including unquoted traded companies.

Q. When will companies be required to comply with the new regulations' requirements covering **publication** of the remuneration policy and vote result, and publication of the remuneration report<sup>12</sup>?

The new publication requirements apply to all remuneration policies approved during the financial year starting on or after 10 June 2019. They apply to all remuneration reports made available for financial years beginning on or after 10 June 2019.

Q. Why does the new publication requirement relating to the remuneration report [for the report to be freely available on the company website for at least ten years] begin on 10 June 2019, while the new content on the remuneration report will not be seen until reports are published on or after 10 June 2020?

The new content requirements for the remuneration report contained in the regulations will require companies to undertake some preparation, and it would not be fair to ask companies to report in compliance with the new regulations in respect of remuneration awarded before the regulations were introduced. This does not apply in the same way to the publication of the remuneration report on the company website, which the vast majority of companies already do.

Q. If a company is not required to bring forward a new remuneration policy until 2022, how can it provide a remuneration report which complies with the new regulations before that time?

If a company is required to produce a remuneration report that complies with the regulations while continuing to rely on a policy approved before 10 June 2019, that company will only need to comply with the measures in the regulations that implement Article 9b of the Directive covering the directors' remuneration report. Any references to the remuneration policy in remuneration reports published before a new policy has been approved after 10 June 2019 should be to the existing policy.

Q. Why do the new regulations extend to unquoted traded companies the existing requirement on quoted companies in Section 430 of the Companies Act to publish its annual accounts and reports on a website?

The Directive requires that in future all traded companies, including unquoted traded companies, publish their remuneration policies and remuneration reports on the company website. The regulations amend Section 430 to ensure this, by extending Section 430 to cover both quoted companies and unquoted traded companies. This has the effect of also requiring unquoted traded companies to publish their annual accounts and reports on a website, (which in practice such companies already generally do), and under s430(2B) to publish on a website details about termination packages for departing directors (once agreed). For reasons of consistency and clarity, BEIS considers that amending the whole of Section 430 in this way is preferable to extending only remuneration reporting website publication to unquoted traded companies.

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<sup>12</sup> For more detail on these requirements, see the sections covering the remuneration policy and remuneration report in this document.

Q. From when will the remuneration of CEOs or deputy CEOs not on company boards need to be reported?

The remuneration of any such CEOs or deputy CEOs must be included within companies' remuneration reports for financial years beginning on or after 10 June 2019.

Q. If the company has not yet implemented a new remuneration policy by the end of its financial year beginning on or after 10 June 2019, how can its remuneration report cover the pay of any CEOs or deputy CEOs not on the board?

In such cases, the company should report the remuneration of any such individuals in accordance with the remuneration disclosures set out in Part 3 of Schedule 8 (as amended by these regulations) of the 2008 regulations, where applicable. Any such remuneration reports could include a clarificatory note that an approved remuneration policy under the regulations, which would include any CEOs or deputy CEOs not on the board, has not yet been required to be brought forward.

Q. The Directive requires that all payments to directors are made in accordance with an approved remuneration policy. How can payments be made to CEOs or deputy CEOs not on the board in advance of their being included in an approved remuneration policy?

Payments to such individuals can continue to be made in accordance with existing practices until such time that the company chooses to, or is required, to bring forward a new remuneration policy for shareholder approval.

Q. On what basis have you determined these transitional provisions?

The Directive is largely silent on when specific reporting requirements should enter into force, beyond the requirement for Articles 9a and 9b to be enacted in national law by 10 June 2019, although the European Commission has made clear that the measures should be implemented in a timely manner.

The transitional provisions in these regulations regarding the remuneration policy are intended to enable companies to continue to rely on existing remuneration policies until such time as they choose, or are required, to bring forward a new policy which meets the requirements of these regulations.

The transitional provisions regarding the remuneration report are intended to avoid companies being required to report on directors' remuneration that was awarded prior to these regulations being introduced.

The table overleaf summarises the transitional provisions provided in the Regulations:

## Summary of transitional provisions

(for corresponding legal provisions, see regulation 2 of the Regulations).

New measures	Quoted companies (including quoted traded companies)	Unquoted traded companies
Additional requirements in respect of Directors' Remuneration Policy	<p>Apply to all new policies put to shareholders for approval on or after 10 June 2019.</p> <p>Companies may continue to rely on existing policies approved on or before 9 June 2019 until the end of that policy's three year cycle.</p>	<p>If an unquoted traded company had no approved remuneration policy in place before 10 June 2019, it must bring forward a policy to a shareholder vote during the financial year beginning on or after 1 January 2020, or at an earlier general meeting.</p> <p>If an unquoted company did have an approved policy in place before 10 June, it may (like quoted companies) rely on that policy until the end of the policy's three year cycle.</p>
Additional requirements in respect of Directors' Remuneration Report	Apply to reporting on financial years beginning on or after 10 June 2019.	Apply to reporting on financial years beginning on or after 10 June 2019.
Additional publication requirements in respect of Directors' Remuneration Policy and Directors' Remuneration Report	Applies to all remuneration policies and remuneration reports required to be made available (i.e. published) on or after 10 June 2019 under Section 430 of the Companies Act.	<p>Apply to all remuneration policies approved during the financial year starting on or after 10 June 2019.</p> <p>Applies to all remuneration reports made available for financial years beginning on or after 10 June 2019.</p>
New requirement on unquoted companies to publish annual accounts and reports on a website under Section 430 of the Companies Act.	N/A (already applies to quoted companies)	Applies to annual accounts and reports for financial years beginning on or after 10 June 2019.
Directors' remuneration payments under Section 226B (and related sections) of Companies Act 2006	New provision under Section 226B(1)(b) (and related sections) applies to payments made to directors following approval of a new remuneration policy on or after 10 June 2019.	New provision under Section 226B(1)(b) (and related sections) applies to payments made to directors following approval of a new remuneration policy (where none previously was in place) which must be in place during the financial year starting on or after 1 January 2020.

## D. New requirements in respect of Directors' Remuneration Policy

### Summary

#### Q. What are the new requirements?

They consist of the following:

Some additional detail must be provided on when shares indicatively awarded to directors may be acquired, in particular by providing information on vesting periods, and on any holding or deferral periods for variable pay;

- The policy must provide an indication of the duration of directors' service contracts;
- The policy must set out the decision-making process by which it has been determined, and highlight key changes compared to the previous policy;
- The company must put the date and results of the shareholder vote on the new policy on its website as soon as is practicable and keep it there for as long as the policy applies;
- If the company loses the shareholder vote on the policy, it must bring a revised policy to another vote within a year (at the latest at its next accounts meeting (AGM)).

### Share schemes

#### Q. How do the new requirements in relation to vesting and holding periods relate to the existing requirements on vesting and holding periods in the UK Corporate Governance Code?

The requirement on the Code applies on a comply or explain basis, to premium listed companies (wherever incorporated) only, and additionally encourages a minimum total vesting and holding period of five years or more.

The regulations, by slight contrast, apply in law to all UK-incorporated, listed (quoted) and traded companies, and specify that this information be provided in the remuneration policy, although they do not specify a minimum period for vesting or holding periods.

In practice, companies which already provide detail on vesting and (any) holding periods in accordance with the Code will meet the requirements in this area under the regulations, provided that the information is included within the remuneration policy.

## Directors' service contracts

Q. The regulations require the policy to include an indication of the duration of directors' service contracts or arrangements with the directors? What is meant by 'arrangements'?

'Arrangements' is not defined in the Directive, but may be taken to mean any agreements to provide personal services that a company may enter into with directors for remuneration that do not constitute a service contract.

Q. Where directors' contracts do not contain an end date, how can this requirement be met?

In such cases, the remuneration policy should state that there is no fixed or indicative duration, or set out the notice period (this is already a requirement under Listing Rule 9.8.8 for premium-listed companies: they must set out the unexpired term a service contract of any director up for re-election, or state if they do not have service contracts).

## Decision-making process for determining the policy

Q. Isn't this information already set out under paragraph 22 of Schedule 8 to the 2008 regulations? If not, what information is expected to be provided on the 'decision-making process' for determining, reviewing and implementing the policy?

Paragraph 22 of the existing 2008 regulations asks companies to provide information in the remuneration report about the role of the remuneration committee, including managing conflicts of interests. This and any other relevant information contained in the remuneration report (for example, from the Remuneration Committee Chair's statement) may be included in the remuneration policy in order to meet the new requirement in the regulations to explain the decision-making process underpinning the policy.

The Directive does not elaborate further on what is expected in this explanation, so companies have flexibility to decide what would be helpful to shareholders to understand how the policy has been determined, and how it is to be implemented and reviewed. For example, a new policy might state that it has been determined after reviewing the impact of the previous policy, and taking account of discussions with shareholders; and that each year's remuneration report will note how the remuneration policy has been implemented over the previous year and how it will be implemented in the following year (as paragraph 21 of Schedule 8 already requires). In order to avoid repetition, companies may wish to cross reference to existing requirements under paragraph 22 of schedule 8.

## Publication of results and date of remuneration policy vote

Q. The regulations ask that the results and date of the policy vote must be published on the company website "as soon as reasonably practicable". What is meant by that?

The Directive does not specify a precise time-frame in this area, beyond stating that the voting outcome should be published "without delay". Article 14 of the original Shareholder Rights

Directive (EC/2007/36) stipulates that voting results on a poll must be published on the website within 15 days of the general meeting at which the resolution was voted on. Under Listing Rules 9.6.2 and 9.6.4, premium listed companies must notify the Financial Conduct Authority and issue an RNS announcement of their results "as soon as possible." Companies should therefore seek to ensure that the voting result of the remuneration policy is published as soon as is reasonably possible following the voting results to comply with both the Regulations and (where applicable) the Listing Rules.

Q. The regulations require the voting results to record the number of abstentions. It is not clear if this means those shareholders who formally recorded an abstention, or who just did not vote. What should be counted?

Article 14 of the original Shareholder Rights Directive does not specify how abstentions should be counted. Companies may instead wish only to record, alongside the actual voting results the number of shares that were submitted as a 'vote with-held', whilst recognising that this is not a vote under English law.

Requirement to bring forward a new remuneration policy to a vote in the next financial year of any vote on a previous proposed policy being lost

Q. Can a company still make remuneration payments to directors in the period between losing a vote on a proposed remuneration policy and bringing forward a new policy?

Yes. During this period, payments can be made in accordance with the current approved policy for that year, or until any date earlier than that on which the company brings forward a remuneration policy to a new vote.

## E. New requirements in respect of Directors' Remuneration Report

### Summary

#### Q. What are the new requirements?

They consist of the following:

- The report must disclose over a rolling five year period “in a manner which permits comparison” the annual percentage change of each director’s remuneration compared to:
  - a. The annual percentage change of the average remuneration of the company’s employees, calculated on a full-time equivalent basis;
  - b. The performance of the company over the same preceding financial year.
- Two columns must be added to the existing ‘Single Figure’ table to show the proportion of fixed and variable remuneration of each director;
- The remuneration report must be available on the company’s website free of charge for at least 10 years.
- Requirement to specify any changes to the exercise price and date for the exercise of share options by directors.

### Reporting the annual change in directors’ remuneration compared to average employee remuneration

#### Q. Does this requirement apply to each individual director?

Yes. Pay for each director, including non-executive directors and any CEO or deputy CEO not on the board, should be reported for this purpose. For the avoidance of doubt, this comparison does not extend to any directors of subsidiaries of the company where they do not also sit on the board of the parent company, (and are not CEO or deputy CEO of the company).

#### Q. Can a director who served on the board in the previous five years, but not in the relevant financial year, be removed from the rolling 5 year table comparison?

The Directive does not stipulate whether a director who leaves the board may be removed from the 5 year comparison table going forward. Companies may therefore use their discretion as to whether such directors should be removed after they have left the board. Information on the remuneration of these individuals must remain available in the comparison tables for previously published remuneration reports, for the period during which they sat on the board.

Q. Does this just cover UK employees or all employees of the company, wherever they are located? And does it extend to the whole group where the company is a parent company?

The comparison extends to all employees of the company. Where the company is a parent company, it covers the employees of the parent company only and not the whole group. In instances where that parent company only employs a small proportion of the workforce, a company may choose **voluntarily** to disclose the change in directors' remuneration compared to a wider employee comparator group, if this will provide a more representative comparison. This will need to be reported alongside the statutory disclosure.

Q. How should average employee pay be calculated for the purpose of determining the annual change in average employee remuneration?

The Directive does not specify this. Companies may calculate average employee remuneration by reference either to the 'mean' or 'median' of employee pay. Companies are encouraged to state which method they have used for the information of shareholders and other interested stakeholders.

Q. How does this inter-act with the new requirements on pay ratio disclosure introduced last year by the government (under the Companies (Miscellaneous Reporting) Regulations 2018)?

Those regulations require UK quoted companies with more than 250 UK employees to disclose and explain each year the ratio of their CEO's 'Single Figure' to the median, lower quartile and upper quartile remuneration of the company's UK employees.

There are some differences in scope between the pay ratio regulations, and the requirement in these new regulations to compare changes in directors' pay with changes in average employee pay.

The main differences are:

- The pay ratio reporting covers UK employee pay across the group as a whole if the company is a parent company, whereas the Regulations that implement the Directive cover the pay of all employees, wherever they are located, but only to the extent that they are employees of the parent company.
- The pay ratio reporting covers employee pay across all categories of the 'Single Figure' where applicable (salary, pension, any bonus, any taxable benefits and any long-term share awards) whereas these regulations cover just salary, any bonus and any taxable benefits.

Notwithstanding these differences, the gathering of employee pay data to help comply with the new pay ratio requirement may also help companies to comply with these regulations that implement the Directive.

Q. Why have you removed the option in paragraph 19 of the 2008 regulations to use a 'comparator group' to represent annual changes to employee pay?

The use of a comparator group was previously allowed in view of the previous requirement in paragraph 19 (under the amendments to the 2008 regulations introduced in 2013) to compare

the annual change in CEO pay with the annual change in employee pay **across the company taken as a whole**, i.e. the whole Group. The amended paragraph 19 which implements the relevant provision in Article 9b of the Directive covering employee pay extends only to the parent company, which should make the calculation of average employee pay more straightforward. However, a company may still choose to make a **voluntary disclosure** against a wider comparator group if the parent company's employees account for only a small minority of the total employee headcount of the Group. This will need to be disclosed alongside the statutory requirement.

**Q. Why must the average percentage change in respect of the remuneration of employees of the company be calculated on a Full Time Equivalent (FTE) basis?**

Reporting FTE employee pay helps to give a clearer picture of the relationship between executive and wider employee pay, irrespective of the number of hours worked by individual employees. This requirement also corresponds with calculating employee pay and benefits on an FTE basis for the purposes of determining pay ratios.

**Q. Does the data have to be calculated historically?**

No, this requirement covers the "five most recent financial years" and applies only to financial years beginning on or after the 10 June 2019.

**Two columns to be added to the existing 'Single Figure' table to show the proportion of fixed and variable remuneration of each director**

**Q. What is fixed and what is variable pay for the purpose of this comparison?**

Fixed pay should be the sum of salary, any taxable benefits and pension (columns a, b and e of the existing Single Figure table). Variable pay should be the sum of any annual bonus or long-term award (columns c and d of the existing Single Figure table).

Any items of remuneration recorded in the Single Figure table as "any other items in the nature of remuneration" should be counted as fixed or variable pay as the company judges is appropriate.

**Q. What is the purpose of adding these two columns if the data can already be construed from the existing single figure table?**

The Directive requires that the total sum of fixed pay and of variable pay be presented in a manner which permits comparison.

**Requirement to specify any changes to the exercise price and date for the exercise of share options by directors**

**Q. In what circumstances might there be a change to the exercise price?**

The Directive does not suggest any particular circumstances. One possibility might be when a company grants share options during the reporting year and subsequently carries out a share

capital restructure which would necessitate a change in the exercise price for unvested share options.

Q. What is the purpose of this new requirement?

The Directive (Article 9b, paragraph 1(d)) requires companies to disclose in the remuneration report for each director "the number of shares and share options granted or offered, and the main conditions for the exercise of the rights including the exercise price and date and any change thereof". UK law already provides for most of these requirements, but did not previously require any change to the exercise price of share options to be disclosed. This new provision is therefore included in the regulations.

## F. Procedural change covering shareholder approval of directors' remuneration payments

Q. What changes have been made to the Companies Act under these regulations?

A small procedural change has been made to the existing provision under section 226B(1)(b) which will allow shareholders to retain their existing right to a binding vote on any proposed payments to directors that would otherwise be out-with the terms of the directors' remuneration policy.

The changes to section 226B(1)(b) will require shareholder approval to allow a payment to a director outside of the remuneration policy, through an amendment to the policy. This will not count as approval of the whole policy, and therefore does not begin a new three year cycle of the remuneration policy. Companies are still required to present a new/revised policy for shareholder approval at least every three years, under section 439A of the Companies Act.

In this way, UK law will be compatible with a requirement in the Directive that all payments to directors must be in line with a shareholder approved remuneration policy.

## G. Implementation of other parts of the revised Shareholder Rights Directive

Q. How are other parts of this EU Directive [the revised Shareholder Rights Directive] being implemented?

Other parts of the Directive are being implemented by Her Majesty's Treasury, the Department of Work and Pensions and the Financial Conduct Authority.

### 1. Financial Conduct Authority

The FCA has made changes to its Handbook to implement new provisions in the Directive which require:

- Life insurers to make disclosures about their arrangements with asset managers and publicly disclose the main elements of their equity investment strategy;
- Asset managers to make disclosures relating to their arrangements with asset managers and their investment strategy;
- Board approval and additional disclosures by UK companies with voting shares admitted to a regulated market (including officially listed companies) around related party transactions.

### 2. HM Treasury

- HMT laid regulations (the Proxy Advisors (Shareholders' Rights) Regulations 2019) in Parliament on 14 May to implement new transparency requirements in the Directive covering the work of 'proxy advisors', who provide voting services to shareholders in Publicly Listed Companies.
- The new requirements will require proxy advisors to make certain disclosures about how they fulfil their stewardship role.

### 3. Department for Work and Pensions

- DWP amended legislation on 6 June 2019 through the Occupational Pension Schemes (Investment and Disclosure) (Amendment) 2019, which is responsible for implementing new requirements in the Directive that require pension schemes to disclose and explain their investment strategy, their arrangements (if any) with asset managers and their policy on engaging with investee companies.

The above measures were transposed on the 10 June 2019.

Additionally, BEIS will bring plans forward in due course to implement chapter 1a of the Directive covering the facilitation of shareholder rights, which has a transposition deadline of 3 September 2020.

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